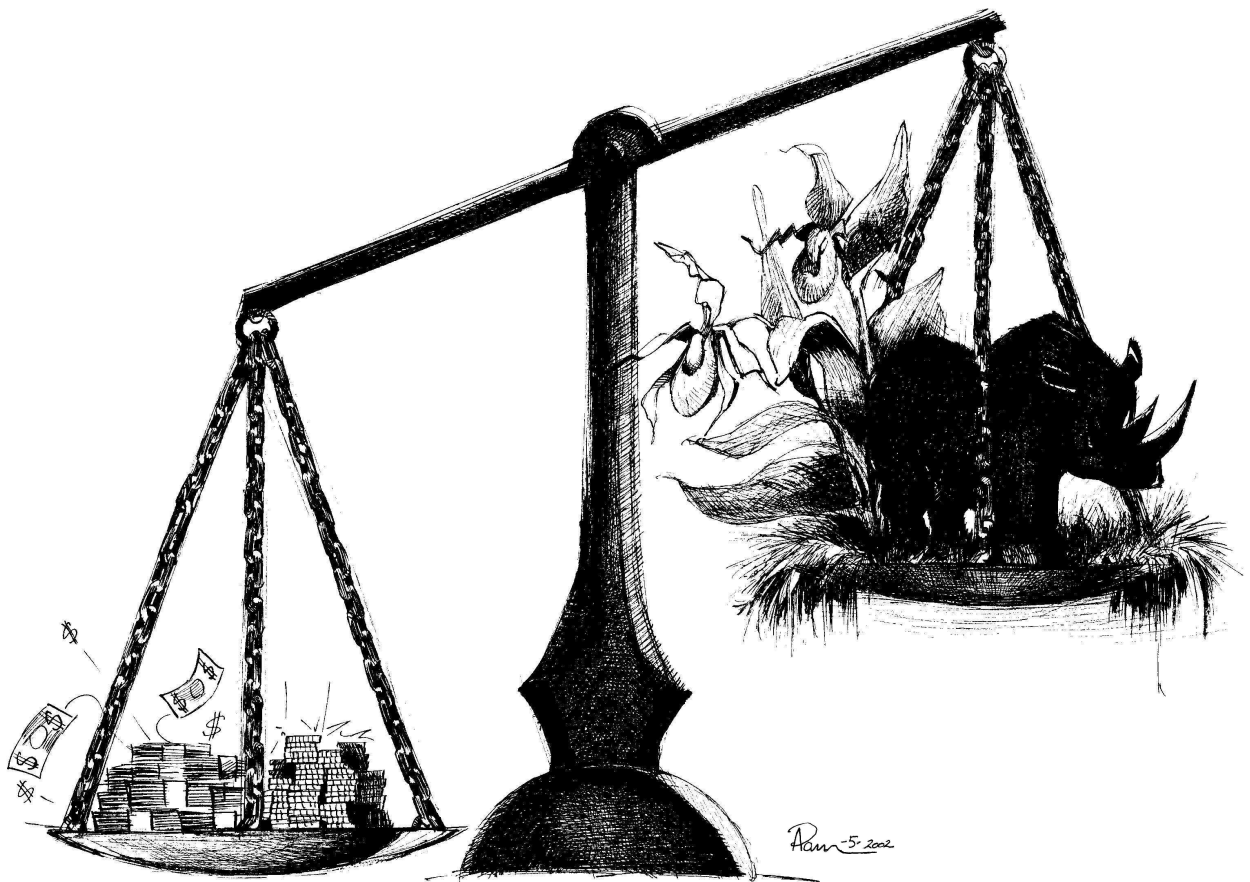


PROCEEDINGS OF THE
**INTERNATIONAL EXPERT WORKSHOP
ON THE ENFORCEMENT OF WILDLIFE
TRADE CONTROLS IN THE EU**

5-6 November 2001 ~ Frankfurt, Germany

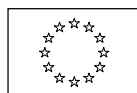
by **Monika Anton, Nicholas Dragffy, Stephanie Pendry
and Tomme Rozanne Young (Eds)**



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PREFACE

Trade in wildlife is big business. It is estimated that trade in wild plants and animals and their derivatives is worth several billions of US dollars and that hundreds of millions of wild plants and animals are involved in international trade every year. We are not talking about a marginal phenomenon.

Wildlife is a very precarious commodity. If traded without precaution and control we risk that populations become depleted and species become extinct, with dramatic consequences for life on earth. The international community is aware of this threat; the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was adopted over 25 years ago and is in force in 157 member states. Yet, the risks to wildlife from trade continue to exist and there are many good reasons to be on the alert. A major problem is enforcement: Any law, just as any international agreement, is only as good and effective as its enforcement.

Enforcement of CITES is a challenge to all countries – the Member States of the EU are no exception. In the EU international trade is regulated through Regulation 338/97; its provisions are directly applicable in all 15 Member States. Enforcement of laws, on the other hand, still remains a matter of national jurisdiction; it is addressed in the Regulation in a rather cautious manner paying respect to the rights of Member States.

It is no wonder that enforcement practice varies from country to country, with differences in political approaches, legal and administrative systems of control, or attitudes and perceptions with regard to wildlife trade. The following proceedings of the Frankfurt Workshop offer a good insight into the nature and dimensions of the problem; it is not only legal-technical but also a problem of attitudes and awareness.

It is therefore, appropriate and timely to intensify the debate about the state of enforcement of CITES in the Member States of the EU. The aim is clear: It must be ensured that in all Member States violations of CITES are sanctioned effectively so that violations of the agreement are discouraged. It must be ensured that Member States react to violations in the same strict manner. And it must be ensured that the principles of free trade in the EU cannot be misused to escape from the penalties which need to be imposed if the law is broken.

The Frankfurt Workshop was a promising start; other steps must follow now. It became clear that the task needs to be approached prudently and that we need to respect the undisputed competencies of the Member States in law enforcement. Nonetheless, guidance and oversight may be needed. This is not only an appeal to the EU governmental institutions; it is also a challenge to the European non-governmental community to watch state practice and raise awareness with the general public. It was one of the lessons learned in Frankfurt: Enforcement of CITES can be encouraged by increased public awareness; prosecutors and judges will take note of the concerns and expectations of a critical public.

Dr. Lothar Gündling, Attorney at Law, Workshop Facilitator

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Proceedings of the International Expert Workshop on the Enforcement of Wildlife Trade Controls in the EU

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John Scanlon, Director
IUCN – Environmental Law Centre

Caroline Raymakers, Director
TRAFFIC Europe

Introduction

The European Community represents one of the world's largest markets for wild plants and animals. The international trade in many of these species is regulated by CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora). Legal imports of CITES listed specimens by the EU Member States in 1996 included 7000 live primates (30% of global trade), 850 000 live (wild and captive bred) birds (65% of global trade), 55 000 live reptiles (15% of global trade), 330 000 snakeskins (45% of global trade) and 800 000 wild collected plants (75% of global trade)¹.

As of January 2002, all 15 EU Member States have now adhered to CITES. Although the Community is not yet a Party to CITES in its own right, it has implemented CITES since 1984 through Council Regulation (EEC) 3626/82, as amended and comprehensively updated by Council Regulation (EC) 338/97 of 9 December 1996 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein in June 1997. This Regulation is currently supplemented by Commission Regulation (EC) No 1808/2001.

The Council Regulation fully implements the State Parties' obligations under CITES, and addresses most of the currently applicable Recommendations and Decisions of the Conference of the Parties to the Convention. It specifically provides control standards regarding wildlife transport to and from the Community, limitations and controls on commercial activities within EU territory, and authorisation of the operations of EU-level agencies and entities for co-ordination of management, scientific research, and enforcement. It leaves to Member States the task of setting and imposing sanctions for violations of its provisions.

The main goal of the joint Project of IUCN Environmental Law Centre and TRAFFIC Europe was to undertake research and compile information to develop recommendations that will help to improve the administrative and judicial oversight of enforcement actions, sanctions, and penalties relating to wildlife trade. The final workshop sought to involve, inform, and raise awareness among responsible agencies, judges, lawyers and targeted audiences relating to the implementation and enforcement of Regulations concerning wildlife trade in the EU. The objectives of the Project were:

- To evaluate and compare legal enforcement measures adopted by each EU Member State.
- To research jurisprudence of wildlife trade crime in the European Union including verdicts and applied procedures of cases.
- To assist with the exchange of information and facilitate the dialogue between responsible agencies.
- To develop recommendations and guidance for enhanced EU wildlife trade enforcement measures.

To achieve these objectives IUCN Environmental Law Centre and TRAFFIC Europe undertook the following activities:

IUCN Environmental Law Centre has undertaken an analysis of national legislation of the 15 EU Member States, focused particularly on enforcement provisions and their implementation; a review of jurisprudential information developed for this project and in other contexts; and the development of synthesis of relevant information on EU wildlife trade enforcement. All of this information is contained or summarised herein.

TRAFFIC Europe has compiled court cases, significant infringements, procedures applied in cases and challenges which lay ahead to serve as another basis for analysis and for suggesting models for ongoing and future activities that can improve the ability of Member States to respond to wildlife trade crime.

Based on the information and analysis gathered by the Project, TRAFFIC Europe and IUCN Environmental Law Centre conducted the "International Expert Workshop on the Enforcement of Wildlife Trade Controls in the EU" on the 5th and 6th of November 2001 at the Zoological Garden in Frankfurt, Germany.

¹ Analysis of the European Community 1996 Annual Report to CITES. WCMC, unpublished report to the European Commission 1999.

During this two-day workshop representatives of wildlife trade regulatory agencies, public prosecutors, the European Commission, the CITES Secretariat and NGOs raised and discussed legal and other obstacles to effective enforcement and implementation related to illegal trade in endangered wildlife in the region. Recognizing that penalties are an important part of the equation, the workshop highlighted two recently designed national programmes for calculating monetary compensation and other penalties. The presentation of selected case studies identified and analysed gaps and challenges in the implementation of Regulation (EC) 338/97. The discussions that followed suggested options for addressing and reducing them. The Workshop participants – working first in smaller, more focused working groups and then in a plenary format – developed preliminary recommendations by which EU Member States can move forward and tackle the challenges that lie before them. Enhanced co-ordination and information exchange among agencies at national level, among EU Member States, and also between the EU and other countries, was one of the meeting's main recommendations. Participants also called for means of raising awareness of the importance of wildlife trade controls, and their value in achieving environmental goals. In this way, it is hoped that the EU can take its place in the evolution of international wildlife conservation.

INTERNATIONAL EXPERT WORKSHOP ON THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS IN THE EU

5th – 6th November 2001, Zoological Garden Frankfurt/Germany

Agenda

Monday 5th November

- 09.15 – 10.00 **Registration**
- 10.00 – 10.20 **Welcome and opening remarks**
(Monika ANTON, TRAFFIC Europe; Tomme Rozanne YOUNG, IUCN Environmental Law Centre; Rudolf WICKER, Zoological Garden Frankfurt; Dr. Dietrich JELDEN, Federal Agency for Nature Conservation/Germany; Dr. Lothar GÜNDLING, Workshop Facilitator)
- 10.20 – 10.50 **Introductory session**
Biodiversity and Wildlife Trade: From Fauna and Flora in Trade to Sanctions
(Caroline RAYMAKERS, TRAFFIC Europe)
- 10.50 – 11.20 Enforcement and the CITES National Legislation Project
(Marceil YEATER, CITES Secretariat)
- 11.20 – 11.50 More than CITES: The EU Wildlife Trade Regulations
(Nicole MAGEL, European Commission)
- 11.50 – 12.05 Coffee/Tea
- 12.05 – 13.00 **Overview and analysis of national legislation and sanctions enforcing wildlife trade controls in the EU**
National Wildlife Trade Regulation in EU Member States
(Tomme Rozanne YOUNG, IUCN Environmental Law Centre)
- 13.00 – 14.00 Lunch
- 14.00 – 14.30 A Preliminary Overview of Court Cases and Challenges in the Prosecution of Crime related to Wildlife Trade in the EU
(Monika ANTON, TRAFFIC Europe)

Introductory session on commercial value of wildlife

- 14.30 – 15.00 Monetary Compensation in Crimes against Nature
(Frans GEYSELS, Belgium, Federal Police)
- 15.00 – 15.30 Value Confiscation – Monetary Compensation in Crimes against Protected Species
(Veijo MIETTINEN, Finland, Finnish Environment Institute)
- Case Studies - The practical experience: prosecution and sanctions of wildlife trade in the EU – I**
- 15.30 – 16.00 Problems related to the Judicial Procedures in Spain with Relation to Wildlife Traffic. Some Solutions.
(Emilio VALERIO, Spain, Fiscal General de Medio Ambiente)
- 16.00 – 16.30 Organised Crime and Wildlife Trade in Germany. The FUNDACEF Case.
(Dr. Axel KREUTZ, Germany, Staatsanwaltschaft Frankfurt)
- 16.30 – 16.45 Coffee/Tea
- 16.45 – 17.15 Cases from the United Kingdom
(Elizabeth RUSSEL, United Kingdom, HM Customs and Excise)
- 17.15 – 17.45 The Problems of the Conversion of CITES in Belgian Law. The Ivory case.
(Leen BAETENS, Belgium, Parket van de Procureur des Konings te Brussel)
- 17.45 – 18.15 Report on the Investigative Activity in the Trade of Avifauna. A Study Case in North-East Side of Italy.
(Dr. Emilio GOTTARDO, Italy, Regione Autonoma Friuli Venezia Giulia, Direzione Regionale delle Foreste, Servizio del Corpo Forestale Regionale)
- 18.15 – 18.45 Enforcement in Italy
(Marco FIORI & Cristina AVANZO, Italy, Corpo Forestale dello Stato)
- 18.45 – 19.15 **Summing up day 1 – prospects of day 2**
(Dr. Lothar GÜNDLING, Workshop Facilitator)
- 19.30/20.00 Dinner

Tuesday 6th November

Case Studies - The practical experience: prosecution and sanctions of wildlife trade in the EU – II

09.00 – 09.45 POLARIS - Sentencing Guidelines
(Drs. Ing. Stefan VREEBURG & Mr. Ing. Arie DE MUIJ, The Netherlands, Expertise Centre Green Public Prosecutor)

09.45 – 11.15 **Working groups - I**

Working groups will make practical suggestions regarding the identification of gaps and problems, examination of various standards and examples and possible provisions and issues to be addressed in the development of guidance on these issues (including recommending possible options).

11.15 – 11.30 Coffee/Tea

11.30 – 13.00 **Working groups - II**

Working groups will make practical suggestions regarding the identification of gaps and problems, examination of various standards and examples and possible provisions and issues to be addressed in the development of guidance on these issues (including recommending possible options).

13.00 – 14.00 Lunch

14.00 – 14.30 **Reports of working groups**

14.30 – 15.30 **Discussion and development of recommendations and action points**

15.30 – 16.00 **Where to go from here – agenda for future action**

(Dr. Lothar GÜNDLING, Workshop Facilitator)

16.00 **Close**

Biodiversity and Wildlife Trade: From Fauna and Flora in Trade to Sanctions

Caroline Raymakers, TRAFFIC Europe

The Challenge of CITES: Linking Nature with Legislation

CITES (Convention on International Trade of Endangered Species of Wild Fauna and Flora) is regarded as a convention dealing exclusively with species, however its provisions (particularly Art. IV.3) cover the link between species, and their habitats and ecosystems. This dimension of CITES sheds light on the fragile balance between species and their ecosystems: an important parameter to be taken into account during the biological valuation of specimens, when legal sanctions are being determined.

Biodiversity and Human Needs

CITES also takes into account human needs and recognises that fauna and flora are resources with a wide range of known, and yet to be discovered utilities. Direct extraction for consumption is the most common use, for instance plants used in the pharmaceutical industry; trees as timber and non-timber forest products (NTFP); fish as food and, health products. But nature can also be the subject of non-consumptive use such as tourism. In both cases a wide range of users are involved and partnerships are essential, particularly dialogue with the biotechnology industry.

International Trade in Wildlife

An estimate of the annual value of global international trade in wildlife in the early 1990s (based on declared import values, Customs data) reveals that timber represents 65% (104 billion USD) of the global international trade, fisheries 25% (40 billion USD) and others 10% (15 billion USD).

According to CITES Annual Reports and Customs data for 1996, EU (European Union) imports were:

850 000 Live Birds	(75% of global trade)
800 000 Wild Plants	(75% of global trade)
150 Tonnes of Caviar	(50% of global trade)
7 000 Primates	(30% of global trade)
555 000 Live Reptiles	(15% of global trade)

Management Relies on Science

Another important challenge for CITES is to assess that the level of trade has no detrimental effect on wild populations. Management Authorities are therefore under the obligation to rely on their Scientific Authorities regarding the issuance of export and import permits, as well as in relation to the evaluation of export quotas. The legal and financial independence of Scientific Authorities is needed for experts to perform objective 'non-detriment findings' concerning the status of species in the wild, the level of threats they are exposed to, and the significance of trade in them.

Biological parameters include principally:

- the age at first reproduction, the growth and recruitment rates of the species, and
- the distribution and abundance of the species in the country of origin.

The volume exported annually is not the only information that matters to measure the threats caused by international trade, authorities must also consider among others:

- the collateral damage that occurs at collection sites,

- the mortality or loss of specimens before export, and
- the level of domestic use, whether for subsistence or commercial purposes.

In addition, a non-detriment finding must integrate other threats, such as habitat destruction, pollution and many other obstacles to the survival of plants and animals in the wild.

Enforcement is Essential

At the enforcement level the main bodies that should be involved are Customs, the Police, prosecutors, judges and lawyers. Critical factors include time, co-ordination between national authorities, political will, inefficient judicial procedures, prosecutors' and judges' knowledge on wildlife, and inadequate penal legislation in case of violations of wildlife-trade regulations. Co-ordination is essential to avoid frustration on the part of all bodies responsible with ensuring enforcement. There have been few examples of enforcement of CITES principles under Council Regulation (EC) No 308/97.

Necessary Legal Provisions

In order to comply with CITES provisions, the national legislation of CITES Parties or countries that want to accede the Convention should cover as a minimum:

- List of species (not equivalent to domestic fauna & flora);
- Specimens regulated, e.g. all parts and derivatives;
- Administrative structures in place and their power;
- Procedures for the issuance of permits and certificates;
- Possession, transport, collection, export, etc. of specimens covered by CITES;
- Particularities, e.g. control of shipments in transit, introduction from the sea;
- Provisions for confiscation and sanctions (e.g. Article 16 of Reg. (EC) 338/97); and
- Enforcement structures and their power, e.g. Customs, the Police, federal services (where applicable).

Wildlife-Trade Control is a Chain Reaction

Although they are the last link of the chain, dissuasive, adequate and concerted sanctions are keys to the effective implementation of all other efforts: enforcement, management and scientific.

Enforcement and the CITES National Legislation Project

Marceil Yeater, CITES Secretariat

Problems related to CITES Implementation

The main problems related to the implementation of CITES include:

- Lack of or insufficient national legislation, particularly regarding penalties.
- Issuance of irregular documents.
- Lack of or insufficient border control.
- Fraud.
- Lack of or insufficient co-ordination and communication between the Management Authority, the Scientific Authority and enforcement agencies (customs and police). This can be due to the fact that no specific contact or focal point exists or is known or there is no reliable e-mail or telefax or telephone system available to facilitate communication.
- Insufficient communication with the Secretariat.
- Lack or insufficient control of domestic trade, in spite of the fact that domestic trade has implications for international trade.

National Legislation Project

The national legislation project, which CITES has operated since 1992 - and which is now in its fourth phase - involves the analysis of national legislation, and the provision of assistance to States to improve legislative development and/or implementation. Inadequate legislation can result in the Conference of the Parties or the Standing Committee recommending that Parties suspend trade in CITES species.

Legislative Analysis

Legislative analysis involves reviewing whether the legislation:

- Designates a Management Authority and Scientific Authority.
- Prohibits trade in specimens in violation of the Convention.
- Penalises such trade (offences and penalties).
- Provides for the confiscation of specimens illegally traded or possessed.

Based on this analysis, legislation is classified into one of three categories:

- Category 1: Legislation generally meets the requirements for implementation of CITES.
- Category 2: Legislation generally does not meet *all* requirements for implementation of CITES.
- Category 3: Legislation generally does not meet the requirements for implementation of CITES.

Legislative Assistance

Types of legislative assistance include:

- A checklist for reviewing CITES legislation, which is now being supplemented with references to sample legislative provisions on specific topics.

- A model law on international trade in wild fauna and flora.
- Examples of legislation from other countries.
- The *Evolution of CITES* by W. Wijnstekers (available at www.cites.org).
- Reviewing and commenting on draft legislation.
- Sending Secretariat staff or others on a mission to the country.
- Developing bilateral or multilateral legislation projects.
- Organising or participating in regional/national workshops.

Legislative Elements

Key legislative elements are:

- General Provisions: Purpose of the law, definitions to be used in the application of the law, scope and links to related legislation.
- Institutions: These must be explicitly designated, and their functions and powers should be described as well as their relationship *vis-à-vis* each other and the implementation of CITES. Coordination should be ensured via a mechanism or a process.
- Regulation of Trade: This should encompass:
 - i. Permits / certificates / marking
 - ii. Licensing / registration
 - iii. Border and internal trade control (limited entry points)
 - iv. Breeding operations and nurseries.
- Compliance Measures: Offences should encompass:
 - i. The prohibition of international trade/transit without proper documents.
 - ii. The prohibition of possession, transport and trade without proof of legal acquisition.
 - iii. The punishment of fraud/ non-compliance.
 - iv. The confiscation of specimens illegally traded and/or possessed.

Importantly, there is a need to show people that it is in their own interest to comply with CITES (i.e. there is a benefit with compliance and a cost for non-compliance). Environmental crimes are generally based on technical provisions, e.g. the possession of valid permits, etc, the effect of which is to lessen the importance of such crimes *vis-à-vis* judges. For this reason it is necessary to link environmental crimes with their impact on the environment and/or people, as well as to crimes that are generally regarded as having greater importance (e.g. fraud, conspiracy, organized crime).

It is important that legislative consideration be given to:

- Adequacy of penalty in relation to offence.
- Increased penalty on subsequent offences.
- Imposition of fines - as well as imprisonment -, a ban on future trade activities; and forfeiture. Some countries consider that enforcement stops with the seizure or confiscation of the illegally traded species, however, this should only be the beginning of the process. Seizure without fine or imprisonment or heavy economic consequences is ineffective at deterring future violations.
- Corporate liability.
- National / regional harmonisation.
- Fines directed towards environmental enforcement or towards environmental management

Co-operation

There should be improved co-operation among all bodies involved in CITES, since this is critical in ensuring effective enforcement. Such bodies include *inter alia*: the police and customs; wildlife agencies; specialized environmental crime units; Management and Scientific Authorities; the prosecutors/courts; the public; and NGOs. Co-operation among these different bodies should occur at the global level (INTERPOL, WCO, CITES Secretariat) at subregional/regional/bilateral level, and at national or subnational level.

Suggestions:

- Organise regular and specialised training of relevant bodies.
- Establish checklists, sample pleadings, or other tools.
- Establish a mechanism for expedient communication.
- Elaborate sentencing guidelines (e.g. as in the US or the Netherlands) / valuation methods (e.g. as in Finland) Memoranda of Understanding between or among authorities.
- Establish a clear role for the public and for NGOs. When governments are not taking sufficient action or need assistance, NGOs may have a role to play, however, it is important that both governments and NGOs are aware of their precise roles. NGOs can work with governments in clearly defined ways to facilitate compliance/enforcement efforts but governments retain ultimate responsibility for application of the law.
- Utilise scientific / technical support.
- Exploit the media.

More than CITES: The EU Wildlife Trade Regulations

Nicole Magel, European Commission

History

When CITES came into force at the beginning of 1975, the European Communities had nine Member States, five of which acceded to the Convention in the four subsequent years (Germany, United Kingdom, Denmark, France, Italy). Three main reasons made the Community draw up common rules for the implementation of the Convention:

- external trade rules are of exclusive Community competence;
- the absence of systematic border controls as a result of the customs union; and
- the adoption of environmental action plans for the Community and legislation on the protection and conservation of the Community's indigenous species, making wildlife trade regulations shift from a national affair to a matter of Community competence.

These rules were established in Council Regulation (EEC) 3626/82 and Commission Regulation (EEC) 3418/83 which came into force on 1 January 1984. Whereas the Council Regulation outlines the basic principles, the Commission Regulation contains more detailed implementing rules.

In 1991, the Commission proposed that the Council replace these Regulations by 1 January 1993 due to:

- the completion of the Single Market and therefore the virtual complete disappearance of internal trade controls;
- the disparate implementation by Member States of CITES Resolutions which resulted in a lack of harmonisation and confusion; and
- the evolution of wildlife-trade control techniques and policies.

Negotiations between Member States, which took far longer than expected, led to the adoption of Council Regulation (EC) 338/97 and Commission Regulation (EC) 939/97 at the end of 1996 and their entry into force on 1 June 1997.

By that time, the European Union had 15 Member States, only one of which – Ireland - is not a party to the Convention². Despite this fact, EU wildlife-trade regulations have been fully applicable in Ireland from the beginning of 1984.

Ireland is in the process of ratifying the Convention and accession to CITES is expected in 2002. While all 15 Member States will then be parties, the European Community itself is not! Accession by the Community requires the ratification of the Gaborone Amendment to the Convention by 54 Parties. Forty parties have ratified in the last 18 years: the other ratifications are yet to come.

Changes to EU Wildlife Trade Regulations since 1997

Since their adoption in 1997, the two Regulations have been amended several times.

Amendments to the Council Regulation consist of amending Annexes A – D. This is done through the publication of a new Commission Regulation. The most recent update of the Annexes was published on 1 August 2001 as Commission Regulation 1579/2001.

Decisions taken at the biannual Conference of Parties of CITES are incorporated into the Commission Regulation. For this purpose, an amendment to the Regulation is published. After the 11th Conference of the Parties in Nairobi it was decided to completely republish the Regulation in order not only to incorporate the latest decisions, but also to correct

² [SHORTLY BEFORE FINALISING THE EDITED TEXT OF THIS VOLUME, ON 8 JANUARY, 2002, IRELAND DEPOSITED ITS INSTRUMENT OF RATIFICATION, AND BECAME THE 157TH PARTY TO CITES].

mistakes dating back to the first publication in 1997. The new Regulation 1808/2001, which replaces Regulation 939/97, entered into force on 22 September 2001.

The new Council Regulation 338/97

The new Regulation is far more comprehensive than the old one and includes a number of significant changes, which are listed below. Regarding enforcement, Member States decided to include a) a requirement of monitoring and investigations and b) an obligation to have adequate legislation on sanctions.

Principal novelties in Council Regulation 338/97 as opposed to Regulation 3626/82

1. CITES is not attached as an annex to the Regulation anymore but is integrated into the Regulation.
2. The new Regulation allows for the inclusion of non-CITES listed species in Annexes A-D where these meet specific listing criteria ⇒ *Article 3*
3. The Commission can amend Annexes B-D, whereas before a Council decision was required if listing did not result from a Conference of Parties ⇒ *Article 19*
4. Import restrictions: There is an increased possibility of subjecting species to import restrictions. These restrictions are published in the Official Journal of the EC after consultation with the country of origin ⇒ *Article 4(6)*
5. Appropriate housing for Annex A and B species (not only Appendix I species) ⇒ *Article 4*
6. Proper transport for all live specimens is now required ⇒ *Article 9*
7. Provisions for listing exotic species in Annex B which pose an ecological threat ⇒ *Article 3*
8. Provisions on inspections, required facilities and staffing at outside border posts and deals with co-ordination between Member States ⇒ *Article 12*
9. Definition and regulation of personal effects and household goods ⇒ *Article 7*
10. Adequately deals with certification requirements ⇒ *Article 10*
11. Requirements for the designation of one or more Scientific Authorities whose duties shall be separate from those of the Management Authority ⇒ *Article 13*
12. Establishment of Scientific Review Group ⇒ *Article 17*
13. Establishment of Enforcement Group ⇒ *Article 14*
14. Allows the Commission to adopt measures on all aspects of implementation (incl. CITES recommendations) ⇒ *Article 19*
15. Requirement of monitoring and investigations ⇒ *Article 14*
16. Obliges Member States to have adequate legislation on sanctions / to take measures to ensure the imposition of sanctions ⇒ *Article 16*

Commission Regulation (EC) 1808/2001

The Commission Regulation contains detailed provisions on how to implement the Council Regulation, such as design of permits and certificates, application procedures for permits and certificates, documents to be presented to customs, information required on Article 10 certificates, definition of specimens born and bred in captivity, introduction into and export from the Community of personal and household effects, and, marking.

The Committee and the Scientific Review Group

1) The Committee on Trade in Wild Fauna and Flora ('The Committee') – Article 18

The Committee is composed of representatives of the Member States and is chaired by a Commission representative. The Committee delivers its opinion on draft measures proposed by the Commission. A favorable opinion by the Committee leads to subsequent adoption of the measures by the Commission.

The Committee usually meets three times a year in Brussels and discusses not only measures to be adopted but also more general matters regarding the implementation of the EU Regulations.

2) The Scientific Review Group – Article 17

The Scientific Review Group is composed of representatives of the Member States and is chaired by a Commission representative. Like the Committee, the Scientific Review Group usually meets three times a year to discuss and examine scientific questions relating to the application of the Regulation. The outcome of the discussions feed into the decisions of the Management Committee and the national Scientific Authorities, who decide on the introduction into the Community of Annex A and B specimens “*after considering any opinion by the Scientific Review Group*”.

◆ Stricter measures

The opinion formed by the Scientific Review Group also influences the decision to be taken by the Committee on restrictions on the import of certain species.

Article 4(6) gives the Commission the possibility to establish either general restrictions or restrictions relating to certain countries of origin on the introduction into the Community of:

- Annex A specimens if, the introduction would have a harmful effect on the conservation status of the species, or on the extent of the territory occupied by the relevant population of the species, or on the grounds of other factors relating to conservation;
- Annex B specimens if, given the current or anticipated trade levels, the introduction would have a harmful effect on the conservation status of the species, or on the extent of the territory occupied by the relevant population of the species or on the grounds of other factors relating to conservation;
- live specimens in Annex B, which have a high mortality rate during shipment or as to which it has been established that live animals are unlikely to survive in captivity for a considerable proportion of their life span; and
- live specimens of species for which it has been established that their introduction into the natural environment of the Community present an ecological threat to wild species of fauna and flora indigenous to the Community.

Import restrictions can only be established after consultation with the countries of origin. They are published in the Official Journal of the European Communities in the form of a Commission Regulation, the so-called “Suspensions Regulation”. The most recent “Suspensions Regulation” is Regulation (EC) 2087/2001 of 24 October 2001.

Other differences between the EU wildlife-trade regulations and CITES

The most important differences between the provisions of the EU regulations and the provisions of the Convention are:

- ◆ The annexes contain non-CITES species; there is an additional monitoring Annex D.
- ◆ Import conditions are stricter.
- ◆ The regulations provide for intra-Community trade with Annex A specimens.
- ◆ The regulations prescribe the control of transport conditions for all live specimens in the annexes, as well as -
- ◆ the control of housing conditions for live specimens of species in Annex A and B

Enforcement

1. Monitoring of compliance and investigation of infringements

Article 14(1) and (2) require that:

- ◆ Member States monitor compliance with the provisions of the Regulation;

- ◆ Member States ensure compliance or instigate legal action in the case of infringements;
- ◆ Member States inform the Commission (and the Convention Secretariat if CITES species are concerned) of steps taken in relation to significant infringements, including seizures and confiscations;
- ◆ the Commission draws Member States' attention to matters the investigation of which it considers necessary;
- ◆ Member States inform the Commission (and the Convention Secretariat if CITES species are concerned) of the outcome of subsequent investigations.

Article 14(3) establishes an Enforcement Group consisting of representatives of each Member State's authorities responsible for ensuring the implementation of the provisions of this Regulation. The Group is chaired by the representative of the Commission.

The task of the Enforcement Group is to examine any technical question relating to the enforcement of the Regulation. The Commission conveys the opinions expressed in the Enforcement Group to the Committee.

2. Sanctions

When discussing the new Regulation, Member States wanted to have an article on sanctions in the Regulation. EU legislation does not usually define sanctions but leaves it to Member States to do this.

Under (17) the Regulation therefore says "*it is important that Member States impose sanctions for infringement in a manner which is both sufficient and appropriate to the nature and gravity of the infringement*". Article 16(1) gives a minimal list of infringements to be sanctioned (see below). Article 16(2) specifies that these measures have to be "appropriate to the nature and gravity of the infringement" and that they shall include "provisions relating to the seizure and, where appropriate, confiscation of specimens".

Minimal list of infringements to be sanctioned according to Article 16(1)

- (a) introduction into, or export or re-export from, the Community of specimens without the appropriate permit or certificate or with a false, falsified or invalid permit or certificate or one altered without authorization by the issuing authority
- (b) failure to comply with the stipulations specified on a permit or certificate issued in accordance with this Regulation
- (c) making a false declaration or knowingly providing false information in order to obtain a permit or certificate
- (d) using a false, falsified or invalid permit or certificate or one altered without authorization as a basis for obtaining a Community permit or certificate or for any other official purpose in connection with this Regulation
- (e) making no import notification or a false import notification
- (f) shipment of live specimens not properly prepared so as to minimize the risk of injury, damage to health or cruel treatment
- (g) use of specimens listed in Annex A other than in accordance with the authorization given at the time of issuance of the import permit or subsequently
- (h) trade in artificially propagated plants contrary to the provisions laid down in Art. 7(1)(b)
- (i) shipment of specimens into or out of or in transit through the territory of the Community without the appropriate permit or certificate issued in accordance with this Regulation and, in the case of export or re-export from a third country party to the Convention, in accordance therewith, or without satisfactory proof of the existence of such permit or certificate
- (j) purchase, offer to purchase, acquisition for commercial purposes, use for commercial gain, display to the public for commercial purposes, sale, keeping for sale, offering for sale or transporting for sale of specimens in contravention of Article 8

- (k) use of a permit or certificate for any specimen other than one for which it was issued
- (l) falsification or alteration of any permit or certificate issued in accordance with this Regulation
- (m) failure to disclose rejection of an application for a Community import, export or re-export permit or certificate, in accordance with Article 6(3)

3. Confiscation and Seizures

Art. 16(3) concerns the method of dealing with specimens following confiscation. It gives two options when a specimen is confiscated:

The competent authority consults with the Scientific Authority in that Member State, and then places or disposes of the specimens under conditions deemed appropriate and consistent with the purposes and provisions of the Convention and the Regulation.

OR

In the case of a live specimen which has been introduced into the Community, the competent authority may consult with the State of export and return the specimen to that State at the expense of the convicted person.

Art. 16(4) concerns live Annex B or C specimens arriving at a point of introduction into the Community without the appropriate valid permit or certificate. It stipulates that the specimen must be seized and may be confiscated, or that “if the consignee refuses to acknowledge the specimen, the competent authorities may, if appropriate, refuse to accept the shipment and require the carrier to return the specimen to its place of departure”.

Application of the Regulation in EU Member States

Regulations are directly applicable in all Member States and therefore Member States do not have to transpose the provisions of 338/97 into national law. Nevertheless, the Regulation obliges Member States to notify the Commission of a) the names and addresses of designated management and other authorities and scientific authorities, b) the names of people authorised to sign permits and certificates and c) the customs offices for carrying out the checks and formalities for the introduction into and export from the Community. In addition, according to Article 20, Member States have to notify the Commission and the Convention Secretariat of the provisions adopted specifically for the implementation of the Regulation and of “all legal instruments used and measures taken for its implementation and enforcement”.

Article 16 obliges Member States to impose sanctions, and thus in turn, requires the adoption of national legislation. Alternatively, already existing national legislation can be applied to sanction the infringements listed in the Regulation.

National Wildlife Trade Regulation in EU Member States

SUMMARY OF ENVIRONMENTAL LAW ISSUES, AND GENERAL REPORT OF THE IUCN
ENVIRONMENTAL LAW PROGRAMME'S PARTICIPATION IN THE PROJECT:

“ENFORCEMENT OF INTERNATIONAL WILDLIFE TRADE CONTROLS IN THE EU”

Tomme Rozanne Young, IUCN Environmental Law Centre, Bonn, Germany

Note: Following a brief introduction and description of the IUCN-ELC's involvement in this project, This report incorporates three written elements that the IUCN Environmental Law Centre was called upon to provide for this project:

- (i) A paper presented at the workshop, outlining of the issues to be considered in the development of guidelines or recommendations regarding CITES enforcement;
- (ii) A discussion of the legal issues raised by the research under this project, with particular attention to synthesis and evaluation of work of the Legislative Advisors and the various contributions and consultations with governmental and private lawyers in each of the 15 EU countries (provided in full in the Annex), and
- (iii) A legal evaluation of the “jurisprudential data” (as summarised in the “Statistical Information and Factual Summaries” received from 13 of the EU countries, which summaries are provided in full in the Annex)

This report does not include any of the discussions from the workshop plenary and working groups, which are reported elsewhere. Its objective is to synthesise the various reports mentioned above, identify trends, problems and common factors, and note unique approaches and ideas. For convenience, readability, and to avoid undue repetition, this report does not repeat examples, cite to particular legislation, or describe particular cases. It strongly recommends reading the national Legislative Analyses (provided in full in Annex A), on which this document is based, and which provide detailed information on all of the matters described. in this report.

Wildlife trade controls collectively comprise one of the earliest, as well as the most detailed and specific, efforts to create and impose an international regime for the protection and sustainable utilisation of the global environment. The Convention on International Trade in Endangered Species of Fauna and Flora (CITES) was adopted at a time when the loss of species was occurring at an unprecedented rate. Serious concerns existed that many important and charismatic species would disappear forever, absent some radical change. Viewed in this background, one can see CITES as a set of drastic measures for desperate times. Its creation of a world-wide net for controlling wildlife trade was designed to have an immediate effect on a kind of behaviour which was rampant, profitable, and tremendously damaging.

Today, more than 25 years later, the CITES net is still being developed, extended, positioned, and fine-tuned in many parts of the world. However, even in its current state, it can be seen as successful. Many species such as whales and elephants that were then believed to be facing extinction are now relatively numerous. So much so, in fact, that the most recent COP seriously debated downlisting them to Appendix II.

This remarkable success may, in part, be attributed to one important element of the CITES approach – its framework for enforcement specifically requires action by both the country of export and the country of import, as well as countries through which the specimens are in transit. As a result, the swift implementation by western European and North American countries (among the largest importers), both legislatively and administratively, gave relatively immediate effect to the Convention. This was particularly true of CITES's more prohibitory provisions (relating to Appendix I specimens.)

The EU Member States have been on the leading edge of CITES implementation from its inception. Council Regulations (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (herein “Regulation (EC) 338/97”), and its various corrigenda and amendments offers one of the most complete examples of wildlife trade control legislation in existence (all the more impressive given the complex drafting and negotiation process needed to accommodate the combination of federalised components and national legislative authority embodied in the EU approach.) These provisions raise to a fine art the enforcement of wildlife trade restrictions, including both trade involving the EU and other countries, and wildlife trade and transport within the EU.

It addresses both CITES listed species and any other species that the EU may separately designate for protection. Arguably, this legislation represents the highest current standard in wildlife trade legislation.

At a time when many countries are only now adopting the minimum provisions necessary under CITES, the EU Member States have all generally achieved them at a level well beyond the majority of other CITES parties.³ The challenge now is to go beyond these minima, and to try to improve, both nationally and internationally, achievement of the Convention's objectives.

ABOUT THE PROJECT AND THIS REPORT:

This project is formally considered a joint venture between the IUCN-Environmental Law Programme (IUCN-ELC) and TRAFFIC Europe. In point of fact of course, it has been more than that, it has involved intense and directed activity by both of the joint venturers in their areas of specialisation. Hence, it is appropriate to briefly identify both the ELC's role in the project, and the particular objectives of the legal and legislative component, as undertaken by IUCN-ELC.

As described in its original proposal, this project sought "to inform and raise awareness of the Community environmental law among responsible agencies, judges, lawyers and targeted audiences in charge of the implementation and enforcement of European Council Regulations concerning wildlife trade in the Community (Regulation (EC) 338/97 of 9 December 1996 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein, and Commission Regulation (EC) No 939/97, applicable as of 1 June 1997. "

The proposal enumerated four specific objectives, which would "focus on the legislation adopted and enforced by Member States regarding sanctions in case of violation of Regulation (EC) 338/97"—

- To evaluate and compare legal enforcement measures adopted by each EU Member State;
- To research recent wildlife trade jurisprudence in EU member countries;
- To facilitate relevant dialogue and communication among the enforcement agencies, judges, prosecutors, international agencies, ngos and other legal experts; and
- To disseminate information on jurisprudence and sanctions applicable in the European Union and in the pre-accession countries.

IUCN, through the Environmental Law Centre, as well as the IUCN Commission on Environmental Law, was invited to participate as the provider of legal/legislative expertise for the project. To this end, the specific objectives assigned to the Law Centre and Commission within this project were as follows:

- (i) To undertake 15 separately commissioned expert analyses – examining the national wildlife trade legislation of each EU Member State, as well as application of various other national legislative enactments, which affect or are utilised in the enforcement of CITES and Regulation (EC) 338/97.
- (ii) To evaluate the national legislative reports, in three ways:
 - ▶ □ systematic analysis and comparison of national provisions, in light of the relevant international obligations.
 - ▶ □ legal thematic analysis of preliminary issues and conclusions, based on expert study and discussion of the national legislation, as function of its legal effectiveness and compatibility,
 - ▶ □ practical legal analysis of matters relating to the application of relevant legislation in courts (including primarily the jurisprudential data compiled by TRAFFIC Europe)
- (iii) To analyse or comment on the jurisprudential and statistical data which TRAFFIC Europe has compiled under the project;
- (iv) To participate in full discussion of relevant issues in the project workshop.

³ As described in this report, of course, some countries' standards are further advanced than others.

The 15 reports of objective (i) are provided in full in the Annex. This paper seeks to synthesise this work, as well as to satisfy objectives (ii) and (iii).⁴ It is based not only on the comprehensive reports provided, but also includes information obtained in legal and legislative discussions with authors of some of the national legislative reports, and more general discussion of the specific legal and legislative issues encountered by and experiences of members of the IUCN Commission on Environmental Law with appropriate expertise.

This paper will begin with a basic description of the necessary components and requirements necessary to enable for wildlife trade enforcement. It will then turn to the issue of national legislation within the EU Member States and the manner in which they operate, including problems addressed by legislative review, and those raised by experts describing legal impediments to the statutes' functioning. In this connection, it will briefly examine questions relating to the overall European "net" of wildlife trade enforcement, concerns regarding "leakage" and inconsistencies, and possible issues to be discussed relating to solution or improvement of the effectiveness of EU's wildlife trade controls.

I. INTERNATIONAL UNDERPINNINGS OF WILDLIFE TRADE CONTROLS IN EU MEMBER STATES

The authority and mandate for the enforcement of international wildlife trade controls in Europe, necessarily begins with two primary international documents – CITES and Regulation (EC) 338/97.

This paper assumes that the reader will already understand the basic mechanism of these documents. For purposes of the arguments and discussions presented below, however, there are several points which must be noted about these two documents, which are uniquely relevant to the enforcement of wildlife trade laws in the EU Member Countries.

CITES: CITES is relatively unique among multilateral environmental agreements in that it imposes several direct, relatively specific obligations relating to national legislation, and to administrative/enforcement activities at the national level. This does not mean, however, that it operates in derogation of national sovereignty – that is to say, that in ratifying or acceding to CITES, Parties (governments) have not given up their power of decision relating to all matters within their jurisdiction. The Convention requires that all Parties enact legislation designed to achieve certain specified objectives, however, like all international conventions –

- ▶ it does not mandate or direct any legislative choices – the Party may utilise any mechanism it chooses to achieve its CITES commitments.
- ▶ until the Party (government) has enacted legislation or otherwise imposed such requirements, neither the convention nor its parties may impose those requirements within the Party's jurisdiction;
- ▶ even if the Party's legislation is never adopted, is not properly implemented, or does not comply with CITES, the only remedies with regard to these failures (or for any violations within that Party's jurisdiction) will be against the Party itself. No remedies will be available against individuals, or for individual crimes and violations.

CITES currently binds each of the EU Member States individually.⁵ The "Gaborone Amendment" to the Convention will open the Convention to accession by "regional economic integration organisations" who may be bound to the "extent of their competence," acting on behalf of those of their members who are bound under the Convention. The amendment has not been accepted by enough parties to enter into force. As a result, the members are still separately responsible for compliance with regard to all international trade⁶, including trade between EU Member States.

⁴ Unfortunately, objective (iv) could not be met as fully as originally intended, reportedly owing to the unexpected cost involved in including the national legislative consultants or other CEL experts in the workshop. Hence, it was not possible to bring together the national legislative experts. Three representatives of the IUCN Environmental Law Centre were present, however, to attempt to share this work as fully as possible. In addition, we were fortunate in the presence of several legal experts in wildlife law whose attendance was financed by themselves or by the agencies or organisations, including two who were among the authors of the national legislative reports.

⁵ Since the project workshop, Ireland has become a party to CITES, so that all member states are directly bound.

⁶ It probably goes without saying, however the use of the term "trade" in this paper, and throughout this project is a delicate matter. For purposes of CITES and Regulation (EC) 338/97, "international trade" in specimens of endangered species encompasses virtually all situations in which such specimens cross international borders (including borders with international commons (seas).) Exceptions are granted in only a few very limited situations. (CITES, Art. VII; Reg 338/97, Art. 7; Council Reg 1808/2001, Chapters III-V(Arts. 24-33).) By contrast, domestic legislation invariably uses the word "trade" to refer to commercial situations.

In this paper, then, the word "trade" is used to refer to all activities described under CITES, and in light of the current status of the Gaborone Amendment, will consider any movement of species between EU Member States to be fully subject to CITES. In some

Regulation (EC) 338/97: By contrast, Regulation (EC) 338/97 steps beyond the conventional international agreement following the EU's federalised approach. As to many issues and concerns (prominently including trade), the European Council's regulations immediately take on the character of national law within the Member States, and must be implemented and enforced by national officials. Under Regulation (EC) 338/97 virtually all of the prohibitions and requirements with regard to international trade in wildlife are adopted in this way.⁷ These provisions include both trade within the Union, and trade between a Member State and a non-European country.

With regard to its coverage of implementation and enforcement, however, the Regulation varies from this uniformity. It specifically leaves the issues of penalties and enforcement powers entirely to be decided by national legislation.⁸ The Council does provide something to guide national legislators in regard to the penalty process. In Article 16, it identifies a minimum list of infringements for which Member States must specifically and legislatively impose sanctions, and notes that these sanctions must be "appropriate to the nature and gravity of violations involved," and must include provisions on seizure and confiscation.⁹

The reasons behind this division of legislative responsibility, however, probably find their origin in the nature of the crimes involved. Wildlife trade controls are difficult to categorise and address uniformly. They are not simply "trade" but encompass a variety of issues, administrative agencies, and objectives whose mandate may extend into environmental and nature conservation law matters, which are firmly ensconced in national law. The Regulation recognises that each country's enforcement needs to be adjusted to reflect this.¹⁰

As further discussed in this paper, every Member State has current legislation in force, which not only specifies these penalties and powers, but which also discusses or incorporates the specific prohibitions and requirements of Regulation (EC) 338/97.¹¹

As part of the international "net" for catching wildlife trade violations, Regulation (EC) 338/97 is very strong, including many provisions that extend beyond "international trade" (as defined under CITES) to include a full range of domestic activities. Under these provisions, human activities which move listed wildlife specimens (whether from Europe or elsewhere) between EU countries are illegal without appropriate administrative permission. These provisions are important as adjuncts to the CITES and EU species and ecosystem protection regimes, as implemented within each Member State.

Common Elements: Two things are common to and clear in both CITES and Regulation (EC) 338/97:

- ▶ First, the basic, underlying objective is the same for both documents – to helping to curtail the "extinction crisis" and to ensure the survival of plant and animal species around the world.
- ▶ Second, they both utilise the same the basic mechanism – reducing/ controlling international trade in wildlife and wildlife parts and products, as a means of limiting the takings of these species from the wild (ensuring that such takings are sustainable, in terms of the rate of growth/replacement of species populations and the manner in which those taking affect relevant ecosystems.)

The most important result of both documents, however, is that the Parties/Member States are ultimately responsible to ensure that their collective and cumulative action actually promotes the objective of the Convention and the Council

situations, a general reference will include domestic activities that would be considered "trade" under CITES, if they crossed national borders (i.e., movement of specimens or their parts for purposes not exempt under CITES). I will attempt to avoid the term "trade" when speaking of domestic activities, and will instead describe the specific activities or categories, rather than use the term "trade."

⁷ The author recognises that this three-sentence summary does not do justice to the complex EU legislative system. However, recognising that other nascent "regional economic integration organisations" are being developed, which might in future benefit from the European experience, those three sentences appear necessary.

⁸ This combination approach means that both EU law and domestic law of a Member State will be relevant in each case brought under Regulation (EC) 338/97. One case has already come before the European Court, with the parties seeking advice on the interpretation of a provision relating to infringement, in the context of a domestic sale involving a listed species.

⁹ See also, *Reference Guide on the European Community Wildlife Trade Regulations* (1997, European Commission/TRAFFIC Europe joint publication.)

¹⁰ In fact, of course, most of the specimens and products themselves are not negative. Unlike drugs which are harmful if introduced into the country, most CITES controlled specimens are harmless – caged birds or reptiles, trophies, tourist souvenirs, oriental medicines, shawls, etc. The control of international wildlife trade is not focused on the products, then, but on the effect of the trade itself on irreplaceable species and ecosystems.

¹¹ National law in Portugal, still refers to the prior Regulation (Regulation 3626/82); however, implementing agencies have been interpreting this provision to give them full authority to implement Regulation (EC) 338/97, pending revision of the national law.

Regulation. This responsibility encompasses many points. However, reasoned analysis of it can lead to only one conclusion – it is not enough for a party to meet or surpass all of its specific obligations (*i.e.*, to enact, implement, and enforce legislative trade controls.) Rather, the parties have an obligation to ensure

- that their activities are part of, and contribute to the success of, an effective international “net,” and
- that the impact of that international net *supports and promotes achievement of the underlying objectives* of the Convention and the Council Regulation.

Consider, for example, a country which creates a tight net around a particular “international hub” airport. While this activity may well satisfy the Member State’s obligations, it will not advance the basic objectives of the Convention and Regulation 337/97, if as a result the illegal traffic simply finds a different airport, perhaps in another Member State, and the specimens still reach destinations within the EU.

Clearly, the achievement of CITES objectives on the EU-wide scale necessarily means both –

- (1) creating a “net” that includes and regulates
 - all types of “trade,” transport, transactions
 - other changes of possession of specimens within the EU,as well as mandating or authorising the necessary links with other states;
- (2) co-ordinating with other countries’ efforts to maximise the effectiveness of the international “net” for curtailing illegal trade; and
- (3) addressing the relationship between trade controls, “black-market” prices, and the incentive to trade illegally in wildlife specimens – *i.e.*, seeking to ensure that trade controls do more than regulate trade, but that they actually serve the underlying objectives of the Convention and Regulation.

II. BASIC ASSUMPTIONS: LEGISLATION AND ITS ADEQUACY

As noted above, under CITES in combination with Regulation (EC) 338/97, EU Member States must exercise specific legislative authority in order to

- authorise the administrative entities who will implement the law, and
- set penalties and regulate enforcement activities.

It has been the ELC’s task, within this project, to assess the adequacy of Member States’ wildlife trade legislation, with regard to these elements. In order to properly comment on this subject, however, it is necessary to know what are the characteristics of ‘adequate legislation.’

One quickly discovers, however, that it is not enough to ask ‘*Is the legislation “adequate”?*’ or even ‘*Is it adequate in terms of enforcement mandate and penalty provisions?*’ Legislation is, in function, the bridge between policy and implementation. Hence, the adequacy of legislation can be evaluated only in terms of its ability to meet the national policy objectives that underlie its adoption. Hence, the question is actually: *Is the legislation adequate in terms of enforcement powers and penalties, in order to meet X, Y, and Z objectives?*¹²

When examining wildlife trade controls, the question can be stated as follows:

Are the penalty and enforcement provisions of the wildlife-trade-control implementing laws of EU Member States adequate in terms of achieving the following objectives:

- (i) *Controlling and regulating intra-EU and intra-national trade as required under Regulation (EC) 338/97;*
- (ii) *Controlling/regulating international trade as required under CITES; and*
- (iii) *Providing a positive step toward achieving the underlying objective of these documents?*

¹² This presentation does not address the tightly related question ‘Are these the correct policy objectives?’

For each country then (and for the EU), an appropriate evaluation of penalty legislation and jurisprudence must examine five elements:

1. What **policy objectives** is the law trying to serve through the assessment of penalties?

These are noted above. A penalty may satisfy the surface objective (controlling trade), if it is set at an appropriate level, backed up by penalties for alternative crimes, and implemented in a similarly rigorous fashion. It will address the international objectives if decreases the overall incentive to stay in the market. Beyond this, to serve the underlying conservation objective, a penalty must be developed in concert with the full range of other tools and programmes, and provide their awareness, deterrent and punishment characteristics in a way that supports each component of the system, at an appropriate level.

2. What **legal tools** are available and authorised for the imposition of penalties?

This inquiry focuses on the range of penalising elements that are available with regard to a particular type of violation. For example, a law may set a specific penalty or penalty range for “illegal import.” Initially such a penalty may appear inadequate, because it does not allow for consideration of the value of the item being assessed. Assessment of the adequacy of that provision must consider a number of factors:

- Is this penalty assessed per incident or per item?
- Is this the only penalising element that can be applied (i.e., are there other penalties under the criminal or customs laws that might also apply)? Can they be applied in addition to this penalty?
- What non-punitive tools (e.g., seizure and confiscation, specimen protection, search, closure, etc.) may be utilised as an additional deterrent or awareness mechanism?
- To what extent can associated crimes be based on these facts?
- Etc.

3. What **resources** are available in support of these objectives?

Here the initial query must focus on manpower and administrative authority – determining whether these are sufficient to achieve the enforcement objectives, in the manner contemplated by the law. All too often, the answer is simply that existing resources are insufficient. Then, additional questions must be considered, including –

- How can (or “Can”) existing penalty and enforcement framework be revised to maximise the available resources?
- To what extent can enforcement activities be effectively supplemented by education, and by the work of private individuals?

4. What **obstacles and conditions** affect the objectives, and the imposition of penalties?

Of course, the lack of manpower and physical resources is a consistent obstacle. Until there can be a guard on every protected animal or plant, or every meter of the national border, it will continue to be true that the net of direct oversight is incomplete¹³ Additional obstacles, however, might be found in, for example –

- a culture or community where individuals (even civil servants) were bound by cultural standards to give special treatment to community leaders or extended-family members (including in extreme cases allowing them to violate the law);
- a natural area containing specimens of great value, that is remote or in which poachers may easily remain hidden;
- a defect in the law, through which known violators go unpunished.

5. How might conditions described above **develop or adapt**, altering the effectiveness or use of penalties?

Enforcement under CITES and Regulation (EC) 338/97 is intended to control illegal international traffic in protected specimens and products. However, the products and specimens are very often no *per se* illegal. Hence, by imposing a strict control on their international movement, the effect may be an increase in the market value of these specimens and products, both on the legal and illegal markets.

¹³ And if all protected plants and animals were guarded, there might still be a manpower shortage – the need to police all of the guards...

In these situations, the change in market value makes illegal activities more profitable and attractive. It may also increase the amount of money and effort that poachers and smugglers are willing to invest in their illegal activities.

The “deterrence” impact of a penalty on poaching and/or smuggling is usually dependent on whether the amount is sufficient that the risk of apprehension would make the criminal activity less attractive. Where a penalty is not high enough, it is essentially factored into the smuggler’s “cost of doing business.” This is particularly true when the chance of being apprehended is low.

While all five factors affect and are mentioned in the results of this synthesis, it is not possible for a series of “desk studies” to fully address them. Hence the analysis in this paper focuses on issues 1, 2, and 5.

III. ANALYSIS OF LEGISLATIVE DESIGN AND OPERATION OF EU MEMBER STATES’ WILDLIFE TRADE LEGISLATION

The remainder of this paper focuses on the measures and issues discerned in the National Legislative Reports, and in the Statistical Information and Factual Summaries (Annex B). As with all surveys relative to the EU, it is only a “snapshot” of a particular point in time, offering some perceptions about the current state of national legislation at that point.¹⁴ Since the completion of national reports, new laws have been adopted in some countries (the Netherlands, Luxembourg, Germany, Austria) and administrative agencies have gained experience in regard to laws which were, as of the reports’ preparation, still new and basically untried (Ireland.) One country (Portugal) is expecting to revise its laws soon as well.

It contains four general sections. The first two address the design and use of legislation (first, penalty legislation, per se, and then the enforcement provisions that are essential to make penalties effect.) Second, and equally important, however, it compiles comments made less directly, relating to the need to improve the “human factor” (judicial and prosecutorial discretion which limits the use of penalties in wildlife crimes.) Finally, it examines the nature and value of monitoring and evaluation in this context.

A. Legislative Penalty Provisions and Amounts

This analysis begins by attempting to determine whether the legislation is drafted appropriately. This determination cannot be based solely on an academic evaluation of the legislative documents themselves. Hence, it must also consider the valuable information compiled through the efforts of TRAFFIC Europe, regarding the manner in which those laws have been used.

As described above, Article 16 of Regulation (EC) 338/97 identifies the specific infringements for which Member States are required to impose legislative sanctions. More importantly, it provides guidance regarding this national legislative obligation, which must be “appropriate to the nature and gravity of violations involved,” and must include provisions on seizure and confiscation. The Workshop’s presentations, plenary discussions and working groups focused on a number of significant issues regarding when a penalty is “appropriate to the nature and gravity of violations.”

This section examines what legislative and other factors related to that discussion. It begins by looking at the penalties themselves then considers other legislative factors that affect their use and effectiveness.

1. Direct provisions on penalties

The specific penalty provisions must be the first focus for examination the role of sanctions under a law. There are many facets to these provisions, not limited to their role in the judge’s decision to assess a fine or term of imprisonment.

¹⁴ Owing to the difficulties inherent in a study of 15 countries, who legislate in 11 different languages, additional study of new legislation produced after the completion of the national legislative reports could not be included in the analyses, although many of the consultants have kindly provided legislation and brief descriptions of it.

a. Fitting wildlife crimes into national enforcement frameworks

An important role of statutory penalty provisions is frequently overlooked – the identification of the law’s place within the country’s formal or informal enforcement framework. Often, the level of penalties show the judge where the particular crime fits within this framework.

In Belgium, for example, the law sets a maximum term of imprisonment for wildlife crime at three months. General principles of Belgian enforcement practice, however, tie many critical issues to the maximum imprisonment penalty available under a given statute. If the law says that a particular type of offender can be sentenced to prison for over a year, then the alleged violator can be held in custody pending trial, for example. Where the maximum prison penalty is less than one year, however, custody is not possible. This limitation applies to wildlife trade violations. It may also color the mind of the judge, encouraging him to think of these as minor penalties, even though the maximum fine is very large (€ 500 000).¹⁵

- ◆ *It therefore appears that, even though Belgian officials may be unlikely to seek longer incarceration penalties against violators, they should recommend increasing the maximum permitted prison sentence to one year, in order to obtain access to relevant legal tools.*

Not all countries offer such clear-cut systems, and where they do, the range of approaches is very broad. Such provisions are often tied to maximum periods of imprisonment, suggesting that all countries should consider the extent to which (unused) authority to seek imprisonment sanctions might broaden access to other enforcement mechanisms.

b. Penalty amounts

National approaches to penalty legislation vary greatly in the EU. Some countries (e.g., Denmark, Germany) state only the power to assess “a fine,” with no range of monetary penalties. These countries, do, however, place limits on imprisonment, and those limits might operate informally to guide the amount of penalties assessed.

Overall, with regard to penalty amounts, this project has demonstrated rather clearly that the legislative provisions are not the limiting factor. Not one of the cases reported in this project involved penalties that were near the maximum penalty allowed by law. In most cases, the assessments, even including court costs, costs of specimen care, etc., did not exceed one-quarter of the maximum imprisonment, nor of the maximum fine.

The one exception to this basic rule, that penalty amounts cannot be used to judge the effectiveness of potential enforcement activities is Portugal. There, the maximum penalties are set in fixed amounts based on the species involved. While these amounts might be effective if applied on a per-specimen basis. However, Portuguese law states that these are administrative violations (not criminal) suggesting that they may not be used at their full impact. In addition, it should be noted that these penalties are significantly lower than under the country’s prior wildlife trade law.

- ◆ *As the country whose penalties appear to be significantly lower than the other Member States, Portugal should reconsider penalty amounts within that law.*

Beyond these specific details, the most important immediate lesson from review of the national legislative reports, and of the *Statistical Information and Factual Summaries*, is that penalty legislation is not generally comparable. The following are a few particular lessons derived from analysis of these reports, with regard to penalty amounts.

Day fines: A growing number of countries (including Sweden, Spain, Austria), in a growing number of situations, utilise “day-fines” for addressing penalties. Simply put, a day-fine is calculated on the value of a normal day to the individual being fined, calculated on the basis of his earnings and other factors. Particular violations are fined a specified number (or range) of “days.” In this way, the impact of such fines is more even-handed than a flat rate or penalty range. Recognising the deterrent nature of penalties, day-fines are more best utilised where the activity being penalised is not a part of a criminal enterprise, or otherwise focused on illegally obtaining money. Thus in the case of

commercial smuggling, a day-fine system might not work,¹⁶ however collector and tourist cases might utilise it relatively well.

The “day-fine” concept offers a potential basis a comparison between penalties and thus may be effective in assessing penalties against foreign nationals, wherever the factors that determine the violator’s “day-value” are fixed and determinable. It can reflect regional economic conditions, for example. Currently the mechanism is not uniform among countries that use it. In Spain, the “day-value” ranges are set by statute, and appear quite low. However the number of days that may be assessed for wildlife crime are relatively high.

- ◆ *For purposes of increasing congruence among the EU Member States in terms of penalty amounts, it may be valuable to invest further study of the use and availability of day-fines, throughout the Union.*

Judicial discretion in assessing penalties: Another issue that is closely related to penalty amounts is the level of judicial discretion allowed. In virtually all countries, in laws, legislative provisions, principles of judicial discretion, or other mechanisms under national law might allow the judge to actually apply a higher or lower penalty or even to dispense with penalty. These provisions arise out of the fact that when assessing penalties every judicial official is, in some fashion, obliged to ensure that those penalties are “appropriate to the nature and gravity of the violations.” In some instances, legislative provisions make this discretion appear absolute. The penalty is “a fine,” suggesting that the judge may decide what level of fine based on his own review of the evidence. In others, this may be done by describing the level of discretion of the judge or administrative official in applying the law, whether judicially or administratively.

In a few cases (e.g., Finland), the availability of discretion is directed. The judge *may not* impose penalties, where the offence is “minor.” Other law and procedural documents specify more generally the judge’s ability to revise the penalties, if they are unreasonable.

Penalties as a multiplier of specimen value: A number of EU laws specifically link penalties with the value of the specimens or products involved in the crime. This type of link may be valuable as a guide to judges. In Ireland, for example, the penalties include fines of “up to £10,000 or three times the ‘street value’ of the goods concerned (i.e. the notional value if resold in Ireland).” Other countries have included this concept in the penalty/enforcement decision in other ways.

- ◆ *For purposes of achieving the objectives of wildlife trade laws, it is very important for the penalty decision to link concepts of illegal market value of the specimens, and of the “real” value of the specimen as a part of a living ecosystem, to guide the judge regarding the factors that should be considered in the penalty decision. Where possible, it is often most effective to address these concepts in penalty provisions, although they may also be included elsewhere.*

c. Use of other law for penalising violators

It is clear from the legislative analyses, that all countries authorise a range of penalties. Analysis of these provisions, however, may not give a complete picture of the ability of the enforcement agency, prosecutor and judge to penalise violators. Other applicable laws may have a similar impact, of depriving the violator of things of value, and of other commodities. There are two basic types of such laws.

Alternative and additive criminal provisions: Such laws may have a variety of different impacts. In one sense, they may offer the prosecutor various options. If there is not enough evidence against a violator to gain a conviction under one law, there may be enough under another. Customs and general smuggling laws, for example, may offer many alternative avenues for prosecution, since different phrasing, sanctions, or controls on the circulation of undocumented merchandise, may be easier to apply in a particular instance. Other laws that might be useful in this context include tax laws, money laundering laws, sanitary and phytosanitary laws (many of which have been strengthened in the wake of BSE and foot-and-mouth disease), interference with public officials, etc.

¹⁵ This fact is extremely unfortunate, in combination with the fact that many CITES offenders apprehended within the EU are not citizens of or resident in EU countries.

¹⁶ The countries which utilise day-fines in wildlife legislation, do not utilise them in relation to smuggling.

In some situations, more than one law can be applied to penalise the same activity. An offender can be cited for illegal import, that same activity may also constitute evidence of “illegal enterprise,” for which an additional fine may be assessed. Even where additional criminal provisions do not allow the imposition of additive penalties, they may provide added powers, such as the power to trace and seize illegally obtained goods, the proceeds from sale of such goods, or even the legal goods later purchased with such proceeds.

Accomplice liability (penalties for aiding and abetting, criminal facilitation, etc.) and penalties for the attempt to commit a crime, may offer another valuable tool.¹⁷ The accused accomplice will be less likely to give help or silent consent, if he is risking fine or prison.

Non-penalty provisions and powers: Beyond this, laws may exist that give enforcement agencies access to additional powers, or impose additional costs on violators. This is an important point for purposes of this study – the fact that national penalty provisions do not give a clear indication of what the violator actually suffers. In fact, they may be the least important element. Often, a judge dismiss or conditionally abate penalties; but other losses are suffered directly and without abatement. Such losses might arise through confiscation (of illegal specimens or things used in the violation), government tracing and detention of ill-gotten profits, closure of businesses that have been used to foster illegal activity, licence revocation, etc. Since some of these are not “penalties,” they may be exercisable without a finding of guilt in the basic case.

Examples of this type of “additional costs incurred by the violator” include provisions empowering seizure, confiscation, recovery of illegally obtained proceeds, closure of illegal enterprises, return of specimens to the country of ownership at the violator’s expense,¹⁸ etc.

Confiscation and seizure are mandatory powers, which according to both CITES and Regulation (EC) 338/97, must be provided in national law, and all Member States provide these powers with regard to wildlife trade. Seizure (and even confiscation, in some countries) is not perceived or implied to be a penalty. The items are seized not as a penalty, but to remove them from trade. Because they are not legally possessed in the seizing jurisdiction, there is no need to pay compensation for them, but even this is not actually a penalty, and may occur before or in the absence of proof of intent or negligence may all have this type of impact.

Although not punishments, these provisions may have a serious penalising impact. This is particularly true where they include (as nearly all of the EU Member States’ laws do) the power to confiscate the equipment and vehicles used in the violation. (This power has been used in Belgium in a recent case.) This power is not usually mandatory, however, and in at least one country (Finland) the power is not available in the case of minor offences.¹⁹ (By contrast, however, that same country includes very broad confiscation powers, requiring the court to determine and confiscate “the economical benefit which the violator obtained for himself or another by committing a crime.”)

A number of different kinds of provisions may have such impacts. Temporary closure of a business for (passive) involvement in illegal activity may affect the public’s perception of that business.

This kind of violator may even be effectively penalised by a provision authorising searches of properties in which illegal merchandise is suspected. Luxembourg’s proposed legislation will authorise searches of shops selling furs and leather goods. Such a provision, if exercised periodically, may serve to remind such shops of the effect that a major publicised seizure of illegal furs or skins could have on their legal customers.

Another penalty which may be telling is license suspension (see e.g., Denmark, France). This may have a particularly strong impact in the growing number of situations in which one of the violators normally engages in legal wildlife trade, but tries to pass some illegal or illegally documented merchandise as well. This type of violator may be strongly deterred, if (i) licensing requirements are strongly phrased, (ii) the power to rescind includes the relevant business permits, and (iii) that power is exercised. In addition, depending on the national legal system, this power may be

¹⁷ In most countries, these crimes are found in general criminal law, however, in Ireland they are specifically reiterated in national wildlife legislation.

¹⁸ Portugal notes a number of practical problem in implementing the requirement for return of illegal live specimens. This may be an area in which the EU could develop mechanisms enabling and assisting countries in this process.

¹⁹ The statute does not define which offences are “minor.”

exercised by administrative authorities, as well. Although the person whose license is suspended may appeal that decision, even the temporary suspension pending appeal is a type of non-monetary penalty that can “bite.”

In addition, it should be noted that costs and fees, including the costs of the institution caring for seized animals pending confiscation and/or return to their country of origin, can amount to a substantial sum, which cannot be abated or conditionally discharged by judicial order.

Similarly, in a growing number of countries, the State is empowered to bring civil action for damages caused by these violations (such as, for example, the introduction of an alien species, which causes harm.) Currently, this right is not available generally in the EU (specifically excluded in Belgium for example.) It is expected that, as transnational litigation will become more common in future, and the country from which the specimen was illegally exported may eventually have an additional right to seek civil damages for the harm caused by the exporter, including possibly the value of the specimen as a natural resource/part of a natural ecosystem.

d. Administrative enforcement

The fourth component of the evaluation of specific penalty amounts and authorisations relates to various mechanisms by which penalties may be assessed administratively. These include authorisation to compound penalties, as well as specific legal provisions regarding a category or type of offence which is particularly designated for administrative enforcement. This project, was not able to provide a rounded examination of these enforcement measures. All 15 legislative reports examined all levels of enforcement (administrative enforcement, minor (misdemeanor) enforcement, and major (crime) enforcement activities) available within the country, however, the coverage of the statistical data varied on this point.

- ◆ *It will be useful, in support of other recommendations and suggestions in the reports, workshop outcomes, and other documents to develop more detailed comparisons, including examination of actual amounts of penalties and fines charged, given in non-summary form,²⁰ in administrative penalty situations, and identifying the criteria or administrative guidance used by the compounding official, in setting such penalties.*

In general, the amounts permitted as administrative penalties, “in-lieu-of-trial” settlements, or administrative compounding are minimal, even in comparison to the value of the specimens involved. For this reason, administrative penalties are generally perceived to be effective in cases of minor offences, or where only minor offences can be proven. If the agency keeps suitable records of the violation, they might increase the value of administrative penalties, as deterrents, in several ways. First, the fact of previous violations may be applied against the violator who later is caught again, and might in some countries provide a basis for proving that his actions were taken with intent to violate the law. In addition, a tourist or other minor offender may be less likely to re-offend, if his previous violations could then be made known. These impacts may be lost or weakened, however, where administrative enforcement records are not detailed and indexed (*i.e.*, where they are kept as statistics, rather than evidentiary records.)

- ◆ *Administrative agencies should investigate the value of administrative penalty records within their national legal systems, as well as the possibility of sharing this information with other national wildlife trade administrative and prosecutorial authorities.*

Administrative violations may also provide a basis for license suspension or revocation. As noted above, this may be a very effective penalty against traders who use a predominantly legal business to cover their illegal activities.

- ◆ *It may be useful to examine national legislation regarding licensing, to determine whether the reasons for license suspension can and should be extended to other licences, in addition to wildlife trading permits and certificates, so*

²⁰ Many statistical reports were offered in extremely summary form (e.g., “2001: 94 cases of violation, involving a total of 4100 specimens, maximum fine 1840USD.”) In many cases, however, the informational objectives and requirements noted in this project suggest a need for detailed information broken down infraction-by-infraction, so that particular types of comparisons can be made.

that wildlife trade violations can serve as a basis for suspension of basic business licenses as well. This approach may offer a major deterrent to would-be violators who operate legal businesses in Member States.

B. Other legislative tools of wildlife trade enforcement and how they are used

To determine whether national legislation meets the requirements and objectives of CITES and Regulation (EC) 338/97, it is not sufficient merely to examine whether penalties are provided, or in what amounts. These tools can only be effective in connection with proper legislative support in its provisions identifying offences, authorising the work and powers of enforcing agencies, and (intentionally or inadvertently) affecting the particular impact of the law on the violators' incentive to commit violations.

1. Specific provisions and issues relating to legislative provisions and authority

Unquestionably, a preliminary component of the effectiveness of any penalty provisions is the requirement that they serve the overall policy objectives of the law. None of the national reports indicate any direct disconnects between national wildlife trade enforcement mandates and the relevant policy objectives.

Beyond this overarching requirement, there are seven specific criteria for evaluating or analysing a particular law's enforcement legislation are: (i) unequivocal empowerment and mandate of enforcement authorities; (ii) clear and practically usable descriptions of each offence; (iii) clear and objectively determinable descriptions of the nature of offenders; (iv) clear and useful guidance to enforcement, prosecution and judicial or quasi-judicial (administrative) decision-makers; (v) clear instructions and empowerment relating to co-operation, both domestically and internationally; (vi) proper provision regarding the factors that increase the attractiveness of legal or illegal behaviour (positive and perverse incentives); and (vii) appropriate flexible mechanisms to address social, environmental, and other changes. The legislative reports under this project examined the laws of all 15 countries in terms of all of the above-described components.

a. Empowerment of enforcement authorities

In support of penalties, a law must specify the authority of particular agencies, and in particular authorise their specific powers and set specific limits on what they can do. CITES and Regulation (EC) 338/97 identify certain powers, and imply others, which are essential for their functioning. These specifically include the powers to investigate, seize, detain, and prosecute

Investigatory powers under wildlife trade laws in EU Member states are generally very broad. The various Member States specify different components of these powers. Ireland offers very broad authority to search personal luggage, for example, as well as authorising the detention for up to a months of irregular goods and any vehicle and/or thing used in their import, export or conveyance. Similarly, in Belgium, search, seizure, and confiscation powers under wildlife trade laws give authorities more powers than under general criminal law. These extensions may be justified, at least in part by the possibility that living creatures may be involved, where urgent measures are necessary to their survival.

The amount of oversight necessary for the use of investigatory powers, is also varied. While most countries impose similar requirements for wildlife crime as for other types of criminal commercial activities, in Belgium, policemen or appointed officials have a blanket search authority with regard to wildlife crimes, based on a permit provided by the Judge in the Police Court (a relatively summary process), as compared with other criminal law searches, for which a search warrant from the Examining Magistrate (a more formal process) would be required.

In many countries, however, other investigatory powers, including surveillance and wire-tapping, for example, are less available in wildlife trade cases. Traditionally, these powers are limited in scope, pursuant to national legislation protecting the rights of citizens to privacy and freedom from harassment.²¹ However, the universal availability of cel phones and electronic technology has empowered violators to an extent that the investigation and compilation of

²¹ Note in this context, that these protections, and the relatively strict laws that implement them are designed to serve as protections for the judge/ prosecutor/administrative officer, who might otherwise be liable to civil or criminal action for human rights violations, as well.

evidence without access to electronic surveillance may seriously diminish the effectiveness of national wildlife enforcement.

A general examination of basic protections for citizens was beyond the scope of this project, however, the effect of these protections as mechanisms by which intentional violators are protected from apprehension is probably not appropriate. As a result, it seems clear that national criminal law will eventually have to adjust to the modern situation. In this process, it will be important for wildlife trade crimes to be recognised and given appropriate status among types of crimes for which special investigatory powers may be utilised.

b. Clarity concerning the nature of the offence

Successful enforcement is generally reckoned according to whether the violator is eventually found guilty and sanctioned. In many cases, this result is dependant on how the offence is described. While CITES and Regulation (EC) 338/97 clearly describe the kinds of actions that must be considered as violations, and subject to penalty, they leave it to the Member States to specifically describe or clarify certain elements of these offences, and to set the standards by which guilt and penalties are to be determined.

Burden of proof: One important element of each law relates to the “burden of proof.” Typically, this burden is divided. In most cases, it is the burden of the defendant to prove that goods were imported legally (usually by showing documentation or proving an exception.) However, the prosecutor is generally obliged to prove other elements of the crime, including both the observable facts and the mental element, *i.e.*, he/she must show that the alleged violator was negligent or acted with intent.²²

Mental state: The mental element has proven difficult in some countries. It is possible, in some countries to identify specific violations for which the violator is “strictly liability” (that is, liable based only on the observable facts, without proof of mental state.) At present, none of the EU Member States’ wildlife trade laws allow a finding of liability without proof of intent or negligence, in this context. As a general matter of law, strict liability is used only in situations involving a crime or condition that presents very great peril (e.g., possession of lethal substances that are improperly contained, etc.) The general concern in adopting strict liability for wildlife trade or other smuggling is that one might be penalised for material that was placed in his/her luggage without his/her knowledge.

In one country, in fact, the opposite provision is in place. Spain provides that where the smuggled goods are items that can be legally possessed in the country, and are sold to a good faith purchaser who knew nothing of their illegal origin, then those items may not be seized nor their owners cited. This provision may well operate as a facilitation of smuggling, since purchasers in the market will bear no risk, if the items they are purchasing have entered the country illegally. A similar provision in Spanish law, which holds that a vehicle used in smuggling cannot be seized if it was owned by a third party not involved in the smuggling activity may also operate as a facilitation, since it relieves the vehicle owner from responsibility or impact if he “turns a blind eye” to the use that his vehicle is being put to.

◆ *National legislators should reconsider laws which facilitate smuggling by removing responsibility or risk from those who buy from or offer passive assistance to smugglers.*

Particular provisions of CITES/Regulation 338/97: Only a few particular enforcement/penalty issues have arisen which affect the nature of these offences. One of these relates to the nature of exceptions and derogations. The Statistical Information and Factual Summary on the Enforcement of Wildlife Trade Controls in the Netherlands indicates a need for additional clarity regarding whether “personal effects” are being brought into the EU for commercial purposes. (See Commission Regulation (EC) 1808/2001, Arts. 27-28.) In this connection, it should be remembered that the derogations from CITES are expressed in “international-law-speak” – as such, they identify overarching national objectives, but do not clearly identify the elements that must exist in order to apply the derogation.

◆ *It may be useful for legislative analysts within the EU to work with national CITES authorities to evaluate the exceptions and derogations in Regulation 338/97, in terms of their relevance, clarity and usability in enforcement.*

²² In most countries to show that someone “acted with intent,” one need not show that he knew the act was against the law (it is presumed that all citizens know what actions are against the law), but rather than he intended the action. Rather, one could negate intent only by showing that someone else packed the box containing the smuggled species, or perhaps that one unintentionally picked up the wrong box.

Levels of illegal action: As noted above, it is also useful for the law to identify a spectrum of criminal possibilities. In Ireland, for example, if one does not have sufficient evidence to convict an apprehended violator of illegal import or export, he may still be convict-able under a secondary criminal provision – failure to properly mark packaging containing specimens, or failure to keep appropriate records. While the penalty in this case may seem unsatisfactory to the prosecutor, the criminal record, which will include the full record of the evidence obtained, may later be useful to demonstrate criminal intent or criminal enterprise liability, should he be apprehended again.

While many states appear to adopt such an approach, either legislatively or in administrative and prosecutorial practice, it is not universal. However, as noted above, the record of a violator's former involvement in lesser crimes may increase the chance of his later conviction on greater ones.

- ◆ *It may be advisable for wildlife trade enforcers reconsider the use of “lesser” criminal provisions, where available, and to suggest that they be created as a supplement, where they do not already exist.*

Penalising other actions relating to wildlife trade: In some cases, national legislation has gone beyond the direct mandate of CITES and Regulation (EC) 338/97, specifying particular kinds of behaviours that are directly involved in this trade, making it easier for officials to take action against them. Both Denmark and Italy are giving particular attention to “illegal taxidermy” – i.e., taxidermy involving specimens that were obtained illegally or do not possess requisite documentation. In recent years, taxidermy involving biologically important bird specimens has seen a growing market. Taxidermists normally operate in a physical (often licensed) facility with a basic business of “legal taxidermy.”) If the law says that they can lose their legal livelihood, for taxidermy involving illegal specimens, it may offer an easier pathway to curtailing this illegal trade.

- ◆ *The approach taken by Denmark and Italy may be worthwhile for other Member States' consideration.*

Tying environmental issues into the crime: As noted above, it is important to specifically link the value of the specimens or products (both environmental values and market values) to the description of the crime. At present, none of the countries specifically identifies damage to environment or the value of the rare species in the wild as a factor to be considered in enforcement or the imposition of penalties. In several countries (including Portugal, Italy, Ireland), the penalty ranges are set according to which annex the species involved is found in, which may be an indirect way of factoring environmental issues into the decision. Others (e.g., Spain) identify categories (very serious, serious and slight) of offences, without specifying how those terms will apply.

In this sense, wildlife trade is treated essentially similarly to other smuggling. It may be possible to link enforcement to environmental issues, in part by tying ‘street value’ of the goods to the penalty amounts. This brings before the court or administrative decision-maker some elements affecting the market value of the specimens, the criminal intent of the violator, and the harm to society from the smuggling itself.

Even in this context, the consideration of street value is only a partial solution. Looking at the overarching objectives of CITES/Regulation 338/97, the law must also attempt to recognise the environmental conservation values of the specimens as living natural resources. One way to do this would be for the law to specify that these factors must be considered in the setting of penalties. Another option might be to empower the courts to hear claims asserted by the country of origin – civil action for damages and/or lost value. It may be possible to permit both. Certainly, these provisions should be carefully drafted, both to ensure that the country of origin does not claim a share in assessed.

Apart from this, the “harm to society” issue is difficult to address. Wildlife trade is not perceived to result in harm to society (in comparison to trade in drugs, or to illegal monetary transactions or trade in stolen artworks), because the actual items being smuggled are not illegal. It is not illegal to own a pet bird, for example, only to import and/or sell one illegally. Hence, the damage to society from the crime is minimal. In this sense, however, the current legislative penalty provisions may cause a disconnect between the overarching objective of CITES and Regulation 338/97, which seek to address a different type of damage – potentially irremediable damage to the global environment.

Special provisions for locally important species: Some countries (including France and the UK) authorise the imposition of more stringent penalties where the specimen is of an endemic protected species of the legislating country. These stronger penalties also appear to have the support of the judiciary.

c. Clarity concerning the nature of the offenders

In a few instances, the law addresses various categories of violators. Often, this determination is based on the “severity” of the offence. These provisions take a variety of forms.

Major and minor violators: In particular, several countries provide separately for “minor” and “major” smuggling offences, either generally under customs laws, or specifically in wildlife trade law. Some of the laws do not define “major” and “minor” in this context, leaving this determination to the judge’s discretion. Where it is specified, however, this distinction usually refers to valuation of the specimens and products – usually directly in reference to their value on the illegal market. This approach could have devastating indirect impact, where, for example, the conservation value of a very rare or important species is jeopardised by a trade in which market values are not high.

Virtually none of the Member States’ laws specifically identify different categories of violators in terms of the mental or intent element of the crime. Hence, the laws do not specify that “innocent-hearted” offenders (such as tourists, unaware that the cactus or shawl they purchased cannot legally be brought into the country) are any different, for purposes of initial determination of violation, than intentional criminal violators. This approach leaves to the judge or adjudicating administrative official, to determine the level of action to take, or to adjust penalties in connection with the level of intent shown by each violator

Intentional and unintentional violators: In various less direct ways, national enforcement provisions and practice, however, often focus on the differences in intent as mechanisms for categorising violators and their punishment. For example, nearly all of the national laws identify higher penalties for recidivism. Thus, the repeat violator (who presumably commits the violation with full knowledge that it is illegal) is of a different category than the first offender. In addition, many *Statistical Information and Factual Summaries* indicated that the practices of administrative and prosecutorial officials differ according to whether the violator was acting criminally, for personal gain, or simply making a mistake.

Limitations on the value of distinctions among categories of violators: In this context, it should be noted, that many of these distinctions among different types of violators may not serve the underlying objectives of CITES/Regulation 338/97. This approach may foster to a situation in which major impacts to rare and important species are unabated, because those impacts are caused by “innocent” tourists, or by tourists and others who know that their actions violate the law, but whose violations are overlooked or unpunished, because the amount of value or quantity involved is minimal.

A very current example of this relates to sturgeon – a species that is highly endangered due to the breakdown of the former system that controlled exploitation of sturgeon roe (caviar.) Recent studies indicate that a major market for caviar is small purchasers by European tourists and other visitors to the region, bringing home with them amounts in excess of the limit on personal transport. The purchases in these cases are more likely to involve small-time caviar sellers, whose activities may be more damaging to the highly endangered sturgeon species than more organised trade. Hence, a decision to ignore these violators may be the death knell for the species and for the sustainability of its utilisation, even where stiff penalties are given to smugglers of larger amounts.²³

While it may be impossible to control small-scale transport of caviar, some level of enforcement may be necessary, to underscore and backstop public education efforts.

Corporations and other entities as violators: Another important element relating to the nature of the violator arises in the case of corporations or other legal entities.²⁴ Generally, under the law, these organisations are considered to be separate from the individuals who run them or own a right to share in their profits. In many countries, there is a general trend to hold corporate officers, directors and shareholders individually responsible for those activities of the corporation, which cause specific kinds of harm, including environmental damage, and damage to collectively owned natural resources.

²³ As noted above, where the potential profit on a specimen or product is high enough, the smuggler can “afford” to pay rather substantial penalties – as a “cost of doing business”. Where judicial penalties at high levels are publicised (as recently in German caviar smuggling cases), they still may not constitute a deterrent in cases of such high-value, high-volume trade.

²⁴ For convenience, this report will use the word “corporation” to describe all types of entities that are given separate legal status under national law.

In many countries, the provisions governing the liability of corporate officers, *et al.*, are found in corporations law, or general criminal law, matters only marginally examined in this project. However, in Greece those issues directly discussed in the law on wildlife trade. Given possible judicial unwillingness to impose sanctions for wildlife crimes, direct mention of director liability may help alleviate any argument that these authorities are not applicable in cases of wildlife crime. These provisions may be very valuable, because they will more effectively inhibit individual directors from agreeing to actions that might be wildlife trade violations.

- ◆ *Countries should examine their ability to apply penalties to corporate officers, directors, and other persons, when the law would consider the corporation to be the violator.*

Foreign nationals: Perhaps the most difficult category of violator, however, is the foreign national. Several countries indicated serious difficulties in bringing cases against serious or multiple offenders, because those persons were able to return to home countries outside the EU, before the case could be filed. Powers of arrest and detention of these individuals are nearly always governed by two types of laws – general criminal law and bilateral agreements regarding legal actions against foreign citizens. As noted above, in many cases, national judges and prosecutors have been unwilling to authorise and/or continue detention of wildlife trade violators, presumably believing that these crimes are “too minor” to warrant long-term detention. In a recent Belgian example, the relevant officials did not even require that the defendants post bail.

These problems, of course, exist for all national criminal laws equally, with very complex legal arrangements available, usually only in very grave criminal cases (such as those involving murder, kidnapping, drug smuggling, etc.). Given the international nature of wildlife trade crime, however, they arise more frequently and frustratingly in this context. In many EU Member States, the question of how to deal with these matters is bound up in the basic national legislation relating to “protection of the accused.” These provisions cannot be easily changed.

- ◆ *As “globalisation” becomes a greater factor in human activity generally, criminality, including wildlife crime, must increasingly address the issues of foreign nationals as violators. It will be important for these efforts to fully recognise the application of these issues in the case of wildlife trade.*

2. Mandate, guidance, and information for the prosecutor

One of the issues addressed in both the *National Legislative Reports* and the *Statistical Information and Factual Summaries* is that of information. In many cases, the reports have presumed that, if there had been better evidence as to the various values of the merchandise involved, and/or the size and profitability of the illegal markets, and the importance of the resource (expressed in valuation terms), then the judges would be more easily moved to impose a higher penalties.²⁵

Compilation of valuation data: There are many issues here. It is certainly true that evidentiary problems in valuation of natural resources are particularly difficult in connection with the resource’s value as part of the living ecosystem from which it has been severed. But at the same time, it may not be realistic to imagine that each country, or even each continent, will be able to maintain current information about value of species, on international markets. The step beyond this would require providing value information in more nebulous fields of international biodiversity and ecosystem research, compounded by factors of economics, conservation efforts and other matters relating to the country of origin. Considering the number of species already involved in illegal trade, this prospect appears somewhat unrealistic.

Instead, as demonstrated by the *Statistical Information and Factual Summaries*, currently information compiled relating to wildlife trade regulation focuses on statistics. The potential use of statistics in evidence, however, is limited. Judicial procedures often place limits on what level of credibility such evidence may be given. Often, an expert must appear as a witness, in court or deposition, or the judge may not be allowed to consider the evidence. In many cases, the testimony of the arresting or citing officer may be the only evidence for the prosecution. In addition to the problem of judicial credence, this situation may present a serious manpower drain on CITES management authorities.

²⁵ See also the discussion below, regarding the “human factor” and some concerns regarding the validity of this basic assumption.

The reports all suggest (directly or indirectly) a need to develop procedures for the presentation of valuation data, such as through the TRAFFIC network, and to specify parameters for its collection, presentation, and updating. If these procedures and parameters could be sufficiently rigorous, such a system might obtain formal judicial notice, and thereby rectify this serious evidentiary gap, which could have a major role in maximising the effectiveness of enforcement.

- ◆ *Member States, and the EU, should consider the development or certification of a system for compiling valuation data in a form and manner which will make such data acceptable as evidence in court.*

In addition, it should be noted that there are sometimes observable “trends” in wildlife trade. Particular items may be subject to significant levels of illegal trade. Presently, two such items are caviar and shawtoosh shawls. It may be very useful (and much more feasible) to provide detailed and current information about the value and environmental cost involved in such trend items. This sort of targeted information is specifically requested in some reports.

Information on decisions by other courts: Another suggestion in reports from Portugal and Belgium relates to the value of knowing what penalties other courts have assessed in similar situations. The implication of this request is that this added knowledge will increase penalty assessments or ensure that they properly reflect market values. This option, however, suffers from numerous potential problems.

First, relatively few countries utilise other countries’ case law, as precedent. While such cases may be cited, they will usually be effective only where they offer a useful legal theory addressing a matter on which national case law is non-existent.

Second, it is rare that cases are fully reported with regard to the penalty setting. While written or published decisions usually detail the legal theories and evidentiary matters, they sometimes do not provide any information about the penalty. In some cases, they announce the penalty, or in others, only say that a penalty has been assessed.

Third, reported cases usually focus on specific issues – those that are disputed. It may be undisputed that a violator illegally imported several hundred Appendix II specimens, but the defendant may be disputing a claim regarding a single Appendix I specimen. The penalty, in such a case, may appear to be very large, if it is perceived to relate to a single specimen. Other factors affecting the severity of the crime may not appear in the reported cases, even where they are the main factors colouring the judge’s penalty decision.

Finally, the *Statistical Information and Factual Summaries* generally indicate that courts in the EU have exhibited a tendency to avoid applying penalties at deterrent levels, apart from a small number of high-profile cases, the compilation of evidence of what other courts are doing may have a negative impact on penalty use. A judge might feel more validated in setting a low penalty, if he finds that none of the recent cases have involved the levels which the prosecutor and CITES management authority are recommending based on market and environmental values.

3. Co-operation

Another issue that has been clear in the *Statistical Information and Factual Summaries* generally is the need for stronger mandate and incentive for co-operation. National Legislative Analyses indicate that currently relevant legislation does not discuss this kind of co-operation specifically in the context of wildlife trade.

Many of the countries indicated that international co-operation is a key element in successful prosecutions. In a modern world that maximises opportunities for private international communication, governments need to similarly maximise their own ability to co-operate.

At the level of enforcement agencies, however, co-operation is often difficult. Governmental agencies often have limited authority to interact with foreign officials, and must get pre-approvals before doing so. These restrictions may limit even such minor activities as the exchange of information (as for example, where a smuggling operation operates bases in two countries.) The various processes for formal requests and for responding to them (letters rogatory) may be very complex, and require approvals and oversight from diplomatic ministries with little understanding of or sympathy about litigation needs and timetables.

Even where formal contact is approved, it is sometimes difficult to track down the correct official in another country for dealing with wildlife trade issues. These problems exist within the EU, as well as in contacts between an EU Member State and another country.

One recent extremely large case utilised the INTERPOL Group on Wildlife Crime and its associated Police Corps to good effect, suggesting that resources are developing which may be of assistance to agencies seeking to co-operate at this level.

This project did not examine national legislation for diplomatic contact between enforcement agencies, however, it noted that none of the national wildlife trade laws contain any pre-approvals for such contact. Lacking these tools within the legislation, it would appear advisable for the EU countries to collectively develop a network linking information sources within the various enforcement and/or prosecution units assigned to address wildlife trade crime.

This is, moreover, an area in which informal communication between NGOs, or between an NGO and government, may be useful. The NGO network may be more easily set up, and certainly can transfer information more easily. Most government agencies have broader discretion to communicate with domestic NGOs, so that where an organisation with local offices in several countries can be trusted to obtain and provide information accurately, it can be of inestimable use in the investigative and prosecutorial processes.

4. Positive and perverse incentives

A very important factor in the effectiveness of legislative penalties and enforcement is the existence and impact of incentives within legislation. Incentives come in many forms. In general, penalties are intended to serve as a very important type of incentive provision – a “deterrent” (*i.e.*, an incentive to operate legally to avoid losses of money, freedom or reputation.) Most laws also contain other kinds of incentives. A very few of these are intentional – such as offers of awards or benefits for desirable behaviours. Much more often, the true underlying incentive impact of legislation is unintentional. Quite often such unintentional incentives are “perverse” – that is, they provide some kind of encouragement for negative or illegal action.

Incentives based on Legal Markets: In some cases, a potential area of concern is the manner in which the legal market is affected by illegal trade. Legislation relating to penalties can serve as either a positive or negative incentive in these areas.

An example of a positive incentive was noted in the French *Legislative Report*. In France, wildlife trade legislation addresses, as a critical issue, the marking of legally documented specimens (tagging). Obviously, in any tagging system, the close control of officially authorised tags is central to the validity of the system. If the ordering, distribution or stock management of tags were not strictly controlled, it could create opportunities to violators. In recognition of this, French law provides that, in the event of any irregularity relating to the management of tags, the Minister may terminate right of the tag-managing entity. That entity is an industrial consortium of skin-using businesses. This termination may mean that no legal tags would be available – a condition that could seriously harm the members of the consortium. This provision creates a strong incentive for the members of the consortium to protect against any loss or misuse of tags. It also ensures that there is a major business risk to anyone who would attempt to coerce the organisation into illegal practices.

Other countries (e.g., Italy) have identified illegally obtained rings (for marking birds) and false permits as major problems. It may be advisable in these cases to focus at least some attention on the sources of these tags and documents.

- ◆ *Countries should examine the way in which their law can be adjusted to serve a deterrent, to those who manage and control wildlife trade documentation and marking, from contributing to or allowing irregularities in that process.*

Facilitators of illegal wildlife trade: Another type of disincentive that may have an impact on wildlife trade is one which deters non-participants from taking actions that would facilitate the violation. One possible example is found in Swedish law. Where “in connection with export” someone “neglects to report a product to custom clearance, gives incorrect information at custom clearance or neglects to give prescribed information at custom clearance and thereby causes a risk of violation,” that person may be held liable. Thus, it is not only the violator who could be cited, but

anyone whose action or failure to act “causes a risk of violation.” This provision is softened by the fact that, in Sweden, these cases require a showing of “severe negligence” in order for the person to be convicted.

A more concrete deterrent provision is one which makes the owner, pilot or driver of the individual carrier aeroplane, boat, truck, etc. responsible (as an accomplice or otherwise) if the cargo he hauls is illegal. The UK utilises such an approach in its laws controlling domestic trade in wildlife (which fully integrate with its international trade controls.) Under this law, it is an offence “to unship or unload any goods, the import of which is prohibited or restricted, with intent to evade such a prohibition or restriction.” Although “unshipping” is probably a relatively minor offence, it is one which may catch domestic haulers. This potential liability, as well as possible seizure of some of his equipment,²⁶ and the possibility of a record being kept which might lead to licence suspension²⁷ (at the time, or in future) or non-renewal might decrease haulers’ willingness to transport unknown commodities, and increase their awareness of wildlife trade laws.

Encouraging good citizenship: Another measure that can be very useful in countries (such as Sweden) where enforcement efforts are well supported judicially, is penalty remission for good behaviour. Swedish law allows the judge to take into account efforts of the violator to correct the harms he has caused, and/or to turn himself in (voluntarily report the violation), when deciding sentencing.

Perverse incentives: Wildlife trade law can operate as a perverse incentive (encouraging, or at least failing to deter, violators) in a number of ways. One of these is found in the reported national tendency to marginalise wildlife crime, either by declaring penalty ranges that indicate that it is a minor crime (see above) or through other means. In Italy, for example all wildlife trade crimes, no matter how extensive, are considered to be “infringements” (“*contravvenzioni*”) or administrative violations, rather than a felonies. Even where penalty amounts are high, this designation may allow criminal enterprises to flourish with much less risk of incarceration. The violator’s “criminal record” will not be a strong deterrent either. Such an approach hamstring governmental efforts to apprehend violators, since fewer enforcement powers are permitted in these cases.

Even more severe is the Portuguese law, which does not include these violations as crimes at all. Rather, they can only be penalised administratively. Under any reading of “appropriate to the nature and gravity of violations involved” (Article 16 of Regulation (EC) 338/97), this legislative choice, coupled with the very low penalties (levels appropriate for administrative sanctions, but not sufficient to serve as the sole penalty for these activities) suggests that the Portuguese law should be revised.²⁸

This situation may operate to encourage criminals to traffic in wildlife, rather than drugs or other types of contraband, because the potential profits are high, while the personal risk to themselves, and less chance of being apprehended (given the technological tools that their high profits give them access to – and that government officials cannot apply to many minor offences.)

5. Flexibility

“Legislative flexibility” is a term that is used to mean that legislation contains mechanisms to allow it to adapt to new developments, without going through an entire legislative process. It must involve a mandate to ensure that principles and objectives of the overall legislation are supported by such adjustments. In this connection, global wildlife trade is an ever-increasing phenomenon, and the regulation of it grows more complex with every addition to the lists of species, and with every new use of those species in international trade. Flexibility to address new developments, without the need for regular legislative revision, is essential.

²⁶ Given that the company might not be located in the EU, actions against property and vehicles may be strong deterrents. As noted above, seizure and confiscation are usually not considered “punitive,” instead focusing on removal of illegal goods, and of conveyances that may be used in the future to traffic in them.

²⁷ As noted above, the possibility of loss or suspension of operating licenses might be a significant deterrent — potentially larger than the possible proceeds from the criminal action..

²⁸ The *Statistical Information and Factual Summaries* indicate that, despite their legislative authorisation to impose higher penalties, few countries have penalised offenders at amounts higher than the highest administrative penalty per violation, contained in Portuguese law. Hence, if Portugal’s CITES authority were utilising the full breadth of its authorised penalties, its results would not statistically prove to be much different from the EU-wide average. As noted above, there are many other reasons why a total reliance on administrative penalty mechanisms is not optimum for CITES/Reg 338/97 enforcement.

Technical expertise and new detection methods: One type of flexibility must relate to the type and amount of controls and expertises needed to address wildlife trade violations. Increased attention to global issues of plant conservation, and the need to protect certain species of trees, suggests that new methods of determining species origins, in the cases of seeds, wood products, oriental medicines, etc. may be necessary. In some countries, the law has not clearly adopted “official notice” that particular types of technological evidence (dna analysis, for example)²⁹ is sufficiently dependable that it can be provided in evidence. In these cases, the law must allow for growth of technological solutions (and of technologically engineered crimes.)

Beyond recognition of this evidence, the law should address the possibility of international collaboration with forensic laboratories, and research institutes with the use of new identification techniques. Where these resources have been legally used, they have proven to be an indispensable source of evidence during the presentation of criminal cases to Court

Species lists and controlled legal trade: Many changes in the focus of attention, especially with regard to the control of trade which is legal but limited, may require adjustments to enforcement activities and mandates. For example, the evolution of CITES has moved it from an original primary focus on complete restrictions (Appendix I) to an enormous focus on “controlled” trade (Appendix II.) This focus is clear in the fact that Appendix II currently contains approximately 10 times as many individual species as Appendix I.³⁰ This has led to a situation in which some national authorities (e.g., Germany) are seeing a very large number of imports whose legal permits appear to have been given almost at random by (non-EU) national CITES management authorities. Italy and the Netherlands report an increasing number of forged or falsified permits, and specimen marking mechanisms (rings).

Growing sophistication with regard to permits and the need to ensure that the “net” of wildlife trade enforcement is sufficiently tight that it does not allow criminals to utilise one state’s laxity (about keeping track of pre-CITES specimens, for example) to facilitate traffic affecting the others.

Adaptation: The most important flexibility issues relevant to this paper relates to the adaptation of illegal trade in response to penalties. In other words, as penalties increase or as the net of trade controls becomes more effective, that fact itself may cause an increase in illegal market prices, both by increasing the smugglers “cost of doing business” and by decreasing availability (utilising the market “supply-and-demand” mechanism.) Penalty amounts and their calculation if flexible, will allow the courts and administration of these laws to reflect these changes.

Feedback into the regulatory development process: One final point regarding flexibility is the need to ensure that the experience of national enforcement should “feed-back” into the national legislative and regulatory processes. National reporting to CITES and the EU might be valuable in this connection, particularly if additional details and data management can be retained in a way that is useful and understandable in terms of the legislative processes. In addition, it is important that these inputs should feed into enforcement legislation and procedural development more generally, as well as those elements in specific wildlife legislation. In addition, it should be remembered that these types of feedback are also relevant with regard to national and EU participation in international processes, including CITES COPs, negotiations relating to multinational co-operation and other matters. Accordingly, it is important for administrative officials to feedback into international processes, and national diplomatic personnel.

6. Issues of basic national governance

Some of the National Legislative Analyses, as well as a number of the *Statistical Information and Factual Summary* reports, mentioned as problems, conditions which are basic to the entire legal framework of the country involved. One example that repeated in most reports was “long delays in getting cases to court.” (In Italy, for example, cases are still waiting for trial more than seven years after apprehension.) Although these are clearly problems that extend beyond wildlife legislation, additional study is needed to determine whether legislative mechanisms can help addressing the particular issues that arise in long-delayed wildlife crime cases. Such research is should attempt to determine,

- whether delays in prosecution of wildlife trade crimes are longer than those for other trade crimes?

²⁹ UK law specifically empowers officers to take samples for purposes of dna analysis.

³⁰ Estimated only. Appendix II lists whole genera of species with a single listing in many instances. Consequently, one cannot know with certainty how many species are listed on that Appendix.

- whether the delays relating to trade crimes generally are longer than those experienced with other types of crime?
- what are the sources of the time delay?
- is there a legislative mechanism within the country that helps certain types of criminal enforcement by decreasing the time between apprehension and trial?
- if so, what are the possibilities of using the same mechanism in this case?
- if not, is there a justification under national organic laws for creating a special mechanism for wildlife crime (i.e. for giving these crimes special priority?)

C. Human factors inhibiting enforcement – political and personal will to enforce

As noted above, statutory provisions for penalties exist at levels much higher than the penalties that are actually assessed. This suggests that, although adjustments to the legislation are recommended, the basic problem that is limiting wildlife trade enforcement in the EU is not a problem of national legislation. Rather, on the basis of various formal and informal reports discussed in connection with the preparation of this summary, the most severe problem may be the lack of will among judges to enforce these provisions. As noted in one report, “we think that information and prevention measures are at least as important as legal sanctions in order to prevent Wildlife Crime and the illegal trade of endangered species.”³¹

In Portugal, this public awareness/opinion situation is perhaps most obvious. There, changes to national legislation actually dropped the maximum penalties to less than 20% of the former maximum. This suggests that at the legislative level (the part of government most directly affected by public opinion), there is a clear impression that CITES legislation is not important, and its violations not matters of concern. This may also constitute a relatively clear flouting of the Council requirement that penalties be “appropriate to the nature and gravity of violations involved.”

There are no easy solutions to these problems, however, there are a few basic facts (described in the author’s presentation to the project workshop) that can be mentioned in this context.

Trying to force the imposition of higher penalties by changing legislation: The impact of changes to penalty legislation are limited. In some cases, attempts have been made to mandate that judges impose higher penalties. These usually include listing a “minimum” penalty as well as a maximum. In general, these provisions are of little effect. The judge who does not want to impose a high penalty may exercise a different kind of independence.

Instead of low penalties, for example, one might find an decrease in the percentage of convictions. A judge who knows that a high penalty will be assessed for a crime which he considers minor is more likely to apply rules of evidence very strictly against the prosecutor in such cases. In a recent case in Germany, for example, despite proof of the existence of world-wide organisation of wildlife smugglers, the court refused to find “common intention to commit the offences,” which would have been necessary to impose penalties on the group, and to apply enterprise-based liability generally. Only a few primary defendants were convicted on individual offences. Although prison sentences have been imposed, the individuals have not begun to serve them, well over a year later.

Sentencing guidelines: Proceedings and papers presented at the workshop addressed the possibility of using sentencing guidelines. Some countries offer or mandate the use of sentencing guidelines and/or penalty calculation decrees, while in other countries the use of such documents by a judge (and in some cases by a prosecutor) would be an illegal constriction of the judge’s mandated to come to a fair and reasoned decision.

A Dutch guideline system under development would operate even more automatically, serving as, in essence a pre-trial settlement mechanism. This system takes advantage of the fact that Dutch prosecutors have the same training and mandate as judges, operating as a mechanism by which prosecutors can compound penalties. The accused violator has a full right to go to court, in lieu of accepting the guideline-derived penalty. One of the main differences from administratively compounded penalties

Information systems as evidence: The most important limiting factor in the use of sentencing guidelines, however, is the need for credible evidence, particularly in the area of valuation. In all countries, judges are required to base their

decisions only on current, credible, and complete evidence. Hence, as noted above, for such a system to improve wildlife trade enforcement, it must be based on credible knowledge and information.

This requirement returns to the basic premise of this section – that general public awareness and knowledge must be increased with or before sentencing and enforcement can or will be stepped up. The judge's perception of the evidence of valuation, species status, deterrent effect, seriousness of the violation etc. (the factors involved in sentencing) are subconsciously colored by his or her expectations and basic awareness, as well as by public opinion. In the same way that these factors influence the penalty decision where guidelines are not present, they will also influence the judge's application of the guidelines. He may find that the evidence of value is unconvincing, for example, where he is not aware of the seriousness of the crime on a more basic level. Even where a sentencing guideline is imposed, requiring penalties based on specific data about the value of particular species, and market information, the judge will usually have discretion to overriding the guidelines and not using this information.³²

D. Monitoring and Evaluation How do we evaluate whether legislation is successful?

As a final point, it may be worthwhile to consider the bases on which we determine whether these provisions are being successfully enforced.

First, it is agreed that legislation is not enough, and that a perception that a law is “token” (unenforced) legislation may be worse in some cases than having no laws at all. Connected to this, is the first measure that can be used to evaluate legislative and enforcement success – whether an adequately empowered and equipped enforcement “team” has been created within the Member State. Tied to this are questions of the needs for specialisation, co-ordination and information tools, as described above.

Second, are the questions of how to interpret objective data, in order to determine whether the law is successful. Here, the questions are much more numerous than the answers. For example:

- What does it mean if statistical information shows that the number of Incidents of enforcement (apprehensions, seizures, citations, judgements) has increased? Does this mean that a larger percentage of violators are being apprehended, or that there are more violations?
- If the funding for/manpower of enforcement authorities is increased, does this mean that enforcement efforts will be more effective?³³
- Where the conviction rate for apprehended violators increases, does this mean that enforcement is more effective, or that enforcement officials are limiting their efforts to cases in which they can be assured of conviction?³⁴
- Where the average, median or range of fines collected (or prison terms imposed) is higher, does this mean that judges are more supportive of wildlife crime? Or that the cases coming to trial are involving larger numbers of species?

In all of these cases, it would be better to find a way to measure compliance with the law, and the deterrent effect of the law, than to identify statistics relating to non-compliance. However, it is very difficult to determine whether a law is changing behaviour. Statistical information on the number of legal imports may not indicate deterrence of crime, but

³¹ Statistical Information and Factual Summary, Luxembourg.

³² The Dutch system under development gives the prosecutor full discretion to adjust the resulting amount, for example. Similarly, in both Sweden and Finland, violations which the judge determines are “minor” cannot be penalised. Swedish law also allows the judge to forbid seizure or refuse confiscation or imposition of other penalty, where such forfeiture or penalty is “obviously unreasonable.”

³³ A presentation from Belgium, noted that most CITES-violations are reported by Customs, as a result of them having carried out checks on shipments. The customs officers of the National Airport in Brussels have reported that from the beginning of 2001 until October 2001, there were 40 CITES-violations. They noted that there would be more interceptions if more customs officers were engaged. Customs in Antwerp (harbour) compile only very few reports concerning CITES-violations, due to the fact that they are largely understaffed and need to meet other priorities.

³⁴ The *Statistical Information and Factual Summary for Luxembourg*, suggested that a possible cause for the decrease of seizures in that country after 1995 could be the cessation of the Aeroflot-flights to the South Americas (LIMA-LUXEMBOURG-MOSCOW), whose passengers were often intercepted with CITES-specimens.

only that more species are listed, and that markets are developing for more products. In such cases, the incidence of illegal traffic may increase, decrease or be unaffected.

Some of the various formal and informal reports discussed in connection with the preparation of this summary suggest the potential value of detailed comparison studies, relating to violations and their interception.³⁵ This kind of information might be of use across a number of evaluation areas.

Finally, as described at the beginning of this report, the ultimate success of any law is not related to how well it runs, but how well it achieves its underlying objectives. For wildlife trade laws, this determination is one that must be made on a global level – one must analyse not only how effective the law has been in apprehending and stopping illegal trade, but must also consider what types of specimens are involved, and whether their conservation status is improving, or at least not declining.

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NOTE: All of the authors of legislative reports have supplied hard copies of all legislation which they have described in their reports. These documents are now archived within the ELC's legislation library, and are available for study or photocopying, directly or by making arrangements with Head Librarian Anni Lukacs ([c/o Secretariat@elc.iucn.org](mailto:c/o_Secretariat@elc.iucn.org)). In some cases, the authors have also provided electronic citations to websites where the full texts of these documents may be obtained.

For the most part these documents have been provided only in the original language, (or in one of the original languages (French), in the case of Legislation from Luxembourg and Belgium.) The exception is the Finnish documents, which Professor Hollo has kindly provided in both Finnish and Swedish, in the expectation that the latter might be more accessible.

³⁵ Note for example the *Statistical Information and Factual Summary for Luxembourg*, which suggested, the possibility of a comparison of rates and nature of illegal traffic among international airports.

A Preliminary Overview of Court Cases and Challenges in the Prosecution of Crime related to Wildlife Trade in the EU

Monika Anton, TRAFFIC Europe

The Project's Approach

The approach of the project's partners has been to:

1. Provide an overview and analysis on national legislation and the sanctions/penalties they contain;
2. Provide an overview on recent sentences passed in court and discuss problems, gaps, best practice in the prosecution by presenting case studies; and
3. Develop recommendations for improving enforcement among the EU member countries.

Court Cases and Penalties imposed under National Legislation as illustrative of how Legislation is being implemented

Some useful lessons can be discerned from the compiled data on court cases reported within the last twelve years; although the research was difficult and the information provided was too diverse.

However, court cases and sanctions are not easily comparable, because each case is different or even unique in terms of all criteria which lead to a specific judicial decision e.g. first time or repeat offender, character, co-operation with police, value of item, personal/commercial, negligence, intentional / accidental. While it is often useful to compare CITES enforcement with the illegal drug trade, that comparison is only useful to a certain extent. There are “only” 6 – 7 types of drugs that are commonly smuggled internationally whereas in wildlife trade more than 40 000 animal and plant species are found illegally in international trade.

In giving a preliminary overview on court cases and sanctions, the table only refers to selected cases, and does not represent the full range of sanctions available. Therefore the information cannot be used for any comparisons, analyses or conclusions. (For further details see information provided in the Annex.)

Table 1

Preliminary overview of wildlife-trade cases in the EU

Country	Cases Researched	Offence	Range of penalties given in court
AUSTRIA	3 court cases Furthermore: 413 offences (including 15 court cases) reported from 97 to 01, 97/98 not complete	- Illegal import (2) - Possession	8 months suspended sentence and a fine of 17 441.49 Euro 2 cases pending Penalties of 15 court cases (no details on offences): fines 150 Euro up to 1450 Euro (or 56 days imprisonment)
BELGIUM	2 court cases 11/99, 05/00 Furthermore: 167 seizures 99 – 00, most illegal import and transit	- Illegal Possession - Illegal commercial activity	- 15 days + fine (2000 BF + 1000 BF confiscation, 982 BF law cost, seizure, transportation) - 15 days + 800 000 BF or 3 months + 2000 BF + law cost 3454 BF, seizure 421 800BF

Country	Cases Researched	Offence	Range of penalties given in court
DENMARK	5 court cases Furthermore: 441 cases 93 – 00, approx. 80% non- commercial, e.g. tourist cases, 5 – 10% court cases	- Illegal import (3) - Illegal commercial activities (2)	Confiscation up to 1200 DKR Fines of the 441 reported cases (most illegal import) range from 500 DKR up to 50 000 DKR (50 000 DKR = 5750 US\$) Most cases end with confiscation of the seized specimens. Caution is given in most non- commercial first offences. Commercial offences will usually be fined.
FINLAND	7 court cases 11/95 – 08/01	Illegal import (most cases from Russia)	- 2* no penalty - Fine 50 Euro – 238 Euro - 1* 1 year imprisonment
FRANCE	1076 seizures in 99-00		
GERMANY	7 court cases 98 – 08/01 Furthermore: 5869 seizures in 99-00 3920 confiscations in 99- 00	Illegal import	- 7 – 18 months imprisonment - 2750 Euro – 7700 Euro Fines - 1* 3 years of imprisonment and disqualification from the profession; 3000 Euro fines for two other defendants 3244 procedures in 99: 97 pending, 2623 dismissed, 86 warning, 266 administrative fines, ongoing investigations 33, dismissed by prosecutor 34, dismissed after paying a fine to prosecutor 41, judicial decisions 25
GREECE	7 court cases 08/96 – 04/01	- Illegal possession (5) - Illegal importation (2)	Most cases: pending 1*illegal possession: not guilty 1*illegal possession: pending, administrative penalty 200.000 GD 1*illegal importation: pending, administrative penalty 1.000.000 GD
IRELAND	No Response		
ITALY	9 cases reported Furthermore: 871 seizures in 99-00	Most: illegal import	Penalties only for 2 cases reported: fine 8 – 50 mil liras
LUXEM- BOURG	No court cases documented from 1995 to 2001 50 seizures from 95 – 01		Only sentence is confiscation
THE NETHER- LANDS	29 cases	Variety of offences	From 90 Euro fine up to 34 033 Euro 1* 22 008 Euro * 15 months imprisonment 1* 8 months imprisonment, 8 months house arrest, license withdrawn for 5 year period, 250 000 US\$ donation for WWF reptile habitat conservation project in Indonesia
PORTUGAL	575 seizures 86-00 no court cases	Most illegal import	Fines from 37 Euro up to 4000 Euro, average fine 100 Euro (Lots of cases dismissed)

Country	Cases Researched	Offence	Range of penalties given in court
SPAIN	7 cases (administrative) 1989 - 1999	- Illegal commercial activities (2) - Illegal Possession (4) - Illegal import (1)	Fines 12170.50 - 34933.83 Euro (illegal commercial activities) Pending (4 of years 89, 91, 91, 97)
SWEDEN	30 cases 04/98 – 10/01	Most cases: Illegal commercial activities	Most cases: fines related to income (often 30 day times) Others: pending, 1* 3 months imprisonment
UK	80 cases 03/89 – 08/01	- Illegal import (32) - Illegal commercial activities (most cases: offering for sale and/or sale) (49) - VAT fraud (1)	<u>Illegal import:</u> From £ 200 fine + £ 50 costs up to £ 1000 fine + £ 10,000 costs up to 4 – 18 months imprisonment; 1* 2,5 years imprisonment + £ 5000 costs 1* 2 years imprisonment + £ 18,500 costs <u>Illegal commercial activity:</u> From no fines + £ 15 costs or £ 30 fine + £ 30 costs up to £ 5000 fine + £ 350 costs up to 18 months imprisonment

Source: Information provided by different authorities/institutions of the EU Member States, including, CITES Management Authorities, TRAFFIC International, custom and police departments

Some information in the table can be highlighted as follows:

- Germany: 5869 seizures and 3920 confiscations in 99-00
- Luxembourg: No court cases have been reported since 1995. The only sentence following seizures has been confiscation. Even a seizure of 17,5 kilo caviar lead only to confiscation; no formal procedure, no court cases.
- Netherlands: One penalty has been: 8 months imprisonment, 8 months house arrest, license withdrawn for a 5-year period, 250 000 US\$ donation for WWF reptile habitat conservation project in Indonesia. The donation for WWF reptile habitat conservation project in Indonesia is a good example of a given penalty as it helps the environment.
- Portugal: Portuguese law does not classify the infringements of the CITES legislation as crimes, thus such infringements are subject to administrative offence proceedings, which can lead to a fine but not to imprisonment. Furthermore if no proceedings are developed within one year, the case will be dismissed (150 of 575 reported cases). This is frequent due to the difficulty in notifying non-resident offenders.
- Spain: Until recently only very few punishments were available under the Spanish Criminal Code for illegal trade in protected species. Usually the illegal trade has been punished by imposing an administrative fine.
- Sweden: Investigations in Sweden focus on illegal commercial activities.
- UK: This is only an example, and one which could equally be applied to several other countries. Court rulings and the legislation illustrate that the penalties imposed for illegal imports are at the lower range of penalties that can be imposed – the maximum being sevenyears imprisonment and an unlimited fine.

Major Challenges in the Prosecution of Wildlife Trade related Crime - A preliminary Overview

TRAFFIC Europe asked thirty-nine individuals from fourteen Member States for reports and/or interviews on major challenges, main issues, gaps, etc in the prosecution of wildlife-trade related crime, including *inter alia*:

- Why do cases not come to court?
- Why are appropriate penalties not imposed?

- How can the prosecution of wildlife-trade crime be improved?
- What are the needs of public prosecutors?

The responses related primarily to:

- Information availability and knowledge base
- Awareness and priority
- National and international co-operation
- Resources (and other problems)

Information Availability and Knowledge Base

A major challenge pointed out by several interviewees, can be summarised as “Information availability and knowledge base”.

Databases on courtcases of wildlife crime do not exist. This might be due to a missing nationwide public prosecutor’s office in most countries.

As far as it is known Finland, Sweden and the Netherlands are exceptions in this context:

Finland is currently building up a unit of five public prosecutors whose responsibility is serious environmental crime cases – two of which specialise in CITES. In Sweden a specialist unit was created in January 2000: The Environmental Crime Unit within the Office of the General Prosecutor. The Unit consists of the Director of the Unit, a chief prosecutor and an administrator. In Sweden there are nineteen specially trained prosecutors working solely (or mostly) with environmental crimes, within the six prosecuting districts. The Netherlands have established the “Expertise Centre Green Public Prosecutor” who is currently working on sentencing guidelines (see below “POLARIS – Sentencing Guidelines”).

A fundamental challenge was stated by the interviewees and in many of the reports: the lack of experience (and knowledge) of some public prosecutors. Whereas a public prosecutor in Frankfurt deals with about fifty cases related to wildlife trade crime per year due to the proximity of a major international airport, his Swedish counterpart in Stockholm only deals with two to three cases per year. This is still a lot of experience taking into account the relative infrequency of wildlife cases in comparison to other crimes. Since EU Regulation 338/97 came into force in Greece, no wildlife trade crime cases have come to court. Thus - according to a Greek lawyer - public prosecutors there have no experience. In Finland there are about twenty to fifty cases per year, and it is estimated that on average there is one case per prosecutor every ten years. Finland, however, is establishing a prosecution office of environmental crime.

To be considered:

- Would prosecutions be improved if a nationwide public prosecutor office on environmental crime were created? Would that tackle the problem of lack of experience?
- Would building up a network of public prosecutors specialized in environmental crime with particular emphasis on wildlife crime be a first step to being able to exchange experiences among the EU Member States and to improve prosecution?
- In this context would it be useful to establish an environmental crime unit within the European Judicial Network (EJN), which facilitates judicial co-operation between Member States?

Awareness and Priority

Another major challenge interviewees and reports stated can be summarised as “Awareness and priority”.

The lack of awareness as well as the low priority of wildlife trade related crime among judges, public prosecutors, and other targeted authorities, e.g. Customs and the Police, was highlighted in the reports and the interviewees as a major challenge. Low priority is also linked to the experience judges have, and the lack of knowledge of public prosecutors

and judges. It was reported more than once that Enforcement Authorities passed on the actual national legislation to public prosecutors or judges, who until that time were not aware of its existence.

As regards the level of penalties imposed, the examples from the table show they tend to be towards the lower end of the range of penalties available under the legislation. In Germany it was observed that offences against animal welfare were sanctioned at the upper limit of penalties which could have been imposed, whereas violation of species conservation or wildlife trade laws are sanctioned at the lower range of available penalties. There may be a need to harmonise judicial decisions within states, given the wide range of penalties imposed under the same legislation within one state.

An example from Austria shows how court rulings differ:

An Austrian imported two Hermann's tortoises (*Testudo hermanni*) from Hungary for his daughters, for which he was given a three-month suspended sentence; whereas in a different - but similar - case, the case was dismissed. The usual penalty in Austria would have been a fine of 1000 Austrian Schilling (approx. 70 Euro).

To be considered:

- How do you raise awareness among targeted persons/institutions/authorities, such that wildlife trade related crime is prioritised?
- Is there any way for penalties imposed under the same legislation to be harmonised?

National and international Co-operation

Gathering enough evidence for a successful prosecution and ensuring there is a good level of co-operation amongst authorities within a country are both common problems in many EU countries.

In this context Finland will commence a project at the end of November 2001, whereby the office of the General Prosecutor will endeavour to improve co-operation between agencies by inviting other targeted authorities together so that a dialogue will be started

Some reports and interviewees have highlighted the need for further background information (available via a database or contact persons) on, e.g. species (population size, conservation status, commercial value, etc.) to assist public prosecutors. This could help public prosecutors and/or judges to demand and/or impose appropriate sentences, by putting the case in context.

The prosecution of non-residents (including transits) was highlighted in many reports as being a particular problem, since non-residents may disappear and thereafter cannot be prosecuted. International co-operation between authorities is therefore valuable. In some countries the accused has to be notified before he/she can be prosecuted. This is of course a problem *vis-à-vis* non-residents. In Finland such cases remain open, whereas in Portugal they are dismissed.

To be considered:

- How can the co-operation of authorities be improved (examples, best practice)?
- What are the needs of public prosecutors?
- What can be done to improve the prosecution of non-residents?
- How could international co-operation of authorities be improved?
- Is it beneficial that from January 2002 EUROPOL's mandate will include the support of law enforcement activities in relation to environmental crime?

Resources and other Challenges

It was stated that more resources were needed at court and the Prosecutor's office to shorten court cases, e.g. in Greece no case has been brought to court since the Regulation (EC) No 338/97 came into force. In Spain the sentencing can take as long as ten years to be completed.

As regards the housing of seized animals, which was mentioned as another specific problem, Portugal sometimes does not apply CITES because of the lack of appropriate housing for seized animals. Keeping animals during court proceedings is expensive. In some cases in Sweden it has been necessary to annul the seizure or decide that animals should stay with the suspect due to the expense and problems encountered housing and transporting the animals.

Being aware of the commercial value of species is helpful to impose the appropriate sanction, e.g. in Spain the legislation sets sanctions depending on the value of merchandise. If the value of the confiscated specimen is less than 3 million Pesetas (18 030.36 Euro) the procedure is administrative. If the value of the confiscated specimen is more than 3 million Pesetas the penal procedure will be applied. In relation to CITES merchandise, however, it is very difficult to establish monetary values.

Summary

The challenges can be summarised as:

- Information availability and knowledge base;
- Awareness and priority; and
- National and international co-operation.

Arising questions might bear potential solutions:

- Would prosecutions be improved if a nationwide public prosecutor's office on environmental crime were established?
- Would building up a network of public prosecutors specialised in environmental crime - with particular emphasis on wildlife crime - be a first step to being able to exchange experiences among the EU Member States?
- How can we assist in increasing awareness among targeted persons/authorities as to the priority that should be afforded to wildlifetrade related crime?
- Are there any means whereby penalties imposed under the same legislation can be harmonised?
- How can the national and international co-operation of authorities be improved?
- What can be done to improve the prosecution of non-residents?

Monetary Compensation in Crimes against Nature

Frans Geysels, Belgian Federal Police

1. A key question in material criminal law is: What sanctions should be prescribed to encourage potential offenders to cease from infringing environmental law? Criminal sanctions in environmental law should meet two purposes: First of all, the sanction should have a preventive effect, by threatening the imposition of serious penalties for behaviour detrimental to the environment. Secondly, the sanction should help the environment, i.e. continued behaviour detrimental to the environment in the future must be avoided in all respects.

In many countries, the punishment for infringements of laws on flora and fauna does not address the aforementioned purpose.

2. The following two judgements illustrate the situation that we are currently faced with in Belgium:

- 2.1. Court of First Instance in NAMUR dd. November 12th, 1999

Subject: The illegal possession of 11 parrots (one couple of Scarlet Macaw (*Ara macao*) Appendix I; two pairs of Cuban Amazon (*Amazona leucocephala*) Appendix I; one Moluccan Cockatoo (*Cacatua moluccensis*) Appendix I and two pairs of Vasa Parrot (*Coracopsis vasa*) Appendix II B.

The penalty set out in the Royal Decree dd. 20-12-1983 with regard to the application of the Agreement Concerning the International Trade of Threatened Wild Animal and Plant Species / BS (The Belgian law gazette) dd. 30-12-1983 provides:

- Prison sentences of 15 days up to a maximum of 3 months and/or a fine of 1000 € up to 100 000 € (x 5)

The sentence given in the first instance was:

15 days' imprisonment and a fine of 4000 € (x5) = 20 000 €, with a three-year conditional discharge for 50% of the penalty.

249.77 € of legal costs had to be added to that sum.

The person involved also had to pay 10 456 € to the Ministry of Agriculture (the civil party) which had temporarily accommodated the animals in the Antwerp Zoo. All birds were seized and assigned to the Ministry of Agriculture.

This was a rather severe punishment - taking into account the mild penalty - for a CITES infringement. Unfortunately, such a sentence is more of an exception than a rule.

- 2.2. Court of First Instance in LEUVEN dd. November 20th, 2000

Subject: the deliberate destruction (by poisoned bait for which the "aldicarb" poison was used) of protected animals in the countryside. In reality, we are talking about: one goshawk, six buzzards, two sparrow hawks and one stock dove.

In respect of the penalty defined in the Royal Decree dd. 09-09-1981 with regard to the protection of birds in the *Vlaamse Gewest* (The Flemish Region) / BS dd. 31-10-1981, the penalty in the Game Act is being referred to. Various penalties are prescribed and the most serious infringement is punished with a fine of 200 € up to 4000 € (x 5). These sums may possibly be doubled. The imprisonment ranges from 1 to 5 years.

Both suspects were sentenced to:

A three months' suspended imprisonment during three years, a 200 € fine (x 5) + 49.57 € and each suspect bore half of the costs (78.58 €).

At the civil level, two claims were brought by both the Hunting Association "St-Hubertusclub van Belgie", and the "Koninklijk Belgisch Verbond voor de Bescherming van de Vogels (Royal Belgian Federation for the Protection of Birds). The first claim was for financial compensation for the damage caused; the second one was for the costs of the Defence and the associations' additional administrative costs.

The first association received one Franc as moral damage. The fact is, one of the convicted defendants was a game warden. The court thought that the media had given a lot of attention to this case, which caused people to talk about the Association and the hunters. For the first time in Belgium, the Nature Association was given more than the traditional "one Franc", in this case the amount being 495.78 €. Initially, the Bird Protection Association had asked for 247 893 €. Although the sum the Association received was merely a fraction of the claim, in my opinion this judgement seems to be a breakthrough in the matter.

The Court justified its decision as follows: "The civil party claims considerable moral damages based on the professional report of the expert JOIRIS. It is out of the question that its property should have been affected by the proven facts: the animals killed did not belong to its patrimony, and the costs of the Defence and the administrative costs involved did not arise as a direct result of the criminal act [the Court therefore disregarded these costs]." The fact that the Association had the intention of giving the money to the Minafonds (an official nature fund) and to the Belgian State is irrelevant. *After all, only proper damage can be claimed.* As a result, the appointment of an expert is not expedient.

In accordance with the poisoning / killing of the protected birds the members of the civil party have been deprived of a means of satisfaction: they can no longer enjoy observing these rather rare animals, and it also harms the interests of the Association. The moral damage suffered by the civil party is not comparable to the value of the animals killed, as estimated by the expert on the basis of the ecological structure and that damage to nature harms the entire society. The damage which above all is of a moral nature, should be estimated in fairness at 495.78 € in case concrete numerical data is lacking".

2.3. Both judgements illustrate once again that the infringements involving fauna and flora are still not considered to be serious infringements. On the one hand, this is manifested by the (very) mild punishment, which is especially prescribed in Belgium for the CITES regulation. On the other hand, this also means that only a fraction of the findings are finally settled in court. Mostly, the cases are closed, dropped or a friendly settlement is proposed. It goes without saying that the fines are much too low. On the one hand, they do not sufficiently stress that environmental crime is a social injustice and on the other, they do not encourage observation of the law. On top of that, such mild punishments do not suit the purpose of the environment as acts adverse to the environment continue unabated.

3. How can one obtain satisfaction of some sort for the environmental damage caused by the deliberate removal of animals and plants or the destruction of a biotope?

3.1. The victim of the damage can start a **civil procedure**. By proving the causal connection between damage and guilt, the person who has caused the damage will have to compensate the victim. With respect to environment, some problems arise.

3.1.1. Lots of nature elements do not have an owner and are therefore to be considered as "res communes" and/or "res nullius". In such cases, the value of the damage cannot be recovered since in law such elements belong

to nobody. One only speaks of damage in the context of violation of a personal right or of a lawful interest in relation to the patrimony or the personal integrity of the victim. Where environmental elements *res communes* are damaged, any such damage may nevertheless in certain circumstances be recognised as “damage *per se*”. Here, we distinguish between:

Patrimonial damage, e.g. air pollution causing breathing disorders; bad smells, making plants grow less quickly and making them lose their leaves; or, causing any other kind of nuisance of a patrimonial nature. A legal person managing a wildlife area, either as owner or on the basis of a contract, is allowed to appear in court to protect, for instance, the animals living there or the streaming water. As a matter of fact, damage to fauna often results from damage to the managed wildlife area that is used by the fauna as shelter or as a breeding ground.

Non-patrimonial damage (moral damage): There is general skepticism about this legal doctrine, for instance, as applied to claims for moral damage caused by the sight of dying seals falling victim to oil pollution. Such claims therefore have little chance of success.

A *res communis* (like streaming water) and a *res nullius* (like wild fauna and fishes in streaming water) are only protected in an indirect way, by means of the liability right. Protection is always a side effect of compensation of the damage *per se* invoked.

3.1.2. Civil procedures take a (very) long time. On top of that, the onus of proving damage lies with the plaintiff. In environmental matters, for which the harmful effects usually surface years after the action, it is really hard to identify the real perpetrator. Furthermore, the environmental situation remains the same in the course of the lawsuit, which has a pernicious effect on nature.

3.2. **Criminal law** also offers a number of possibilities to sue the perpetrator financially, on top of imprisonment and/or fine.

By seizing the proceeds arising from the infringement of environmental law, upon the illegally obtained advantages having first been identified.

By requiring the perpetrator to compensate “in kind” or “by way of equivalent” for the damage caused.

3.2.1. It is not easy to gain an insight into the illegally obtained advantages arising from the smuggling of fauna and flora. This will only be possible if nature is considered within an economic framework of supply and demand. Such an approach requires a market for the products. The investigator has to be able to reveal the structures of the unlawful act and obtain as much financial data as possible (invoices, accepted prices possibly on the ‘black market’, profit margins, turnover and so on). This information should convince the judge of the fact that the unlawful act was organised with a view to making a profit. The next step is to seize these profits in accordance with the proverb “Crime does not pay”.

3.2.2. When there is no market to put a price on the value of the environment, three series’ of techniques can be used to estimate the environmental effects.

3.2.2.1. **The direct evaluation techniques** try to estimate the environmental effects in a direct way. Here, we distinguish between two approaches:

- The first group takes a surrogate market where goods and services other than those environmental goods, which have been harmed, are traded, but where the price is directly influenced by such goods that remain outside the market (the price of the real estate market, the time people want to spend to travel to a wildlife area).

Research has shown that the value of real estate also depends on its situation with regard to many factors (e.g. schools, connecting roads, green areas, air pollution, noise, and so on.) The “Hedonic property prices” identify - on the basis of statistical data - that part of the value of the real estate that can be attributed to the positive environmental circumstances, and also show how many people are willing to pay for an improvement in environmental quality. In this way, the social value of the planned investments for environmental improvement can be estimated.

The “Travel cost” is a market-related method, which uses the information about the amount of money and time people have spent to travel to a wildlife area for recreational purposes. On the basis of this data, the willingness to pay for the services of the “facility” can be extrapolated.

- The second approach is the creation of a hypothetical market for the trading of the environmental element, for which actually no market data is available (contingent valuation).

By means of a questionnaire / an enquiry or on the basis of experiments in laboratory conditions, people are asked how much they are willing to pay to realise a certain degree of nature conservation (willingness to pay = WTP), or what amount they would like to collect by way of compensation should a wildlife area be lost (willingness to accept = WTA).

- 3.2.2.2. A second series of techniques is given the denominator “*indirect evaluation methods*”. Here, the dose/effect relation is studied. Afterwards, the effect receives a value, which is based on an indirect valuation on the (surrogate) market. The method is called indirect as one does not try to estimate the value of the environmental element itself, but rather looks for the valuation of the effect of the damage to the environmental elements on other goods.

The pure dose/effect evaluation method is based on a dose/response relationship between the environmental harm and any effect caused by it (e.g. human health, damage to materials, harmful effect on an aquatic environment and so on). Once the relationship has been established, these effects are evaluated.

- 3.2.2.3. A third technique makes use of *fixed evaluation techniques*.

The researcher starts from, for instance, the harmed surface, the damaged volume of the good, the biomass that has disappeared, or the reduction of the environmental element involved. These techniques are based on ecological valuation methods using biological indicators such as the profusion of species, diversity, scarceness. In this case, the researcher chooses certain data symbolising the environmental effect, and to which a value can later be linked, - whether or not based on scientific data -, such as assumptions about the number of destroyed macro-elements at that surface or in that volume - or on an economic theory.

Under French law (Code Forestier), fixed damage estimation techniques are initiated in the form of fines, adapted to the extent of the damage and of minimal compensations. In case of fire, the perpetrator pays per hectare of damaged area. With respect to sea pollution, the American federal state of Alaska uses a fixed calculation based on a simple formula in which the variables are: the nature of the product that was discharged into the sea, the product’s toxicity, the sensitivity of the nature harmed, and the value of the product. Russia uses a similar system in which the fixed calculation mode takes into account the amount of polluted seawater, on the basis of which - and according to the area - is calculated, by means of a quotient, how many individuals of the marine species have disappeared. A price agreed on in advance then has to be paid for it.

Some fixed damage evaluation methods only aim at putting a price on each environmental element. This approach, which utilises price lists or unity tables, is very popular, especially for punctual damage, such as the loss of an animal.

In Spain, each threatened animal species (decree dd. January 22nd, 1986) has its price, based on the replacement value and also dependent on the age and the rarity of the species to which it belongs.

The Belgian approach too, is very similar. The calculation method with regard to the destruction of birds of prey is based on the fact that the value of an animal or plant depends on the size of the population on the one hand (rare animals are more valuable than those which are omnipresent) and that the value of a species depends on the position in the food pyramid on the other hand. The higher the position in that pyramid, the higher its value.

Finally, the Finnish rules (dd. October 1995) provide for a compensation system on the basis of the following criteria.

- Population size: High values for rare, low values for abundant.
- Renewal capacity: High values for slowly reproducing species, low values for rapidly reproducing species.
- Need of protection: High values for seriously threatened species, low values for non-threatened species.

The calculations are made by way of the following formula:

$$V = R \times S / P \times 1200 \text{ FIM}$$

In which

V = Indicated value for protected vertebrate species;

R = Renewal capacity;

S = Need of protection;

P = Population size; 1200 = Value in terms of Finnish marks.

4. The evaluation methods, which are based on econometric research and/or require substantial scientific data concerning the functioning of the environment, have not yet been finalised. The solutions they offer for defining the value of purely ecological damage are very interesting, yet are hard to put in practice. Even if that shortcoming were to be remedied, it will be difficult for the judicial world to work with the available statistical data instead of studying thoroughly each individual case in a separate way. To be part of the judicial technique and to be accepted by the different parties involved in evaluating ecological damage (e.g., insurance companies), the results of scientific research should be presented as solutions that cannot be ignored. We are not sure whether the time has come for the presentation of such models as a better alternative to the way in which the judges currently estimate similar damage on the basis of equity, when they do not resort to the symbolic Franc.

The use of fixed calculations for the definition of the total value of environmental components seems to be more promising than the valuation techniques. It offers legal security, and since the fixed calculation method takes into account the environmental criteria which are relevant to the damage involved, the fixed amounts are closer to the full compensation than that realisable on the basis of the current estimations based on equity. It is best to choose the introduction of fixed calculation methods in a legal form as they guarantee uniformity.

When attributing compensation, which is always the case when a sum of money is paid out, one is faced with the question of whether it should be required that the money serve as reparation for the harmed environmental elements. The common law leaves it up to the person who is compensated to decide how to spend the money.

Nevertheless, we feel that the person compensated in the name of the environment or of society for the reparation of such damage, should use the compensation for the benefit of the environment. This also requires a legislative initiative.

Conclusion

For years now, the Environmental Crime Service of the Belgian Federal Police has tried to convince the policymakers and the legislator of the fact that nature has a right to genuine protection from criminal acts, and that a number of infringements of environmental law correspond to the definition of “serious environmental crime”. In other words, the only effective way to stop these infringements is to judicially take a firm line against the perpetrators. As money-making is the driving force behind their actions, every effort should be made to punish the perpetrators in that field. Fines, seizures of animals / plants and of the means to commit the crime (vehicles, traps, computers and so on), deprivation of the illegally obtained advantages, compensation for the damage caused, systematic recovery of the relief costs, reparation of the lawful situation, promulgation of the judgement and so on, are possibilities which may considerably influence the costs for the perpetrators.

Monetary Compensation in Crimes against Protected Species

Veijo Miettinen, Finnish Environment Institute

In Finland most penalties for violations of nature conservation laws (3-7 cases a year), relate to the illegal killing of birds, however, other cases may also arise in respect of: importation; exportation; transit transportation; use for commercial purposes; and taking possession - referred to in sections 40, 42, 44 (implements Council Regulation 338/97), 45, 49 and 58 (penalties) of the Nature Conservation Act (1096/1996) and chapter 48 section 5 of the Penal Code (penalties).

In addition to a penalty, which is either a fine or imprisonment, there is always a monetary compensation, which corresponds to the value of the protected specie. This may have a pronounced preventive effect. According to Nature Conservation Act, Section 59:

Whosoever is guilty of a violation referred to in section 58 shall be sentenced to forfeit to the State either what he has gained by the violation, or its corresponding monetary value. The value of protected plant or animal as a representative of its species shall, however, always be pronounced forfeit. The Ministry of the Environment shall set standard monetary values.

The same provision could be found in the predecessor Nature Conservation Act, which was amended in 1996. Consequently, in October 1995 the Ministry of the Environment published in Decision 1209 (revised in January 2002, Decision 9/2002), recommended monetary values for protected animals and plants. The Decision includes values for 27 mammals, 217 birds, 9 reptiles and frogs and for some butterflies, beetles, mayflies and mussels. The values are for adult species. Mammals' litter - or part of it – corresponds to an adult specimen. Birds' sets of eggs, brood - or part of it - correspond to an adult specimen. However, all specimens of gyrfalcon and peregrine falcon have equal values. For mammals and birds that occur only occasionally in Finland, the highest value of systematically related species is applied. Values for plants are calculated on a case by case basis.

The proposal for monetary values was prepared by the Finnish Museum of Natural History (for further information see: Väisänen, R. A. (1998). In: DETR (Eds.) *Proceedings of the EU Wildlife Law Enforcement Workshop, London 1 – 2 March 1998*. London, UK.). The original idea was that values should crudely compensate expenses, to protect a species or cover costs for producing a new individual to replace a destroyed one. The indices for calculation are population size (P), renewal capacity (R) and need of protection (S) to which IUCN Red List Categories are applied. The value is calculated as follows

Monetary values for birds and mammals:

$$V = R \times S / P \times 201.60 \text{ Euro}$$

Monetary value (V)

Renewal capacity (R) *logarithm of species specific weight in grams*

Need of protection (S) *IUCN Red list categories (1994)*

S = 1 *Least concern species*

S = 5 *Near threatened species*

S = 10 *Vulnerable species*

S = 20 *Endangered species*

Population size (P) *in country/area concerned*

	<u>Pairs of birds</u>	<u>Specimens of mammals</u>
2	<100	<200
3	101-1000	201-2000
4	1001-10000	2001-20000
5	10001-100000	20001-200000
10	100001-1 mil.	200001-2 mil.
20	> 1 mil.	> 2 mil.

In the formula, 201.60 Euro results from the fact that to protect each specimen of white-tailed eagle it is estimated to cost around 7392 Euro, being V and R, S and P get figures for this species. So, rare, slowly reproducing, and seriously threatened species receive high values; and abundant, rapidly reproducing and non-threatened species receive low values.

The highest value - 9744 Euro - is for an endemic ringed seal (*Phoca hispida saimensis*) of Lake Saimaa, with a total population size of around 250. The lowest values - 16.80 Euro - are for the most common birds and mammals. The median value for mammals is 109.20 Euro and 252 Euro for birds.

The Decision is available at <http://www.vyh.fi/luosuo/lumo/lasu/arvot.htm> with scientific names of the species. The Decision will be amended in 2002 since in a new Red List 2000 of Finnish species, IUCN Red List categories have changed for some species.

Monetary value confiscation has been used once in a case of illegal importation of protected specimens. Just one week after the Decision came into force Customs seized 110 bird eggs hidden inside a car at the Russian-Finnish border. Behind the operation was a Norwegian taxidermist, who was widely known for have committed many offences with respect to protected species. Since the accused was sentenced for participating in an organised crime with respect to protected species, the penalty was a oneyear conditional discharge. Among the species concerned, were rare CITES-species like eagles and hawks. The total monetary value therefore forfeited was FIM 150 000.

Cases (3-7 a year), where sentences of fines and forfeiture have arisen, have usually concerned illegal killing or shooting of protected birds - as game birds. Forfeitures have usually been to the value of 1680 – 13 104 Euro.

Organised Crime in the Wildlife Trade in Germany. The FUNDACEF Case.

Axel Kreutz, Staatsanwaltschaft Frankfurt/Germany

A) Background of Organised Wildlife-Crime

- I. Fields of organised wildlife-crime;
 1. Classical smuggling of animals;
 2. Illicit trade in animals; and
 3. Trade in animal products, e.g. caviar and Asian medicine.
- II. Organisational structures:
 1. Global organisation and networking;
 2. Integration with organisations undertaking lawful activities;
 3. Contact and lobbying with official organisations;
 4. Use of modern communication; and
 5. Money laundering.
- III. Illegal profits, e.g. the FUNDACEF Case and other cases dealt with by the Frankfurt Prosecutor

B) Legal Framework

- I. Sanctions under the Federal Nature Conservation Law can be applied for:
 1. Not giving a sufficient level of protection to endangered species;
 2. The offence of importing endangered species; and
 3. The offence of trading in endangered species.
- II. Corresponding sanctions are found under:
 1. § 129 German Penal Code;
 2. § 330 (1.) No 3 German Penal Code;
 3. § 17 German Animal Protection Law; and
 4. § 373 Fiscal Code.

The FUNDACEF Case

The Office of the Public Prosecutor of Frankfurt am Main conducted an investigation of a group of German, Polish, Russian and Indonesian citizens who were under suspicion of having been involved in a criminal enterprise according to § 129 of the German Penal Code. Such involvement would have been contrary to the Federal Nature Conservation Law, and would have violated the marketing prohibitions of Article 8 paragraph 1 of the Council Regulation (EC) No 338/97, on the protection of species of wild fauna and flora by regulating trade.

C) Origin of the Case

The FUNDACEF Case started in February 1999 when a fax was mistakenly sent to a journalist in Frankfurt, who then passed it on to the bureau of the WWF-Germany in Frankfurt, the Frankfurt Police Office, and the Customs Investigation Office – Frankfurt Branch.

The fax included references to various world-wide animal transactions. Some of these transactions were still being planned, whilst some of the activities mentioned had already occurred. The transactions included merchandise such as crocodiles, elephants, protected birds, etc.

On the basis of the contents of the fax and previous knowledge of the backgrounds of at least some of the persons mentioned in the fax, the Public Prosecutor decided to establish a joint investigative task-force of Customs, special agents and investigators of the Frankfurt CID, also known as “AG ZOO”. This group - under the leadership of Senior Customs Special Agent, Ralf Simon - worked in close co-operation with the Federal Agency of Nature Conservation and a second joint-group, to investigate the financial assets of the organisation.

D) Tactical Proceedings

Initial investigations concluded that there was legal basis permitting a number of telephones to be tapped. The first results of the telephone taps were considered to be very interesting and informative, however the help of a highly motivated and specially skilled group of investigators and translators was needed. The suspects used at least 6 different languages (German, English, Spanish, Russian, Polish and Portuguese) and used different scientific names for the traded animals, making it very difficult to gather, and moreover, to evaluate all the information needed to bring a successful case.

From more than 100 illicit trade operations, the Task-Force - working within the legal framework of the guidelines as defined by the Public Prosecutor - focused on 15 significant cases of illicit trade in endangered species.

One of the first results of the investigation, was the arrest of four European members of FUNDACEF, including the leader, the president and the founder of FUNDACEF.

Whilst the arrest warrants were being executed, members of the Task-Force searched the central office of FUNDACEF, and seized additional documents as evidence, in order to prove the illicit trade in the endangered species.

After evaluating the evidence relating to the illegal activities of FUNDACEF, the Prosecutor was able to address a legal request made by 11 different countries - such as Argentina, Armenia, Belgium, France, Switzerland, Spain, Republic of South Africa, Tanzania, Peru, Poland and Turkey – for an investigation under the existing international legal framework.

Subsequently, evidence was taken from key witnesses in Belgium, France, Switzerland and the Republic of South Africa.

In view of the legal verification by a court of law of the reasons on which the arrest warrants were based (mandatory after 6 months in the Federal Republic of Germany), the Task-Force closely examined 41 FUNDACEF’s operations of illicit trade in species’ regulated under Appendix A of the EC Regulation 338/97. Based on these results the Prosecutor in charge of the case, Dr. Axel Kreutz indicted the members of FUNDACEF only six months after their having been arrested.

The indictment was based on two primary elements. On one hand, the facts discovered during the investigation indicated 41 cases of illicit trade in highly endangered animals; and, on the other hand: the legal view was clear that FUNDACEF had been established as a criminal enterprise.

Some of the most interesting operations of the organisation included the trade in:

- Elephants from Indonesia to Argentina, China and Germany;
- Tigers from Belgium to China and the UK; and
- Komodo-Dragons from Indonesia to France and Mexico.

E) Legal Proceedings

The Indictment

Whilst the Court confirmed the world-wide creation of sub-organisations of FUNDACEF in South-America, Asia, Africa and some European countries, it denied that all suspects possessed the necessary common intention to commit the offences. The judges found that the principal defendant had such a dominant position, and that his character was so strong that it was not possible for the remaining members of the group to possess the necessary intention to plan and/or to commit the crime.

Therefore the Court rejected the indictment as presented by the Public Prosecutor. Without the application of the special function of § 129 of German Penal Code, requiring that all crime committed thereunder be punished according to the sanctions set out under the paragraph, the Court had to rule on each individual offence according to its value in evidence. Consequently, the principal defendant was sentenced to three-year's imprisonment, whilst the other defendants were sentenced to one and a half years on bail.

Although the judgement was given in December 2000, the President of FUNDACEF having been released from his initial detention on remand, has not yet commenced his prison sentence.

F) General Knowledge and Background

- The illegal trade in endangered species is often related to organised crime and can constitute part of its organisational network. As with drug trafficking, large profits can be realised from such illegal activities. The sanctions however, are the same as those that apply to ordinary or even minor offences. With the exception of commercially motivated offences, there is no further qualification for such offences to be considered as severe cases.
- The greater the co-operation between those who trade legally and those who trade illegally in endangered species the greater the chances are of legal traders obtaining illicit merchandise from illegal traders. This may lead to illegal trade appearing to be legal.
- The investigation of wildlife-offences demands a large element of international co-operation at various levels, in order that we can enforce the law. Several countries however, still seriously lack the necessary level of international co-operation, whilst other countries tend to rely on spontaneous and complete co-operation. In some cases and under some circumstances, excellent co-operation and support can be obtained from some international NGOs.
- This type of crime - particular in its organised form - demands adequate enforcement responses, for example telephone interceptions, undercover operations and other forms of covert investigations. Such responses are becoming increasingly important given the ever-increasing variety in the means of communication at the disposal of criminals, as well as their mobility and flexibility, with for example the use of mobile phones, prepaid cards of mobile phones, and the Internet, to mention only a few.
- The German Penal Code recognises certain crimes, such as for example, crimes against humanity, international illegal trade in arms and explosives, drug trafficking, money-laundering, establishing criminal enterprises, and counterfeiting; as being especially severe. These offences therefore appear in a "catalogue" under, for example § 110 a Penal Proceedings Code, which permits telephone interceptions as a legitimate means of investigation. If an offence is not mentioned in the "catalogue", no investigative measures such as, for example, telephone tapping can be undertaken. Unfortunately, neither environmental crime as such nor wildlife-trade-related crime - as a specific form of environmental crime - appear in the "catalogue". From our experience, wildlife-trade-related crime very often involves high levels of organisation. If such a case as described above is investigated and the need for telephone interceptions and/or covert investigations is considered necessary, the existence of a criminal enterprise or the offence of money-laundering will have to be used in legal argument to obtain the desired court order. Thereafter the investigation will be able to proceed by employing modern means of investigation. Such means of conducting investigations is an appropriate response to the challenge presented by international criminals.

Cases from the United Kingdom

Elizabeth Russel, HM Customs & Excise/United Kingdom

As presently arranged the work of HM Customs & Excise Solicitor's Office Prosecution Division is split between Drugs and Commercial Fraud. In the absence of exact figures it is fair to say that CITES cases account for only a very small percentage of the work of the Commercial Fraud Division which mainly deals with Value Added Tax (VAT) and Excise duty fraud. The Department of the Environment Food and Rural Affairs (DEFRA) and Local Authorities deal with other aspects of CITES cases such as welfare and licensing, HM Customs deal purely with the 'smuggling' aspect i.e. the evasion of the relevant prohibition or restriction.

Two cases will be mentioned here: one concerning an importation of parrots in which the outcome was successful. In short this case established the UK Courts' jurisdiction to hear CITES prosecutions notwithstanding that the specimens/goods had originally been imported elsewhere in the EU undetected. The other case concerned the importation of twelve smoked monkeys, where the outcome was not so successful although interesting questions flow from the decision of the jury.

Before considering these cases in detail and discussing the degree and efficacy of enforcement action, it is necessary to keep in mind the volume and growth in international trade as a whole and the commercial reality of the free movement of goods within the EU. As demonstrated in the attached diagram there are essentially three methods for the examination of freight imports by Customs in the UK: they are referred to as Routes 1, 2 and 3. Approximately 75% or the overwhelming majority of importations are not examined at all. This is because based on the description provided at the time of importation the goods are given automatic clearance, referred to as Route 1. Route 2 accounts for approximately twenty-three or so per cent of importations which are vetted through the checking of documentation only. This is called 'face vetting' and the goods themselves remain unexamined. Finally, the smallest minority of consignments are physically examined as a result of irregularities discovered in the Route 2 process.

R v Henry Thomas Sissen

Sissen was an international breeder of rare parrots. In April 2000 he was convicted in Newcastle Crown Court on four counts of smuggling Lear's Macaws and Blue Headed Macaws contrary to section 170(2) of the Customs & Excise Management Act and Council Regulations Nos 3626/82 and 338/97. The parrots were allegedly taken from Yugoslavia, and smuggled into the United Kingdom via Austria. The defendant appealed against his convictions on the basis that as the parrots had previously entered the EU they were already in free circulation within the EU, and accordingly the English courts had no jurisdiction to try him for evading the prohibitions. The Court of Appeal rejected his appeal and held that it was an offence under English law for a person to be knowingly concerned in the fraudulent evasion of the restrictions contained in Council regulations whatever the country of entry into the EU might be. In other words it was made an offence under the 1979 Act to be knowingly concerned in the fraudulent evasion of those restrictions. The 1979 Act could not be interpreted as applying only to acts of evasion of restrictions which took place in the UK. Copies of the Judgment are available.

R v Misarki Kuranku Matudi

Matudi claimed he was importing a large quantity of casava leaves from a woman in Africa and on this basis his consignment was given automatic clearance through Customs. In fact, just below the surface of the casava leaves were the carcasses of twelve smoked monkeys and various other types of what appeared to be pangolin and tortoise. However, as a matter of chance the consignment came to the attention of a Port Health Official who notified the Customs because he was suspicious of the packaging. The Customs then made a physical examination of the goods and interviewed Matudi. A criminal investigation then began and his business and domestic addresses were searched leading to the discovery of a quantity of bush meat in his refrigerator. It transpired he was a proprietor of a food shop

specialising in African produce. When interviewed Matudi told Officers he had no idea the monkeys were in his consignment. He said the bush meat discovered in his premises must have been a present to his wife about which he knew nothing at all. The Officers did not believe Matudi and he was prosecuted under Section 170(2) of the Customs and Excise Management Act 1979 (as amended). This section places a burden on the prosecution to prove Mutudi was ‘knowingly concerned’ in evading the prohibition in Council Regulation 338/97. Not unsurprisingly the Customs felt they had reasonable prospects of success in securing a conviction. The trial took place before a judge and jury in the Crown Court and lasted about a week, at the end of which the jury obviously took a different view of the evidence, and Matudi was acquitted. However, in addition to the smuggling charge the Prosecution had also decided to charge Matudi with an offence under the Products of Animal Origin (Import and Export) Regulations 1996. This was the first prosecution under these Regulations which make it a criminal offence for a person to fail to give notice of the arrival of animal products. The Prosecution argued and the Judge accepted (although the decision has yet to be tested in the Court of Appeal – so it is not a binding precedent) that the offence was one of ‘strict liability’ making the defendant’s state of mind irrelevant. Thus the offence is complete once the goods are imported and no notice has been given. Consequently, as there was no suggestion by the defendant that the monkeys were not found amongst his goods, the defendant was found guilty on this count. He was given a conditional discharge (meaning that should he commit further offences within the following two years he would then be dealt with for the offence in question). He was also ordered to contribute to the Prosecution’s costs.

Offences of strict liability are few and far between in the law, but there are certain instances where the burden of proving a defendant’s state of mind can be dispensed with. There are various authorities on the topic the thrust of which is summed up in a case entitled *Kirkland v Robinson 1987*, where it was stated that:

“Certain aspects of national life are of such importance that there must be an absolute prohibition of acts adverse to them. The Environment and Countryside Act 1987 is of outstanding importance and should therefore be applied strictly, i.e. those who are in possession of wild birds must prove that such possession is legal”.

It was argued successfully by the Customs in the Matudi case that apart from CITES considerations, issues pertaining to both human and animal health were of sufficient importance for the liability to be interpreted as strict. As a matter of general comment long trials in which defendants’ state of mind is at issue are time consuming and expensive and undoubtedly the concept of strict liability is an attractive proposition for the law enforcers.

The Problems of the Conversion of CITES in Belgian Law. The Ivory Case.

Leen Beatens, Parket van de Procureur des Konings te Brussel/Belgium

Legislation

The Law of July 28, 1981 implements CITES into Belgian law. According to Article 5 of this law, it is prohibited to export, import, re-export and/or introduce from the sea specimens mentioned in the Annexes I, II or III of the Convention. According to Article 4, it is prohibited to possess, possess for sale, offer for sale, or buy, readily identifiable living or dead specimens mentioned in Annex I of the Convention. The sanction for violation is 15 days to 3 months imprisonment and/or a fine of 200 000 to 20 000 000 BEF (= +/- 5000 EURO to +/- 500 000 EURO). According to the above two articles, the possession, offer for sale, or purchase, is only prohibited with respect to specimens mentioned in Annex I, but not for those enumerated under Annexes II and III. It is possible to apply Article 224 of the Royal Decree of July 18, 1977, concerning customs and excises, with respect to the possession of Annex II and III specimens, however, it is rare for this article to be so applied. This article imposes sanctions for the circulation of merchandise that is either unaccompanied by the required documents or cannot be established as having been declared during import, export, transit or transport.

In case of violation of Articles 4 or 5 of the Law of July 28, 1981, the specimens are either returned to the State of export (at the latter's expense), or seized - and if necessary, slaughtered or destroyed by government officials. In the case of a conviction, the Court confiscates the specimens that were not returned or destroyed, and orders the defendant to pay any expenses not met by the State of export. Furthermore, the defendant has to pay any experts' costs, and any costs incurred from transporting the specimens to centres of detention, for slaughtering and destruction.

Normally, a house-search requires a warrant, delivered by an examining magistrate. In order to obtain such a warrant, the Public Prosecutor must transfer the inquiry to the Examining Magistrate, such that the latter has complete charge of the entire investigation. Thereafter the Public Prosecutor is no longer at liberty to dismiss or settle the case. On having the file returned to him by the Examining Magistrate upon conclusion of the investigation, the Public Prosecutor has to defer the case to court (counsel chambers, eventually followed by a public hearing) by drawing up a requisition. Such a procedure, which requires a lot of work, is only applied when strictly necessary.

The Law of July 28, 1981 however, establishes a special system for house-searches, allowing the Public Prosecutor to remain in charge of the case. Every policeman or appointed official can perform a house-search - for which a search warrant from the Examining Magistrate is usually required - after simply having obtained a permit provided by the Judge in the Police Court. Afterwards, all reports are sent to the Public Prosecutor, who can decide whether to bring the case to court, propose a settlement or dismiss it.

Compared with the general powers of seizure and confiscation in criminal law, regulation in relation to CITES-law is more elaborate, more specific, and gives more powers to the legal authorities than they normally have. Such powers are required by the specific nature of CITES-legislation and by the fact that sometimes living-animals are involved, whose well-being can necessitate urgent interventions or specific measures.

The Facts of the Ivory Case

In June of this year, Belgian Customs seized 150 kilo of ivory, many handbags and wallets made of the skin of crocodiles, and other prohibited objects which they found in luggage. The luggage was sent by 15 Chinese nationals who worked for 2 years in a mission in Mali. Almost 1 month after the seizure, they themselves travelled from Mali to China and made a stopover in Brussels. They were immediately arrested.

The Public Prosecutor requested an examining magistrate to investigate the facts. An examining magistrate has to be requested whenever coercive measures have to be taken, such as a warrant for arrest, the tapping of a telephone line, a house-search etc. Examining magistrates can only take action if requested by the Public Prosecutor or through a complaint by a citizen (who is called the civil party). The Examining Magistrate writes a 'warrant for arrest', which is valid for 5 days. To obtain a warrant for arrest, a maximum penalty of at least 1 year's imprisonment is needed. Since under Belgian law, the maximum penalty for an infringement of CITES is only 15 days to 3 months imprisonment, the Examining Magistrate had to use another qualification. He made use of the qualification of 'association of criminals or conspiracy', for which the maximum penalty is 2 years.

After 5 days of a suspect being held in custody, the Counsel Chamber has to check the legality of the warrant for arrest, and has to decide whether or not it is still necessary for the investigation to hold the suspect in custody. In the present case, the Examining Magistrate wrote a warrant for arrest for the 15 Chinese nationals, however, after 5 days, the Counsel Chamber decided that there was no further need to hold them in custody.

Why such a decision? The Counsel Chamber did not give much explanation. Personally, I believe that judges think that because of the low level of punishment, such cases are less important. Secondly, it was very hard - in fact impossible - to prove that the Chinese nationals had established an organisation to commit infringements on CITES, because they were in a medical team on a mission in Mali. The 15 Chinese nationals were therefore released - not even on bail - and travelled back to China.

When the Examining Magistrate completes the investigation, he transfers the file to the Public Prosecutor. The Public Prosecutor makes a final order, after which the case is submitted to the Counsel Chamber, which decides whether or not there are sufficient charges against the suspects. If there are insufficient charges, the suspects are discharged, if not, they are referred to the Criminal Court. The final order is made and is sent to the Examining Magistrate, who refers the matter to the Counsel Chamber.

We still have to think about what we are going to do when the suspects are referred to the Criminal Court. If we summon them to the Criminal Court, the judge will have to pronounce judgement by default, because the suspects will not come over from China to appear in a Belgian court. Therefore, we still have to decide whether to summon them, which is very expensive and complicated, or we simply satisfy ourselves with a guarantee from China that they will receive punishment in China.

Additional Comments

The level of punishment is too low, since the maximum term of imprisonment is only 3 months. This has 2 important consequences. Firstly, CITES-offenders can not be arrested and held in custody by the Examining Magistrate, because such a measure requires a minimum penalty of 1 year's imprisonment. Secondly, CITES-offenders are not imprisoned even after a final judgement of the Criminal Court, because imprisonment penalties are generally not executed for sentences of less than 6 months. Essentially, this means that only conviction resulting in a (considerable) fine (+/- 5000 EURO to +/- 500 000 EURO), and seizure of property and merchandise can produce a real sanction for CITES-violations.

The Belgian legal authorities generally do not give priority to CITES-violations. The complexity of the regulations, the fact that the Belgian legal authorities are understaffed, and the low level of punishment, can partly explain this.

Most CITES-violations are reported by Customs, as a result of them having carried out checks on shipments. The customs officers of the National Airport in Brussels have reported that from the beginning of 2001 until today, there have been 40 CITES-violations. There is no doubt that there would be more interceptions if more customs officers were engaged. Customs in Antwerp (harbour) compile only very few reports concerning CITES-violations, due to the fact that they are largely understaffed and need to meet other priorities.

It has to be noted that a number of the CITES-violations concern small parcels, personal property or souvenirs (such as caviar, umbrellas made of cactus, handbags made of animal skin etc.). Also, a number of reports of violations received, concern shipments in transit, which makes it impossible to identify the persons involved in the offences because they live abroad.

Report on the Investigative Activity in the Trade of Avifauna. A Study Case in North-East Side of Italy.

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Servizio del Corpo Forestale Regionale/Italy

The Autonomous Region of Friuli Venezia Giulia is located in the north-eastern part of Italy. Precisely because of its “independent” nature, it has a Forest Corps of its own which performs forestry-related technical and administrative tasks, as well as environmental supervision and criminal police activities.

Environment laws have developed considerably in recent years, consequently increasing social awareness towards the environment and its related sectors. At the same time, the environment has become increasingly vulnerable, as the subject matter of illegal trades, underestimated and unknown until recently.

From an operative point of view, focussing on these issues highlighted the need for our staff to be more accurately and more specifically prepared in juridical-administrative and technical matters specifically with regard to police issues. This would then enable us to actually follow up our intelligence activities and repressive interventions, thus achieving good results both nationally and internationally.

All of this must be viewed within the framework of our specific territory: the Friuli Venezia Giulia Region. Traditionally and because of its natural geographic location this territory is the trading crossroad for wild birds, wastes, and whatever else arrives from or goes to Eastern and Northern Europe.

Aware of the need to meet the above-mentioned operative requirements, our region launched an initiative - through the Forestry Directorate – to give its staff specialist training in such matters. This way, they would be ready to cope with the new and more modern type of intelligence activities carried out in collaboration with the Italian Police Corps and with highly complex investigations, required due to the fact that environment-related criminal organisations are becoming increasingly powerful.

With regard to the issue at hand, the Report describes the investigations performed and completed by the Friuli Venezia Giulia Forest Corps in collaboration with the State Forest Corps and the Customs Service. The investigations concerned the illegal trade of dead and live wild birds of high naturalistic and biological value, and protected by international agreements (Washington, Bern, etc.), as well as by national and regional rules.

The main supply channels were Eastern countries in general from the Balkans to Uzbekistan, Azerbaijan, and even North American countries through import routes running along the Italian-Slovenian border, and spreading all over Italy. This traffic was based on a pyramid-structured organisation, at the top of which sat the major Italian wild bird traders who, backed by a vast network of collaborators and local operators, collected both dead and live wild birds to meet “black market” demand.

Investigations began in 1998 after the State Forest Corps had searched several trade businesses in Northern Italy. In Spring 2000, the staff of the Friuli-Venezia Giulia Regional Forest Corps started a detailed collection of data, which substantially and promptly contributed to complete the overall picture of the relations engaged between suppliers, contributors, traders, and end users. This initiative pointed out the existence of an out-and-out trading organisation. On the basis of the data collected, the Friuli-Venezia Giulia Region immediately emerged as being the present (and having been for a recognisable period in the past) distributing hub for this illegal traffic. As already mentioned earlier, this is due to the Region’s unique geography and, equally importantly, to its strong historical tradition in the field of wild-bird catching.

The turning point in the investigations occurred in 2000 when the various enforcement authorities, which had already been conducting relevant investigations, decided to collaborate closely, mainly by exchanging information and

experience and by performing complicated intelligence activities together. A mixed unit (Regional Forest Corps and State Forest Corps) was set up, consisting of a limited number of persons working on a fulltime basis to develop the investigations.

The **first phase** consisted of **analysing the data that was grouped in a database**. A data cross-reference approach was adopted to identify the most common dealings between traders and individuals already known to the investigators for their involvement in wild-bird capturing and/or trading activities. This resulted in a first series of **important names**. Detailed investigations on these individuals were performed and valuable information was provided from confidential sources. This information turned out to be both very reliable and important, as it came from persons with various backgrounds in illegal trades. A first confidential report was drawn up, in which the *modus operandi* of such individuals was clearly outlined. Already during this first phase (July – August 2000) the hypothesis was materialising under which there **were** basically **two types** of trade **routes**.

The **first** one was that of the **live wild-birds** illegally imported into Italy through non-EU channels or already circulating within EU member countries and then stored in warehouses located mainly in the Veneto Region area. The **second** one was that of the **dead wild-birds** of high biological and naturalistic value, illegally imported from both non-EU and EU countries and then conveyed into the trade channels within Italy. These wild birds would be “naturalised” and then put into circulation to meet collectors’ requests.

At that point the investigative activity proper was managed by the Magistrate of Udine, who was in charge of coordinating all relevant operations at national level.

At this point, the **second phase** began: in operative terms it consisted in following individuals and lying-in-wait near to the buildings and sites where the illegal traffic would commence or be completed. Useful information was collected from small-scale bird-catchers. Consequently, a number of individuals were identified and arrested for being directly involved in organising wild-bird trade as intermediaries in the collection and trading of live wild-birds, but also as top-management members. All of this confirmed the hypotheses underlying the investigations that a **vast and complex profit-making network** was at work. This traffic was obviously unlawful having regard to the species involved and amounts that were being seized. There was no doubt that in order to increase the commercial value of the birds available on the market, their capturing was “legalised” through false certifications (documents and rings) e.g. a bunting from Serbia would be sold for around 150 000 Lire (approx. 150 DM equal to approx. 75 Euro), brought into Friuli and sold for 300 000 (approx. 300 DM equal to approx. 150 Euro), and then, once ringed illegally, it would be placed on the Lombardy-Veneto market at the price of about 1 000 000 (approx. 1000 DM equal to approx. 500 Euro). The species requested most were: thrushes - sold as shooting hut fowling decoys finches - for the great number of breeders; rare species such as bearded tits, red-flanked bluetails, blue-throats, buntings, etc. – sold to breeders and collectors as well as a host of more or less rare diurnal and nocturnal birds of prey. Naturally, all of these birds were listed under the Annexes to the Washington Agreement, i.e. in Annexes A, B, or C to Reg. (EC) 338/97 as modified. This illegal trade was obviously based on false or recycled certificates produced by the organization itself or obtained from the relevant public bureaus often the object of collusion.

As for the **second route**, that of the **dead wild birds**, investigations focussed in particular on a state employee who was in charge of supervising the hunting of fauna. Because of his specific job, he could easily obtain various species of fauna (especially protected and highly valuable species), by personally capturing and trading the birds. Through personal and international contacts he would obtain specimens of countless species in addition to those that he acquired from hunting in various EU and non-EU countries and then illegally importing into Italy.

In order to uncover this illegal activity, the Magistrate issued an authorisation for phones used by the individual under investigation to be tapped, on the grounds of the nature of the offences being potentially very serious. The interceptions pointed to the existence of a network of illegal traffic and dealings at the national level, as had been initially suspected.

In December 2000 the decision was taken to search the homes of the above-mentioned individual and of whoever had connections with him. The documentation that was seized provided conclusive evidence of important and large-scale

illegal traffic in rare species, involving extremely high amounts of money. Over a period of two months (between 2000 and 2001), about 3000 straw-stuffed specimens were seized, as well as 1600 frozen specimens awaiting to be naturalised and 750 live birds; making a total of about 5350 specimens. At first sight - in this case too - the documentation put forward apparently justified the lawful possession of the material; however, after questioning the validity of the documents during interrogation, the papers were subsequently examined in detail. These examinations highlighted the existence of a criminal scheme, which appeared to legalise the entire business.

Other important factors were the statements made by the bird owners, according to whom the collections were decades old. The truthfulness of these statements was verified by resorting to the services of an expert from the University of Padua – Institute of Agricultural Entomology, who determined that the specimens had been stuffed with straw on a much more recent date, in some cases only a few months earlier. Moreover, the identified specimens found in the freezers, evidenced that they had been illegally imported into the country after having been hunted in Eastern European countries, Scandinavia, or North America. In fact, the areas of distribution of these species were typically outside Italy. All of this illegal traffic naturally generated unlawful taxidermy activities in Italy, performed by various individuals aiming to fuel demand for the specimens.

Since part of the above-mentioned unlawful activity consisted also in the illegal introduction of various specimens from abroad, the decision was taken to collaborate with the Fiscal Service of Gorizia (Italian-Slovenian boundary area). They supported our operation with regard to customs smuggling offences and the consequent fiscal frauds.

In the past months, targeted interventions have been organised at the national level against those who received the goods from the main persons being investigated. More fauna was seized in various Italian regions (totalling over 8000 specimens), thus confirming that the organisation was operating according to the above-mentioned methods.

The investigation obviously pointed out the existence of other routes used to import and trade exotic species and for other unlawful traffic. A preliminary investigation of these routes is currently underway. During all the operations described so far, unlawfully-held fire-arms and various types of hunting equipment were retrieved. Indeed, on one occasion 274 mist-nets and various kinds of traps used for bird-catching purposes were seized.

Assessments

In the light of the above, it is of paramount importance to achieve collaboration between the various Italian police corps. Moreover, there is the need for close collaboration with the police corps of other countries and with the non-governmental associations operating in the environmental sector. This collaboration should be in the form of mutual exchanges of information and in the form of coercive interventions in countries outside our sphere of competence.

Italian law- both as such and in its assimilation of international rules- is not sufficiently efficient at present, in that it does not punish this type of criminal activity.

The fact that all the offences committed against the environment fall under infringement codes, gives rise to two types of problems:

- Firstly, it favours criminal organisations in that it allows them to unlawfully make extremely high profits, whilst at the same time running minimal risks, since punishment consists merely of paying a certain amount of money; and
- Secondly, it does not allow the Judiciary Police to utilise all the necessary methods and tools required to perform detailed investigations and achieve optimal results.

In the first case, the most obvious effect is that criminal organisations illegally exploiting the environment continue to develop, precisely because only minor risks are involved. What this actually means is that instead of going into the trade of fire-arms or drugs, criminal organisations find it much more profitable to focus on the trade of live or dead fauna; since the demand for such goods is high, the profit one can make is equally high, and the risks involved are minimal (as stated above).

In the second case, the effect is the inability to operate technically and scientifically, thus preventing the desired results from investigations. Indeed, in order to use efficient investigative tools, such as telephone interceptions, hidden microphones, taps, remote cameras, etc., the investigating Magistrate must be provided with a priori evidence of crimes such as criminal association, customs smuggling, receiving or recycling of stolen/illegal goods, etc.

The Police are aware that the above-listed crimes take place in the context of international illegal traffic. It is however, operationally impossible for them to provide evidence of the existence of such crimes during the preliminary investigative stages, when the only way of doing so is to adopt modern technologies.

We believe that suitable and strict laws **acknowledging the existence of offences deriving from the infringement of the rules set forth in CITES and/or other international agreements as crimes - and not as mere infringements** - would benefit investigations. They would serve as a means of discouraging a priori any interest in these sectors, and thus achieving the desired result of safeguarding our environment.

As for the above-mentioned investigations: thanks to intensive intelligence work performed, evidence was provided of the real scope of the above-mentioned traffic, thus allowing for action to be taken in relation to severe offences (crimes), and enabling the implementation of modern investigative methods.

In short, the crimes imputed to the individuals operating unlawfully in this sector were the following:

- **Law 157/92 Art. 21 lett. b) Art. 30 lett. L):** Unauthorized holding of wild birds for commercial purposes.
- **Law 150/92 Art. 1 and 2 (as modified by DL 275/01):** As performing an unlawful activity concerning the trade in various animal species held for sale and offered for sale in violation of the Decree of 31.12.83 issued by the Ministry of Foreign Trade. The Decree applies to wild-bird specimens included in the CITES Annexes, in the Annexes to the Washington Agreement, i.e. in Annexes 1, b, or C of Reg. (EC) 338/97 as modified.
- **Art. 648 of the Code of Criminal Procedure (RECEIVING STOLEN GOODS) Receiving stolen goods** with the aim of gaining a profit. They traded in several wild bird species, which **was itself a crime** (customs smuggling), since the distribution area of such species is outside the European Union.
- **Art. 648 bis of the Code of Criminal Procedure (RECYCLING)** Receiving specimens of species protected by national rules, having illegally imported them into Italy without paying customs duties, thus committing the crime of customs smuggling. Furthermore, establishing an activity with the aim of hindering the identification of the unlawful origin of the specimens, by the drawing up of false documents to be used to disguise their unlawful marketing, and to give the impression of a lawful activity.
- **Art. 482 of the Code of Criminal Procedure and/or 479 of the Code of Criminal Procedure. (IDEOLOGIC FALSITY and MATERIAL FALSITY).** For having used on various consecutive occasions, in agreement with others, false documents and rings. This activity is illegal because it falsely certifies the existence of the wild-bird specimens described above.
- **Art. 416 of the Code of Criminal Procedure (CRIMINAL ASSOCIATION).**
Other offences to public officials.

In relation to this issue, various investigative channels have been opened. Evidence of the importance of the actions undertaken by the investigating authorities will be available only after a few years.

Problems encountered during the Investigations

To conclude it is worth considering a number of problems, apart from those already mentioned above, which emerged during the operations.

1) The need to establish **collaborative relations between relevant authorities** both administrative and police between all the European Union Member States and the concerned non-EU states, so as to improve the operative investigative activities performed in the environmental sector.

This is directly linked to the difficulties at times encountered in gathering information that is useful for intelligence activities.

Although officially the various police corps can already exchange experience and information, requests for information are not always met in due time. Therefore, a more streamlined method should be set up to obtain useful information according to the timing sometimes very short required by ongoing investigations.

Thanks to the network set up with EABC (Europe Against Bird Crime), thanks to TRAFFIC International, and to personal and direct contacts with neighboring countries (Slovenia, in particular), as far as we are concerned some of our past difficulties in terms of information have now been partially overcome.

We believe that it is necessary to establish safe channels of communication between all control operators (police, international police, specialized bodies) and to set up an open access database, especially in view of the future enlargement of the EU. Whoever is constantly working in the field of environmental crimes should be able to refer to this database, both at the European and non-European level. Users should constantly update the database by adding information and data collected during their investigations.

We believe that modern technologies can easily meet these requirements by speeding up our investigative system and making available to all operators the information and the names of the individuals performing unlawful activities so far collected. This would actually entail establishing close collaborations between all Member States.

The same holds true also for national laws, which are still excessively disparate from one country to the other.

2) **“Verified” identification of the specimens** coming from outside the EU or circulating within the Union, without proper documents justifying the specimens or their circulation.

This holds true for all species, especially for those listed in the international protection rules, without neglecting those species that are protected by single national rules or which are the subject-matter of large-scale unlawful trade.

In order to find a solution to the above, the suggestion is to:

- Make it mandatory to draw up registers and to apply irremovable rings that are officially recognised by all Member States; and
- Clearly and irrefutably ban imports from any country (especially Asia) which does not comply with the above-mentioned criteria, so as to regulate this type of trade which is currently uncontrollable.

Enforcement in Italy

Marco Fiori & Cristina Avanzo Corpo Forestale dello Stato/Italy

Italy is improving its system of federal government, nevertheless in the future we will need to make progress with co-operation among different agencies at national (State police, State Forest Corp, customs service, etc.) and local level (regional Forest Corps, local police, etc.) responsible for enforcing wildlife and environmental laws generally.

The State Forest Corp (*Corpo forestale dello Stato – C.F.S.*) is one of the five national police corps, responsible for environmental control and investigation; forest fires; national parks and natural reserves; and, surveillance and checks of EC agriculture funds. The C.F.S. staff cover the whole country, with more local offices (except for the special regions, like Friuli Venezia-Giulia, with just 1 or 2 offices) coordinated by a central directorate in Rome. A special team inside C.F.S. is responsible for CITES enforcement (*Servizi CITES* and *Nuclei Operativi*), the specialised staff of which work in other sectors as well as customs. This team undertakes CITES investigations with – if requested – the co-operation of the C.F.S. police force and other police forces.

As a result of the significant political and economic changes occurring in Europe during the last few years, the following problems may arise in Italy:

- Lack of sufficient organisation and co-operation for controls among European countries within the Community's new "*free circulation*" system; and, between the different forces involved within these countries.
- Difficulties in the full and effective interpretation of the new "*free circulation*" system, with reference to the CITES control priorities.
- More crimes committed by smugglers and illegal traders with respect to CITES specimens. New techniques (e.g. internet) are increasingly used for illegal purposes, allowing faster international transactions between sellers and buyers. It is now more difficult to carry out investigations, and a professional approach is necessary (techniques and intelligence), to fight the old illegal trade (e.g. in ivory) as well as the new ones (e.g. TCM and oriental medicine, shatoosh, caviar, tropical woods, etc.).
- Wildlife law-enforcement officers have a shortage of investigative tools at their disposal (forensic laboratory techniques; and, the procedure for presenting evidence e.g. in Italy the excessive time taken for the courts to pronounce judgement and to sentence defendants, etc.).

It is both most necessary and important therefore, to further discuss on these enforcement problems, since they do not offer an effective remedy against wildlife crimes. Discussions should also take place among the various agencies and organisations responsible for the enforcement of wildlife-protection laws within the European Union.

We have been quite successful in Italy during the past decade, even if the national legislation (dated 1992 and later amended) did not clearly reflect the European Regulation (changed from 1997).

Seizures and Controls

Between 1994 and 2000:

Around 1 959 600 specimens were inspected further to customs controls by the C.F.S. operative units, and inside the territory by the C.F.S. CITES teams. The merchandise seized was mainly in the form of derivatives, live animals and reptile skins.

Around 77 400 specimens were seized as a consequence of the above mentioned control activity. The merchandise seized was mainly in the form of derivatives and live animals (birds, reptiles, mammals).

During the past year (2000) customs controls have increased, however, the same cannot be said in relation to domestic controls. The seizures consisted of around 26 000 specimens, mainly live animals (80% reptiles). A concerted political and investigative effort was required to achieve these results.

The new national legislation (*Lex n.150/92*, in force in 1992 and modified in 1993 and 2001) clarifies certain terms to Italian animal-breeders, private collectors and dealers; and, consequently it has helped the investigation of the illegal trade in wild fauna and flora. An interesting discussion is currently in progress, which is trying to determine whether or not CITES national legislation is sufficient to effectively investigate and combat wildlife crime. Renewed efforts have been made to stimulate more effective investigations by using investigative channels like Interpol, World Customs Organisation and CITES General Secretariat Investigative Section. The Wildlife Crime Working Group, established in 1993 by Interpol, is fundamental for the exchange of information and knowledge on wildlife crimes.

As a solution to the difficulty of working without appropriate legislation on wildlife offences, it has been proposed that the offence of illegal import, detention and trade of CITES protected specimens should be viewed in the wider context of penalties in general, by referring to others penal laws concerning recycling, smuggling, falsification and criminal association.

Techniques usually used during the investigations on drug and arms trafficking, have also been used to fight CITES offences. Therefore, we have been able to discover many crimes and seize thousands of specimens, thanks to information exchange with Interpol and help from forensic laboratories and research institutions in relation to identification techniques.

Among the numerous cases in Italy, we would lay emphasis on the following:

“Tulip Case”

This name was given due to a Dutchman who at the time was considered central to the illegal activity.

An efficient network of animal dealers and private collectors illegally imported very rare parrot species from South America, Africa and the oceanic region.

They first ordered the animals and then had them sent directly to Eastern Europe (primarily Romania) - where an Italian national had a cover import-export company - using Spanish, Russian and Romanian airlines. From there, the parrots were brought directly into the EU by car (mostly to Italy, Austria and Switzerland).

Recycling and falsifying CITES permits allowed the smugglers to move a large amount of rare specimens, such as *Amazona pretrei*, *Amazona arausiaca*, *Amazona barbadensis*, *Amazona brasiliensis*, *Anodorhynchus hyacinthinus*, *Anodorhynchus leari*, *Ara macao* and rare species of cactus and others. Additionally, small monkeys and tortoises were smuggled using the same means.

Co-operation with Dutch police and CITES Management Authority was crucial, and signaled the beginning of a new way of effective working in wildlife-crime investigations.

- Public Prosecutor of Salerno Tribunal.
- State Corpo Forestale of Rome and Naples.
- Persons prosecuted: 27
- Offences: CITES national law, smuggling (penal code), official act falsifications, criminal association, ill-treatment, tax evasion, and avoidance of customs declarations.
- Persons arrested during investigation: 7
- Seizures: 2150 living *Psittacides*
- Estimated value: hundreds of millions Lire
- Countries involved besides Italy: The Netherlands, Uruguay, Paraguay, Argentina, Brazil, Hungary, Czech Republic, Austria, Switzerland, Belgium.

- House searches and interrogations: 30
- Means: phone tapping, house and premises search warrants, seizures; and, co-operation between the National Wild Fauna Institute and other Forensic Laboratories on genetic identification, marking techniques, rogatories.
- Penalties: the proceedings are still ongoing, however, we are pushing for confiscation of all illegally imported animals, on the basis of the time-limit for the crime having expired.

This case was important for us, as it demonstrates the importance of international co-operation to achieve enforcement (in this case supported by the Interpol channel), and how to operate within a wider legislative field more effectively than with CITES law alone.

“Gila Monster Case”

This investigation was coordinated by the Tribunal of Udine (Northern Italy), and carried out by the Corpo forestale dello Stato - CITES Service of Rome and Padua.

- Smugglers prosecuted: 19 Italian citizens
- Crimes: CITES legislation (L. 150 of 1992) - Smuggling (Unique Law of Customs Crimes) - Falsification (Penal Code) - Criminal association (Penal Code) - Animal ill-treatment (Penal Code) - Receiving stolen goods (Penal Code)
- Person arrested: 1
- Seizures: 160 reptiles (*Varanidae* spp. and *Boidae* spp.) and 50 parrots (*Cacatua* spp., *Eclectus roratus* and others)
- Means: telephone tapping - search warrants - examinations (more of 20)
- Countries involved besides Italy: Indonesia (6 persons were identified).
- Penalties: between 6 and 16 months' imprisonment for the ringleaders and their associates. Confiscation of all animals seized.

The treated species were imported directly from their country of origin, concealed with non-protected birds, bananas and tropical wood. Only an illegal shipment by Malaysia Airlines in January 1996 resulted in the seizure of animals (in this case parrots) valued at over 100 000 USD. During these shipments the mortality reached the 80 % of total.

“Chimpanzee Cases” (1991 – 1998)

Several operations have been conducted by our office since 1990. More of 30 live specimens of chimpanzees have been seized including young ones between 1 and 4 years old.

- Note: illegal import of live primates, particularly chimpanzees (*Pan troglodytes*) was very common between the end of the '80s and early '90s. After their capture in the African tropical forest (Sierra Leone, Guinea, Congo, etc.), young chimpanzees were put on the European black market. The main use of young chimpanzees was for pets, circuses, photography, and biomedical research.
- Penalties: fines (“*ammenda*” administrative measure given by the judge) from ten to twenty million Lire (5100 to 10 300 Euro). Confiscation of animals.

The smugglers and illegal traders used false declarations, which indicated that the animals had been born in captivity, to as a means of disguising their true origin. Early investigations carried out by our office in Rome were directed to obtaining laboratory and other technical tools to try and prove that the declarations had been forged. Collaboration with the Legal Medicine Laboratory of The Rome Catholic University proved to be useful. More than 80 captive chimpanzees were genetically screened using non-invasive methods (hair bulbs). Genetic identification and paternity tests allowed us to seize many specimens of illegal origin.

“Kislovodsk Case”

Carried out by CITES Service of Rome and Genoa.

- Date: March 1996
- Specimens treated: Parrots of genus *Ara* spp. (*Ara chloroptera*, *Ara macao*, *Ara militaris*, *Ara ararauna*).
- Seized specimens: 19 live. More of 50 000 USD of value.

Personnel of the CITES Operational Unit of Genoa port, boarded a Russian ship together with the Italian Guardia di Finanza to undertake a drugs search. Live specimens of parrots originating from Cartaghena were discovered on board. The seizure of the birds was not possible because under international law the ship was deemed to be foreign territory and therefore not subject to Italian law. A diplomatic intervention was, however, sent to the Russian Embassy in Rome and the Russian Ministry of Environment in Moscow, and the CITES General Secretariat also intervened. Thereafter the Russian Consul of Genoa persuaded the ship's captain to discharge the animals onto Italian territory. CITES legislation and the Italian Penal Code were of no use in this particular case; with international principles of diplomacy solidly guaranteeing the protected specimens protection from the Eastern European black market.

"Gaur Case"

Carried out by CITES Service of Rome.

- Date: 1998 – 2000
- Specimens treated: Large mammals. Gaurs (*Bos gaurus*), tigers (*Panthera tigris*), urials (*Ovis vignei* spp.), argalis (*Ovis ammon* ssp.), brown bears (*Ursus arctos*), sun bears (*Helarctos malayanus*), Asiatic black bears (*Ursus thibetanus*), swamp deers (*Cervus duvaucelii*), leopards (*Panthera pardus*), clouded leopards (*Neofelis nebulosa*), etc.
- Seizures: 150 specimens. More of 550 000 USD of economic value.

Gaur is the name of a rare species of Indian wild cattle (*Bos gaurus*) listed under Appendix I of CITES. It is threatened with extinction due to poaching and the destruction of its habitat. It lives in the Indochinese region and shares its area of habitation with other vulnerable and endangered species such as the tiger. Zoologists and conservationists have estimated that there are not more than 5 000 live animals remaining. A further threat for this species is large-scale illegal hunting carried out by rich European and American hunters, who ignore the controls and authorisations required with respect to protected species under international regulations such as CITES. They hunt rare and protected species because they represent a "status symbol" and collect them as "works of art", under the pretence that they are permitted to do so. In a seized article of correspondence, one hunter said to another - after visiting the other's collection: "you give back life to these rare species. You have had the privilege to see, probably for the last time, these animals before they disappear definitively from the Earth...".

The Gaur operation started in the bosom of the Interpol Wildlife Crime Working Group in 1997, on the basis of information provided by French representatives informal. Italian hunters were associated with a number of very rare species - most of them listed in Appendix I of CITES – that had been illegally hunted and imported. The wide dimensions of this investigation were immediately clear.

The first problem was the official application of the information, which was necessary to commence the investigation in Italy. It is not always easy to receive rogatories in the wildlife crime field due to the bureaucracy in the justice system, and due to the low level of interest shown by some magistrates to these type of crimes. Fortunately in this case, there was good collaboration with the French Embassy in Rome, which officially transmitted some of the information and documents to us.

The investigation was therefore able to start with – amongst other things - the use of telephone tapping. Following the issuing of search warrants, two large seizures were effected in July 1998 in Turin and near Venice. More than ten

persons have been found to have been involved up until today, among them hunters, taxidermists, big game tour operators, custom carriers, etc. The picture that emerged from this investigation was disquieting.

Furthermore, in 1997 the illegal hunting of tigers in Myanmar and India was confirmed by way of seized videos, photos and other evidence. The tiger is the symbol of the conservation drama. Some of its subspecies are close to extinction - not more than 500 live Siberian tigers still populate the Russian Taiga. Italian and other European hunters may soon also hunt other very endangered species, like one species of muntjak and another of oryx, which were discovered by zoologists in the forests of Vietnam only a few years ago. In addition, several species like snow leopards, clouded leopards, sun bears, Tibetan bears, etc. have been proposed as potential game by French and Russian tour operators.

More than 150 embalmed animals were seized, among them: 3 gaur (*Bos gaurus*), 4 tigers (*Panthera tigris*), 7 urials (*Ovis vignei*), 13 specimen of seven different argalis (*Ovis ammon* spp.), 6 markhor (*Capra falconeri*), 2 Tibetan bears (*Helarctos malayanus*), 20 brown bears (*Ursus arctos*), 2 clouded leopards (*Neofelis nebulosa*), 1 musk deer (*Moschus* spp.), etc. All these species were proven to have been recently illegally hunted and imported to Italy and other European countries.

The data on the expenses incurred for shooting the animals proved to be both important and very useful. The need to quantify the actual damage caused to the environment and the community by illegal behaviour towards nature has been evidenced in the past few years. In this regard, the Interpol Wildlife Subgroup started working to determine guidelines for the economic and biological value of CITES specimens, which will prove useful to all wildlife enforcement officers.

Although Italian CITES law does not deal with this issue, the Scientific Committee of Environment Ministry is working to determine the extent of both biological and environmental damage resulting from wildlife crimes. In addition, in the “Gaur” investigation we also used the smuggling legislation (T.U.L.D. - customs national code). This legislative tool imposes as a penalty the payment of an amount between 2 and 10 times the economic value of the smuggled merchandise. The value - the law says - is the real amount of money paid for the individual goods or specimens. So, during our investigation we proved the existence of these values:

- around 70 000 USD for shooting a tiger (*Panthera tigris*)
- around 10 000 USD for shooting an Indian gaur (*Bos gaurus*)
- around 15 000 USD for shooting a polar bear (*Ursus maritimus*)
- around 15 000 USD for shooting a leopard (*Panthera pardus*)
- between 12 000 and 15 000 USD for an urial (*Ovis vignei* spp.)
- between 14 000 and 20 000 USD for different subspecies of argali (*Ovis ammon* spp.)
- around 25 000 USD for shooting to markhor (*Capra falconeri* spp.) etc.

To these amounts actually paid (these information were taken from factors, bank titles, etc.) for each specimen, we should add expenses for trips, flights, accommodation, local taxes, corruption expenses, helicopter expenses, etc.

The investigation is currently continuing and we are trying to co-operate with authorities of India, Russia, Germany, and France again. We believe - and this case would be evidence of it - that the way to combat crimes against nature should be through “international co-operation”.

We therefore consider that the most effective way of co-operating is to better disseminate knowledge on wildlife matters e.g. species ID techniques, standard marking techniques, forensic laboratory techniques, etc, and the ever-increasing new routes and means used by illegal traders of wildlife.

Moreover, in our opinion it is crucial to give priority to the appropriate training of judicial authorities (magistrates and judges) in wildlife crimes at national level, with international assistance and contribution. Additionally, the development of study projects is necessary for a more reliable evaluation of economical damage resulting from this illegal activity, as reported in the pilot-project, presented here by Frans Geysels, co-chair of the Interpol Wildlife Crime Working Group.

"*Elegans Case*"

Carried out by CITES Service of Rome.

- Date: 1999 – 2000
- Specimens treated: red-eared slider turtles (*Trachemys scripta elegans*).
- Seizures: 23 000 specimens. About 29 000 EURO of economic value.

A Community import restriction of December 1997 has been established in relation to this species of turtle, due to the great danger that it represents to the native ones (*Emys orbicularis*).

Since 1999 this species has often been found on sale in animal shops as *Trachemys scripta scripta* or other subspecies. A similar situation occurred in Spain and in Portugal. From investigations carried out in the individual cases, we deduced that the animals were coming by land from the Balkans and by plane from USA.

In the first case, the turtles were imported by car, as personal luggage, through Austria. Up until now it has been possible to stop a shipment of about 3000 specimens, but we were aware that it was not an isolated case. The trial for this illegal import was concluded with the imposition of a sentence and a fine (import 4500 EURO). The animals were seized and then destroyed due to sickness from *Pomona* spp. pathogen.

In the second case, the Italian Department of Health authorised the introduction of *Trachemys scripta elegans* coming from Louisiana (USA) farms, with other similar species except *Trachemys scripta elegans*. As the price of this turtle is lower (less than one-fifth) than other similar species (*Trachemys scripta scripta*, *Trachemys scripta troosti*, etc.), the Americans breeders preferred to sell *Trachemys elegans* in place of similar species, maybe with the connivance of the Italian importer who, as a result paid, less.

The export permit had been falsified and in another case the exporter had made a false declaration in order to obtain the necessary papers. Attempts were even made to camouflage the typical red/orange color of the post-orbital stripe (by leaving the animals in the dark for a long time and using an antibiotic treatment), to fool the customs officers.

Through stopping various shipments of red-eared sliders and their hybrids in Italy, we discovered that both the export company and the breeder had changed their names, but nevertheless still had the same address. We returned the main bulk of the shipment to the USA. Only a small percentage of the merchandise was seized to prove the illegal import. We immediately informed the US CITES Management Authority, who are now following up the information provided, since it is a serious offence to make false declarations in the USA.

At present it seems that the illegal trade in *Trachemys scripta elegans* from the USA has been stopped.

POLARIS – Sentencing Guidelines

Arie de Muij & Stefan Vreeburg, Expertise Centre Green Public Prosecutor/The Netherlands

Introduction

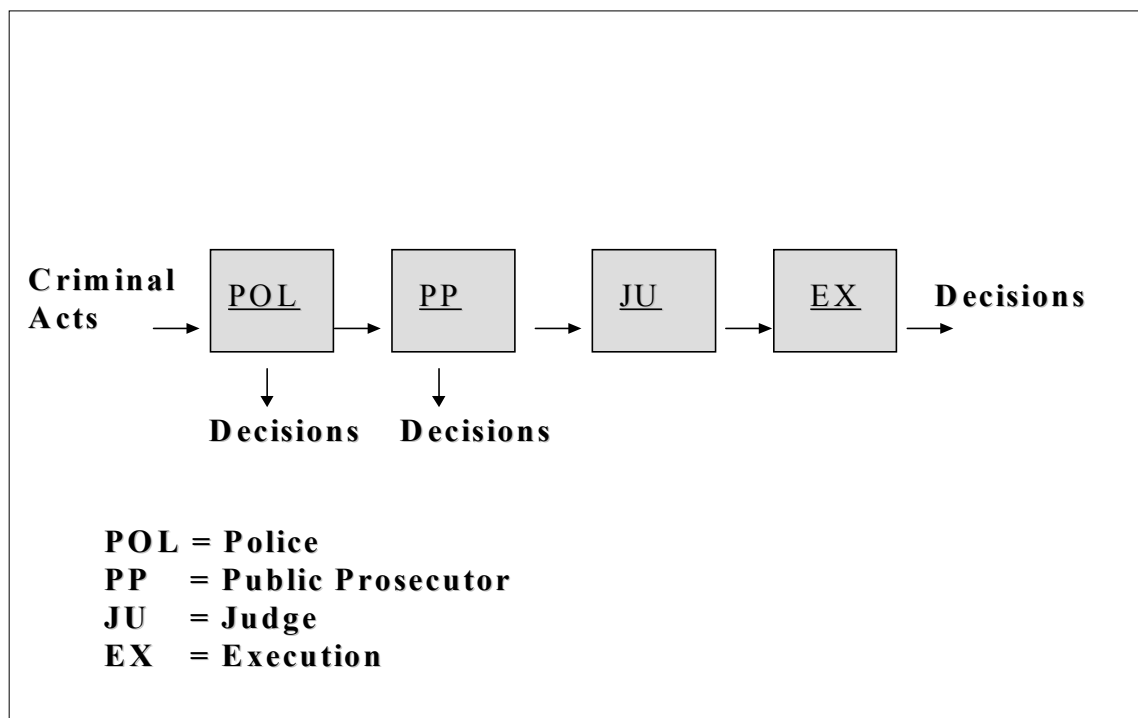
During the 1970s in the Netherlands, there arose the understanding that comparable offences against the law were not always sentenced in the same way. Wide discrepancies - although relatively few in number - could occur in courts all over the country; as a result of which guidelines were developed. Since then, every public prosecutor can go to court with a lengthy list of all possible types of offences and the sentences attributable to them.

A few years ago, computer software was developed to replace the guidelines. The advantage of this kind of computerisation is that assessment of criminal cases can be delegated to the assistant of the Public Prosecutor.

The Dutch System of Criminal Law Enforcement

Figure 1

The system and the parts



This figure shows the system of law enforcement in the Netherlands.

After uncovering a criminal act, the Police can take various action, from doing nothing, to arresting the criminal and sending a report to the Public Prosecutor.

The Public -Prosecutor, after receiving the report, will study the case and take a decision, which could be to:

- Dismiss the case. This will happen where there is insufficient evidence, the case is too minor to prosecute, or because of other exceptional circumstances.
- Propose a discharge of liability in the form of a payment of a fixed penalty. If the suspect pays this fine the Public Prosecutor loses the right to bring the case to court.
- Indict the suspect and thereby bringing the case to court.

Characteristics of the Dutch Criminal Justice System

- Only professional judges and prosecutors.
- Both - judges and prosecutors - trained for 6 years in the same way.
- No minimum or mandatory sentencing.
- No plea-bargaining. No difference between guilty and none-guilty pleas.
- Full discretion of the Public Prosecutor.
- In 80% of the cases judges follow the prosecutors' sentence request.
- Prosecutor has authority over the Police.
- The accused can always go to court.

The Dutch system has the following distinctive characteristics:

- The Dutch Public Prosecutor has full discretionary power to:
 - Set the case aside;
 - Require the suspect to pay a sum of money to the State; or
 - Send the case to court.
- The accused is not obliged to pay, however, if he refuses to do so the case will automatically be send to court.

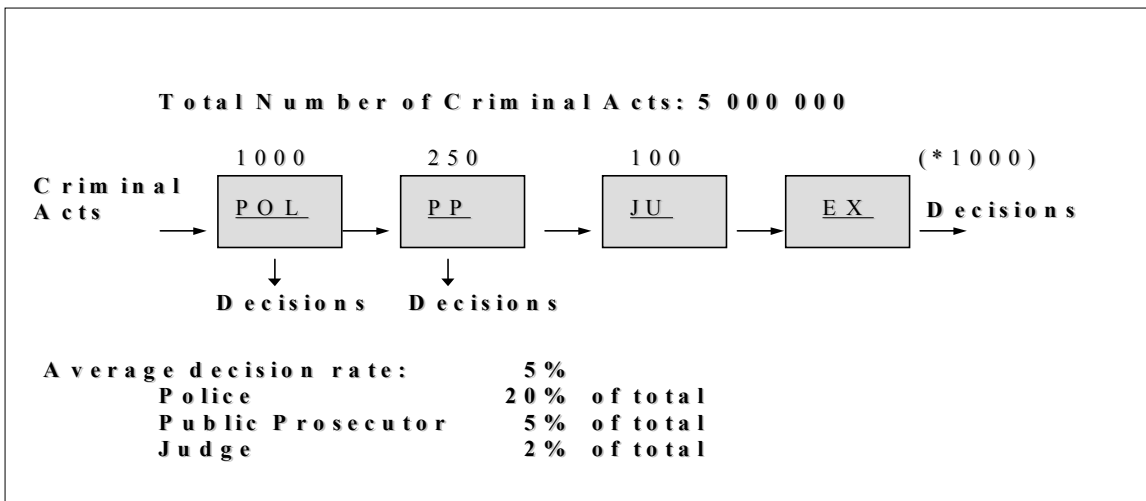
In this way, the accused always has the right to go to court if he/she wishes. This right exists under the European Convention of Human Rights 1950, to which the Netherlands is a party.

Enforcement Figures

The total number of criminal acts committed each year is estimated to be about five million, of which the Police uncover about one million. Of that one million, 75% are dealt with by the Police themselves by applying the law. So, 250 000 cases will arrive on the desk of the Public Prosecutor. Of these 250 000 cases, the Public Prosecutor will close about 150 000 and send at least 100 000 to court.

Figure 2

The Enforcement Figures



Time-Scale

On average, 165 days elapse between the date of a criminal act and its registration by the Public Prosecutor's Office.

A final decision by the Public Prosecutor will usually take about 122 days.

Therefore, 63% of cases will be determined within 3 months.

It takes an average of 233 days between registration by the Public Prosecutor and final judgement by the Court.

44% of cases are concluded within 3 months. These are the ‘simple’ cases in terms of evidence, such as for instance, drunk drivers.

In brief:

Public Prosecutor’s decisions:	165 days + 122 days = 287 days
Judge’s decisions:	165 days + 233 days = 398 days
All decisions:	342 days (average number of days it takes for prosecutors and judges = (287 + 392)/2)

Ratio of Public Prosecutor’s decisions /Judge’s decisions: 50/50

Sentencing

Fines & conditional discharges	50 000	50%
Community service	22 000	22%
Immediate imprisonment	28 000	28%
Average fine (incl. Conditions)	680 Euro	(1 Euro = 2.2 Guilder)
Average time of imprisonment (incl. Conditions)	197 days	

As regards the ‘average fine’, the Netherlands has applies a special law for economic crimes (including environmental crimes).

The sentence for an economic crime is generally a fine, because of the fact that most of economic crimes are committed by companies (it not being possible to send a company to prison). The level of the fine will be proportionate to the size of the company, with the average fine therefore being much higher than where private individuals are involved. Fines of thousands, sometimes hundreds of thousands of Guilders are not exceptional.

Failure to Accord ‘Due Process’

The following percentages of cases will be dismissed due to them not having satisfied the requirements of criminal ‘due process’:

Invalid Summons	3,0%
Acquittal	3,6%
Application of ‘the rule of non-prosecution’	0,6%
Dismissal of criminal charges	0,1%

All cases satisfying the requirements of ‘due process’ will be prosecuted as mentioned above.

Processing of Cases

Cases are submitted by the Public Prosecutor to the Judge through a series of channels, such that it is difficult for the Public Prosecutor to acquire direct access to the Judge. The files are transferred from desk-to-desk, where they can remain until time is found for them to be dealt with. As a result, about 90% of the time that it takes to process a case, is taken up by it waiting to be dealt with, which it has to be said is a most unfavourable percentage. Questions relating to sentencing and ‘due process’ therefore have to take precedence here, due to the importance of the issues at stake.

POLARIS – Sentencing Guidelines

Judges in the Netherlands is independent, i.e. they are not obliged to follow the Public Prosecutor's guidelines, however, in 80% of cases the Judge will follow the request of the Public Prosecutor.

Several problems occur in the use of the "old" sentencing guidelines. There were too many guidelines and they were not uniform and the contents not coherent. The concepts were not well described so differences in interpretation lay at hand. But, for a first step towards national guidelines there were not bad. The second step was the formation of a working group of experienced people that could transfer all the guidelines to a coherent, transparent uniform system. Such a system could improve the quality of sentencing enormous. The result of this exercise was POLARIS. The first edition was developed for criminal offences.

The goals of POLARIS:

- Uniform standard.
- Unambiguous judgement.
- Coherent system of guidelines.
- Explicit judgement:
 - Proportionate penalty.
 - Minimisation of judicial inconsistencies.

POLARIS Points System

Every type of a criminal offence (the 'basic offence') is designated a number of 'basic points'.

The 'basic points' are added to a pre-determined number of points representing the aggravating factors of the crime - certain aspects of the crime making it more serious in nature - e.g. economic gain, which gives the total number of penalty points.

POLARIS can be distinguished from, e.g. the system in the United States, where sentences of 352 years imprisonment can arise, since the sentence does not increase *pro rata* with the number of accumulated penalty points. Instead, upon acquiring a pre-determined number of penalty points, the sentence is reduced by a fixed percentage.

The total number of accumulated penalty points, give an indication of the type of sentence applicable. Each point represents a fixed amount of money, or numbers of days of imprisonment.

Example:

Shoplifting - First offender - Item: mobile phone: 170 Euro

- Basic points for shoplifting: 6 points
- Category of the economic gain (more than 114 Euro): 4 points
- (aimed) economic gain 170 Euro
- The gain (above 114 Euro) results in: 1 point
- Total: 11 points
- 22 Euro per point
- Amount payable by offender: 242 Euro

Framework of POLARIS

The framework of POLARIS consists of:

- A system that can be applied to environmental offences (also suitable for economic and fraud offences);
- Instructions on how to apply POLARIS in specific cases; and

- An explanation of the ‘points-system’, and the effect that the gravity of the crime has on sentences.

Where more than one offence has occurred in a given case, the sentence applicable for each will be calculated independently of the others. The total number of all the penalty points will then be added up to give the grand total.

Sentence Reduction

POLARIS tries to ensure that the sentence imposed is appropriate having regard to the offence(s) committed. For example, a series of small offences could result in a high amount of points, which if applied *pro rata* could result in a disproportionately severe sentence. Therefore, POLARIS reduces the total amount of points on pre-determined bases, once certain thresholds are reached. For anything up to 180 points, there is no reduction; a reduction of 50% is applied between the range of 180 and 540 points; and above 540 points a 75% reduction is applied.

If there are a lot of small cases, each one of them is calculated individually. All the basic points are added and the rule of sentence reduction reduces the total amount of points. For a severe case the total amount of points is also according to the rule reduced.

The indicated sanction calculated with POLARIS contains besides punishment also the economic gain. When the relation between punishment and economic gain gets out of hand, especially in cases with a high score of points, the economic gain should be calculated separate from the indicated sanction. POLARIS is less suitable for these cases.

The POLARIS guidelines are presented in such a way that recognisable topics can easily be identified. The layout of the guidelines is uniform in nature, i.e. there is a description of the guideline, an identification of the basic offences, and a legal reference.

The ‘Basic Offences’ and ‘Aggravating Factors’

Each recognisable ‘basic offence’ is described in POLARIS.

The number of ‘basic points’ attributable to each ‘basic offence’, is based on the number of specimens involved, as listed under a specific appendix (according to their vulnerability).

These ‘basic points’ are added to the pre-determined number of points attributable based on aggravating factors.

Aggravating factors are for example:

- Repeat Offending:

First offence	0%
First repeat-offence	50%
Second repeat-offence	100%
Third repeat-offence and above	150%
- Capacity

Private individual	-25%
Small trader/business	0%
Medium trader/business	+25%
Large trader/business	+50%
- Reason for Offence

A resolute action (economic gain)	+25%
Out of ignorance	- 25%
Different reason	0%

Some legislation provides for special regulations that can have a bearing on the total amount of points accumulated.

The description of each offence in the guidelines includes a list of the possible accompanying aggravating factors. No one aggravating factor is considered as overriding *vis-à-vis* any other aggravating factor.

Effects:

The Public Prosecutor can decide whether or not POLARIS is suitable for a particular case. He/she may deviate from his/her decision if motivated to do so.

Examples

Example Case 1: Illegal import of reptiles

1963 specimens (Appendix B) were illegally imported in two suitcases

- Amount payable (according to old guideline) by offender: 2270 Euro

- POLARIS

Basic points:

Amount of specimen * points (Appendix B)

1963 * 12 points = 23 556 points

Aggravating factors:

Capacity: courier 0%

Repeat offending: first-time offender 0%

Sentence reduction: The first 180 point count for 100% => 180 points;

The range between 180 up till 540 point counts for 50% => 180 points

The remaining points above 540 count only for 25 % => 23 196 * 0.25 => 5799

Final points: 180 + 180 + 5799 = 6159 points

Indicated sentence:

6159 * 22 Euro = **135 498 Euro**

Market value:

60 000 Euro

This example shows that the relation between punishment and economic gain is out of hand. Therefore in this case the prosecutor should choose to calculate the economic value separate from the punishment.

Example Case 2: Parrots without ring-mark

10 parrots (Appendix B) without ring-mark

- Amount payable (according to old guidelines) by offender: 1130 Euro

- POLARIS

Basic points:

10 * 12 points (species Appendix B) = 120 points

Aggravating factors:

Medium-sized trader/business +25%

(There is no sentence reduction for the first 180 points.)

Final points: 150 points

Indicated sentence:

150 * 22 = **3300 Euro**

Market value:

3400 Euro

Example Case 3: Import of 5 carved ivory statues (150 grams each, Appendix A)

In the Netherlands most of the offences against CITES-legislation are observed at airports (approx. 1250-1500 cases a year). POLARIS makes a difference between offences by private individuals/tourists with souvenirs and traders/couriers with the same kind of goods. For common souvenirs (for instance coral, shells, rainsticks and plants) POLARIS uses the same amount of basic points.

- POLARIS

Souvenirs

The basic point for an offence: $5 * 2$ points = 10 points

Aggravating factors: First offence 0%

(No sentence reduction for the first 180 points.)

Final points: 10 points

Indicated sentence

$10 * 22$ Euro = **220 Euro**

The same goods, but now illegally imported by a trader

For each gram of ivory 0,1 points are calculated:

150 grams * 0,1 points = 15 points

Aggravating factors: Small trader/business 0%

(No sentence reduction for the first 180 points.)

Final points: 15 points

Indicated sentence:

$15 * 22$ Euro = **330 Euro**

Decision Support System

POLARIS is supported by an automatic decision support system 'DSS'.

The Public Prosecutor's assistant can employ a specialised computer software programme ('DSS') to calculate the indicated sentence (e.g. a fine that matches the type of offence), by entering variables such as aggravating factors, sentence reduction, etc. DSS produces a report on the calculation, which is added to the file.

It goes without saying that POLARIS does not exclude human factors. On DSS having calculated the indicated sentence, the Public Prosecutor's assistant or the Public Prosecutor him/herself has the opportunity to vary the sentence to make it more appropriate. Thereby, one avoids sentencing people by computer.

Author's Note: *POLAIRS is not yet officially approved as a sentencing guideline for environmental cases. The authors hope that the Ministry of Justice will approve the guidelines for the new Flora and Fauna Law soon. For further information please contact: OMEC.Groen@planet.nl*

WORKING GROUPS

Three working groups were formed, (chaired by Tomme Young (Group A), Robert Seelig (Group B), and Alexander Koning (Group C) which addressed the basic issues of the workshop. They returned with a variety of recommendations and suggestions:

WORKING GROUP 'A'

Before Beginning:

Our discussion should distinguish among

- Tourists (classification 1)
- Collectors (classification 2)
- Criminals/Smugglers (classification 3)

Recommendation: This distinction should be addressed in each element of discussion

- common factor for all three classifications: They are part of the overall international framework
- Divergences among the three:
 - *Impact* (the impact of classifications 2 & 3 is entirely different (in nature, and perhaps in size) from 1
 - *Money* (it is a main motivation of groups 2 & 3 but probably not in group 1)

1. Role of NGOs

- travel agencies have duty as awareness-raisers
- distinguishing among
 - type/objectives
 - separating politics from cooperation),
 - recognizing/using domestic focus
- Information sharing
 - credibility of information/ evaluating source and value of information
 - Direction of information flow (legal restrictions on what government can share)
 - building trust relationship on all levels and on both sides (component groups and factions)

2. Options for NGOs co-ordination with Government

- Initial choice: Activism in courts and other fora vs. Cooperation with enforcing agencies
Having chosen the latter, there are 3 possible mechanisms:
 - Informal relationships
 - (formal relationships can sometimes be risky)
 - Formal inclusion of NGOs in national team (see below)
 - NGO commitments include specific promises,
 - Full inclusion in team
 - Bilateral agreements (NGOs relationship w/ team is through a separate agreement with a government agency) Particularly appropriate where full partnership can compromise security, free exchange, etc, within team

- NGO commitments are much more general: to work together and to work legally
- government commits to provide information, where possible, and perhaps to hold an annual event to address issues, develop a network

3. Development of a National Unit for Internal Co-ordination within Government

- Basic purposes: Expediting information exchange
- Connecting the special units within policing bodies

Question of focus and scope - Should it address wildlife crime only? Or all environmental crimes?

Organisation: (no consensus) public prosecutor as nexus of team?

Query: Is this „a bridge too far“ for many countries? It might be better to focus on initial steps:

- First step - informal communication network
- secondment of representatives from policing bodies to environmental agencies

4. International Cooperation

- Initial evaluation is needed: Are existing networks enough?
 - CITES
 - Interpol
 - World Customs Org.
- Can problems with existing networks be solved within these networks:
 - awareness/accessibility
 - collaboration is not ideal
 - process of obtaining assistance/info is slow
 - need to connect to the „right person“ (CITES specific?)
- If new development of other systems is needed, initial needs are -
 - for an informal network for information exchange, followed at an appropriate time by
 - recognition by EU or other international level bodies, which may be important (example EABC)
- In light of the difference between formal and informal networks, it is not always true that „formal“ is better.
- Essential component of a network – clear delineation of pathways of information
 - where does/may it come from?
 - where does/may it go?
 - where does/may it stop?

5. Awareness that Wildlife Trade Crime is a Serious Offense

- Policy (and judicial opinion in some cases) arises from public awareness
- Indirect indicators of seriousness of the crime:
 - Sentencing guidelines may be a vehicle for communicating the seriousness of the offense
 - Legislative and administrative regulatory provisions connecting the offense itself to the underlying values involved
 - How do we define „serious offense“?
 - Environmental value of the item
 - technical/enforcement issues and powers
 - Does the discussion of market values cloud the issue?
 - Coordination of awareness efforts with „national team“ development and use
 - Impact on officials may be direct (training) or through public opinion
 - Public Opinion: How to use the mass media?

- How effective are press releases?
- NGOs are very important here, but remember that the press must be given credible information
- Focus should be on Education: Use of species is not inherently bad, and CITES recognizes this.
- „Focused“ activities targetting the Judiciary/Prosecutors
 - Judiciary
 - Training
 - Continuous need
 - scope of current efforts insufficient
 - prosecutors
 - different issues
- Appropriateness of „specialized courts“
- Other options („strategic filing“, etc.)

6. Setting enforcement priorities

- Priority attention
 - Focus on category 3(criminals/smugglers)? Basis for decision:
 - examine historical data
 - set goals
 - Multiple offenders?
- Priorities are situational. Needs include
 - Criteria for situational priority decisions.
 - what to do where non-priority violators are apprehended
- Beyond CITES -- trying to find/prosecute the provoking agent
- Domestic legislation is the key to priority setting. Regulations needed --
 - guiding and explaining application of
 - administrative offenses
 - judicial offenses
 - setting criteria for prioritising choices, based on
 - protection level
 - multiple offenses
 - threat/status
 - type of offender
- Note: Administrative actions do not create precedent. Every country needs to give attention to developing a „body of caselaw“ on wildlife trade crime

WORKING GROUP 'B'

As a summary, consider the following:

- i. The need of guidelines for penalties *vis-à-vis* administrative / tourist offences, bearing in mind that such guidelines may not be universally effective *vis-à-vis* criminal offences;
- ii. The production of a 'value-reference book' for species at EU-level, undertaken by a well-respected and impartial organisation (NGO). This will assist in harmonisation where sentencing guidelines are not applicable. Such book should differentiate between legal and non-legal issues;
- iii. The need of CITES information and training to public prosecutors and judges. Requests should be addressed to EU-Management Group / EU Enforcement Group
- iv. Co-operation and exchange of experience / information between national prosecution authorities;
- v. The creation of a court-case reference list / book (compiled by an NGO possibly in collaboration with the EU Commission);
- vi. Establishment of an environmental public prosecution agency. Where this is not possible, the establishment of an 'advisory board' should be considered (European Judicial Network could assist here);
- vii. Institution of infraction proceedings against member states failing to fully implement EU Regulation 338/97;
- viii. Utilisation of NGOs' knowledge for preventive action and prosecution. Consider: objectivity, timeliness, and quality of source of such information;
- ix. Exploitation of the media should be undertaken, but in a fair and balanced way to ensure that every trial is fair;
- x. Amendment of EU Regulation 338/97 so as to provide for effective training of more national sectors than customs at the port of entry; and, to increase the obligation for Member States to co-operate;
- xi. Holding of national workshops with international contribution from affected parties such as: public prosecutors, judges, CITES authorities, customs, police etc;
- xii. Formation of an 'information focal point body', providing technical – as supposed to legal - assistance, e.g. information on species, such as: the price for the species; trade in the species; routes used for smuggling; protection afforded to the species; relevant cases, etc. Consider whether this should be undertaken by: TRAFFIC, WCO, EUROPOL, the EU Commission DG XI, etc.? Consider also whether access should be restricted or open; and whether the Internet could be used as a suitable medium.

WORKING GROUP ‘C’

Problems	Solutions
Annex B specimens – no easy way to prove a crime has been committed. Marking not a sufficient option.	Burden of proof – an owner has to prove legality.
Exchange of information between Management Authorities, prior to issuance of permits. Need fast exchange of information, so licences issued correctly.	Set format for request for information, encouragement of fast reply, use of existing directories, use of email.
No area of experience to refer to for CITES cases in EU countries.	<ul style="list-style-type: none"> - Distribution of information on cases in prosecutors’ journals through email list, and also via Management Authority too. - Develop case study book of EU cases/updateable database accessible via internet.
Disparity of sentencing	<ul style="list-style-type: none"> - Sentencing guidelines to be developed nationally - Develop areas/centres/people of expertise within prosecutor services
Penalties ok for most crime, but not for organised crime. If it is not recognised as serious, cannot use certain investigative procedures.	Ensure penalties are high enough to ensure investigations can be carried out to gather proof of evidence
Law awareness of judges and prosecutors	<ul style="list-style-type: none"> - Raise awareness of prosecutors and judges – refer back of case studies/show impact of the crime - Management Authority duty to raise awareness of prosecutors and judges - Through the use of the European Justice Network (EJN) <p><i>Linked to “develop areas/centres/people of expertise within prosecutor services)</i></p>

Recommendations of the International Expert Workshop on the Enforcement of Wildlife Trade Controls in the EU

The “International Expert Workshop on the Enforcement of Wildlife Trade Controls in the EU” examined a number of problems in the enforcement and prosecution of wildlife-trade-related crime and suggested a variety of possible solutions. The following initial recommendations were compiled by TRAFFIC Europe and IUCN Environmental Law Centre and based upon the outcome of those discussions.

1. Developing a More Systematic Approach to Types of Offenders and Nature of Offences

From the beginning, the workshop addressed the need for systematic understanding of the primary types of offenders and the nature of the offences.

Categories of offenders

Neither CITES, nor Council Regulation (EC) No 338/97 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein, nor the Member Countries’ national legislation specifically identifies categories of offenders. However, the attendees agreed that there were significant differences in the motivation and impact of the criminal activity on fauna and flora between three relatively easily distinguishable categories of offenders, i.e.,

- Tourists
- Collectors , and
- Organised networks/smugglers.

Participants recognized the need to address each category of violator in a different way, in order to maximise the effectiveness of enforcement measures.

Accordingly, one recommendation from the Workshop was to address the need for legislative and institutional adjustments which would support the establishment of a system for categorising violators, and different enforcement mechanisms for each type.

Categories of offences

Most of the national governmental representatives at the workshop agreed that, in light of scarce manpower and financial resources, enforcement officials must focus their efforts on a limited set of “priority” offences. TRAFFIC and CITES statistics indicate that the actions of smugglers have the highest impact on wildlife, suggesting that they should be one of the primary foci of enforcement efforts.

2. Improving Enforcement-related Co-operation and Exchange of Information

It was clear from an initial analysis of the information gathered by the Project and from the discussions throughout the workshop, that co-operation and exchange of information is increasingly important to improving the extent and effectiveness of wildlife trade controls in Europe and elsewhere. The Workshop recommended consideration of a variety of activities related to international and national co-operation and scientific and technical information exchange.

A International co-operation

In particular, participants discussed in detail the importance of improving (or creating, if necessary) formal or informal networks and enforcement partnerships, and addressing the legal issues that limit their use. For this element, the current

use, effectiveness and potential of, existing intergovernmental institutions and organisations (e.g. CITES Secretariat, Interpol, World Customs Organisation), existing enforcement networks, and other concerned bodies should be assessed, with particular attention to information-exchange. Some of the particular points that must be addressed in this process are:

- National awareness and recognition at the parliamentary and highest administrative levels, including legal support for international collaboration, whether through unilateral legislative statements, or bi-/multilateral agreements;
- Lack of legislative or institutional mandate or motivation for collaboration;
- Accessibility (increasing institutional transparency, including clarity about who is the “right person” to address specific enforcement issues and activities);
- Procedures for obtaining assistance and ensuring the viability and legal credibility of actions taken and evidence gathered through international co-operation.
- Information control issues (including confidentiality, security, reliability and maintenance of the appropriate pathways of information);
- The nature, extent and mechanisms for including NGOs in some capacity in these networks and activities.

Recommendation addressed to: EU Member States and relevant authorities should consider developing such networks and enforcement partnerships for co-operation and information exchange, where they do not exist, and adopting legislation to facilitate such exchanges. The European Commission and relevant institutions (e.g. the EU Enforcement Working Group, the Interpol European Wildlife Crime Working Group) might take a leading role in the process of reviewing existing networks, and identifying their needs. If necessary, their efforts could include designing and establishing new networks, or providing guidance or assistance in the development of informal networks on an *ad hoc* basis. Experience has shown that the participation of NGOs may also have an important role in this process. The Workshop noted that the specific nature of their actual participation in international co-operation networks must be determined in light of many factors, both legal and practical.

B Intra-national (internal) co-ordination and co-operation

Although the goal of the development of a national unit for internal coordination and co-operation of enforcement bodies might be difficult to achieve in all countries, initial efforts could focus on the development of an informal communication network. (It was suggested that the secondment of representatives from policing bodies to environmental agencies and vice versa could be helpful in this context.) The European Commission should consider giving guidance and assistance to Member States, which could consist of information on the mechanisms, procedures and frameworks used in other countries. In this connection, the assistance of NGOs could be helpful.

- Prosecutorial Specialisation: One Working Group suggested that where possible under national legal and administrative rules, Member States could establish at the national level an environmental crime unit within the prosecution service of each country. (In countries where this might not be possible – e.g. countries with a federal structure – possibly a national advisory board for wildlife trade enforcement issues could be established.)

Recommendation addressed to: The office of the General Public Prosecutor and the Ministry of Justice of EU Member States should investigate the relevance of this recommendation, and the appropriate national mechanism for its implementation. The assistance or co-operation of/with the European Judicial Network (EJN) and national CITES Management and Enforcement Authorities might be useful here. NGOs could join these efforts by helping to raise awareness for the need of such unit.

C Scientific and technical information exchange

The Workshop discussed a number of possible activities relating to information and database development that would be of particular value to enhance enforcement in the field of wildlife trade. In particular, the participants recognised the need for accurate accessible information on the biological status of regulated species, commercial values, and enforcement. Some Working Groups suggested the following activities:

- Assess the practicality of developing effective informal information exchange fora, through which enforcement officials and prosecutors would have access to scientific and technical data in a form, and from a source, that will be accepted in court as evidence. Such an informational resource would be particularly valuable in the area of scientific and technical assistance on species (threat/protection status; commercial value; trade routes). In addition, this assessment should consider issues relating to the maintenance and control of this information.
- Investigate the feasibility and value of establishing and maintaining a compilation of court cases and administrative materials, to serve as a body of judicial precedents for prosecuting wildlife crime. However, the Workshop plenary expressed concerns that the informational law issues (including copyrights, intellectual property, access and other issues) as well as the cost of establishment and maintenance of such a compilation (whether as an electronic database or in some other form) may be overriding factors, particularly in light of the fact that many countries' courts give limited weight to judicial decisions of other countries.

The initial step in this investigation should be an evaluation of the existing sources of information on judicial decisions. This can determine how much relevant information is available elsewhere, and also consider the cost and efficiency of using/improving these services. A second step may be to investigate possible collaboration with jurisprudential organisations such as the European Judicial Network (EJN) and other concerned organisations and NGOs to determine whether and how best to supplement existing information. One Working Group recommended that public prosecutors, judges and other judicial experts should distribute information on cases related to wildlife trade through journals, email and via Management Authorities. Compilation of such case data, like all statistical information described in this section, should be overseen by an international NGO, whose mandate focuses on wildlife trade issues and data.

- Assess the usefulness of the production of a reference tool on valuation of species listed in Annex A to C of the amendments to Regulation (EC) 338/97 taking into account their ecological and biological values and the damage to biodiversity. While such a publication might help to harmonise penalties, the accuracy of such an assessment may be controversial. This information should be developed and maintained by well-respected, impartial and independent bodies or organisations, operating under a clear and well overseen mandate.

Concerns expressed in the Workshop plenary noted that the market value of species may increase where controls on that species are improved. Hence, if this reference information is successful in improving enforcement, it may also quickly make itself obsolete. Similarly, where controls are ineffective at reducing illegal trade, the species may become more valuable due to its near extinct status. As a consequence, if the reference tool does not improve enforcement, it may cease to be valid informative data.

Recommendations addressed to: One Working Groups suggested that the European Commission, its Scientific Review Group, EU Member States, and relevant authorities should consider undertaking these activities. The co-operation with the European Judicial Network (EJN) and the involvement of NGOs might be useful here.

3. Legislative and Institutional Development

The general assessment of national legislation indicates that most countries' laws adequately implement CITES and Council Regulation (EC) No 338/97 on Wildlife Trade. However, the Workshop plenary identified certain elements of wildlife trade enforcement, which might be enhanced through changes to national or EC legislation. Several possibilities were noted, including

A Amending Council Regulation (EC) No 338/97 on Wildlife Trade

Amendments or supporting regulations of Council Regulation (EC) No 338/97 on Wildlife Trade should authorise and mandate the following:

- Appropriate training of national CITES enforcement authorities in posts other than customs at the port of entry;
- Seminars and information and advanced continuing education programmes directed at judicial and prosecutorial officials and authorities;
- Clarification and extension of national authorities' legal obligation to co-operate;
- A regional mandate for development of guidelines, networks and other mechanisms to improve enforcement.

B Amending national legislation

Those countries whose legislation includes maximum penalties at extremely low levels, should be encouraged to amend those amounts, both to avoid the situation where the possibility of apprehension is considered only a “cost of doing business” by intentional violators; and to eliminate any inference that those countries do not give priority to wildlife trade law enforcement.

C Legislative mechanisms to strengthen enforcement and improve rates of apprehension and conviction

Among legislative mechanisms suggested are:

- Evaluation of the advisability and impact of applying principles of “strict liability” to possession of illegally imported wildlife and wildlife products;
- Where possible under national legal systems, authorisation of judicial and prosecutorial officials to develop and use sentencing guidelines, and independent evaluation of the current draft guidelines being prepared in several EU Member States.

This issue was discussed as a mechanism for addressing frequent disparities in sentencing -- *e.g.* where sentencing within a country is inconsistent; where sentencing does not reflect the economic value of the resource for the violator, or to the ecosystem or to global biodiversity. It was also suggested that disparities among EU Member States should be considered and that the situation might possibly be benefited through sentencing guidelines, in some countries. While the use and validity of such guidelines raises numerous very difficult legal issues, the fact remains that national level prosecution and penalty are still the primary mechanisms by which wildlife trade can be efficiently enforced.

For the development, maintenance, use and assessment of sentencing guidelines updated and comprehensive statistical information must be compiled about

- the market uses and values of the wildlife or products (see discussion of a species reference tool, above); and
- the environmental and biological value of the species and its parts and derivatives.

Recommendation addressed to: The European Commission, the appropriate national institutions and other organisations focused on developing or recommending international and national regulatory development for conservation should be involved in these initiatives.

4. Training and Awareness-raising

The workshop discussed possible solutions to address a variety of problems raised by presentations describing unsuccessful and frustrating prosecutions. Many of these issues appear to arise out of the lack of awareness and knowledge of the seriousness of wildlife trade related offences. Compliance with existing law and the improvement of policies, legislation and judicial decisions may all be positively impacted by an increase in awareness, both within the general public and in the more focused area of judicial and prosecutorial officials, legislators and policy makers.

Training and information for prosecutors and judges

The workshop plenary agreed that the development of a core group of prosecutors and judges who are fully aware of the importance, and the various complexities, of wildlife trade enforcement is essential. The workshop was not unanimous on how this work should be accomplished, however, it did identify the following avenues for developing appropriate awareness and specialisation:

A Targeted awareness-raising:

National and regional workshops (possibly with international contribution) directly targeted at public prosecutors and judges, but also at CITES authorities, customs, police and related individuals, authorities, and institutions, can increase the number of individuals with expertise in this complicated and specialised area, and may also serve to raise awareness, facilitate information exchange and co-operation and build up networks.

Recommendation addressed to: For most of these activities, the national CITES (Management, Scientific and Enforcement) Authorities, may play a primary role, supported in appropriate cases by other agencies authorised to enforce these laws. In addition, targeted training programs can be most effectively developed at regional level, by the European Commission or others, including NGOs, acting through the European Commission. Co-operation with the European Judicial Network might be advisable. However, it should be noted that raising awareness is a responsibility jointly held by all parties working in the area of wildlife trade control.

B General awareness-raising:

A number of participants noted that, in many countries, judges and prosecutors are more influenced by public opinion than by information presented in a “continuing-professional-education” format. All of the Working Groups, and the Plenary devote significant attention to awareness-raising issues and identified a number of possible activities that could be part of a programmatic approach to awareness raising:

- Carefully balanced information on wildlife trade and its legal implications should be made available to tourists, because the number of offences by tourists – which are often unintentional - may exceed those of collectors or criminal dealers. In particular, a notification program for tourists who are found leaving or entering a country with prohibited specimens or products may serve both as a deterrent to the particular individual, and as a means for developing word-of-mouth campaign among other tourists.
- Travel agencies should be obligated to provide their clients with this type of information, as these agencies have a specific responsibility in this context and can inform tourists easily.
- Care should be taken to ensure that the media receive correct and balanced information regarding wildlife-related crimes and lawsuits. While some levels of publicity of wildlife-trade-enforcement activities have the potential to increase public awareness, they may do so in either a positive or negative way. Further attention must be given to the manner in which these cases are publicised, so that public news stories can serve to enhance public support for wildlife conservation and awareness of the real contribution that local individuals, agencies and organisations can make.

- One aspect of wildlife crime that could be discussed in the media, might be the current lack of/need for judiciary training, as a means of increasing the currently insufficient scope of judiciary efforts.
- Include education in and understanding of the complexity of CITES issues, particularly in the context of sustainable development and use of natural resources, in any follow-up project to raise public awareness as education plays a major role in that matter.
- Development of an accessible method of presenting sustainable development issues in public media. Public perceptions of wildlife-trade crimes may be strikingly impacted, if it becomes generally clear that the use of fauna and flora can be managed in a sustainable way

Recommendation addressed to: The participants recognised that the primary implementers of these recommendations would be communication officers of Management and Enforcement Authorities, NGOs, and public prosecution offices. They noted, however, that the press can lose interest, if they hear too many such statements from these bodies. For this reason, statements and releases from other entities and individuals can sometimes have much greater impact.

5. The Role of NGOs

Throughout all parts of the Workshop, the specific role of NGOs was recognised and addressed. Although NGOs should not be given the responsibility to fill the gaps created by a lack of political will and administrative deficiencies, the participants were in agreement that NGOs could assist with the following tasks:

- Conduct workshops and provide training for public prosecutors, judges and other judicial experts;
- Provide factual and objective information on biodiversity, ecological and economic values of species, illegal wildlife trade practices and data to Enforcement Agencies (to be available for prosecution, court and other fora); and
- Raise awareness, knowledge and understanding, e.g. co-operate with public prosecutors, judges, judicial experts, media, travel agencies, hunting organisations, pet shops, suppliers and others.

The participants gave particular attention to the role of NGOs in official enforcement partnerships (as discussed above under the heading “Improvement of intra-national (internal) co-ordination and co-operation”). While many factors complicate efforts of government agencies in the EU to develop partnerships with NGOs, or include NGOs directly in other “team” relationships relating to wildlife trade enforcement, the attempt to clarify a mutually beneficial relationship to maximise the effectiveness of both groups in wildlife-trade enforcement is valuable. To this end, specific co-operation arrangements can be set up through Memoranda of Understanding between governmental bodies/authorities and acknowledged NGOs, where appropriate legislative and other authority is present. Through this mechanism, the parties might commit to

- working closely together to tackle the issues identified during the workshop;
- sharing information (within the limits of the government’s ability to do so);
- hold annual events and develop a network to address main obstacles.

ANNEX A

Legislative Analysis and Reports: Enforcement of International Wildlife Trade Controls in the EU

LEGISLATIVE ANALYSES AND REPORTS

Enforcement of International Wildlife Trade Controls in the EU

The legal component of this project centred around a detailed analysis of (1) the legal regimes of all 15 EU Member States relating to the enforcement of wildlife trade restrictions, (2) the comparison among those regimes in terms of their implementation (as interpreted by examination of the juridical and statistical data relating to enforcement, as compiled under another component of the project), and (3) the manner in which those regimes function and interrelate to one another. This component was performed by the IUCN-Environmental Law Centre, utilising its internal expertise as well as a team of European experts.

The cornerstone of effective completion of this component was the selection of qualified legal experts. It was essential to find persons with substantial expertise in wildlife trade and enforcement law issues, who would be able to work in English as well as the national language of the country whose laws they were to analyse. To this end, IUCN was able to utilise the expertise of its Commission on Environmental Law (CEL) – a world-wide network of nearly 800 eminent environmental law authorities, whose experience and expertise covers every aspect of environmental law. Although not all of the legislative experts utilised in this project are CEL members, all were recommended by CEL members as fully qualified.

The high recommendations of these consultants were borne out by the quality of their work. These following legislative analyses are an excellent a basis for the remaining legal/legislative synthesis and analysis in this project.

About these analyses

When asked to undertake this assignment, each of the Legislative Analysts was given detailed Terms of Reference, which are reproduced at the end of this introduction. Most important, they were given the following outline, describing the information which they would be asked to provide, and the format in which it should be provided for each country:

CITES Status

Date of Ratification or Accession to CITES:

Accession to Amendment:

CITES reservations currently in force:

List of Legislation Relevant to International Wildlife Trade Controls and their Enforcement:

Violations Related to Wildlife Trade and Related Activities

- (i) illegal export and/or re-export of specimens of species
- (ii) illegal import and/or introduction-from-the-sea of specimens of species,
- (iii) illegal possession of relevant specimens, etc.

Specific Penalties for Illegal Wildlife Trade and Related Activities

Legislation Authorising, Mandating, and/or Empowering Officials or Agencies to Undertake the Enforcement of Wildlife Trade Controls:

- (i) searches and seizures,
- (ii) compounding penalties,
- (iii) administrative enforcement activities, including license/permit revocations, etc.,
- (iv) prosecution of offenders,
- (v) etc.

Other Relevant Legislation

Additional Comments

The analysts followed these requirements exactly. Hence the outline headings shown above in **BOLDFACE** are used, in this order in each of the reports. It is hoped that this adherence to the format will provide easy access for the reader, and enable some possible comparisons and other uses of the data. It should be noted however, that the national legislative systems and approaches within the EU countries are so diverse that full comparison among these reports will not be a simple matter.

Many opportunities for collective work and larger understanding were, unfortunately, not available in this project. Necessarily, the Legislative Analysts undertook their work independently. Early hopes that the project could bring these experts together at the project workshop could not be realised ultimately. As a consequence, the primary use of these reports to date has been as a basis for examining the Statistical information (Annex B, below). That initial comparative analysis is summarised in “*Summary of environmental law issues... for the Project: Enforcement of International Wildlife Trade Controls in the EU*” at page 19, above.

There remain many possible avenues for follow-up, however, which can use these studies and the expertise on which they were based, including–

- ▶ □ comparison of the particular powers of administrative authorities,
- ▶ □ the manner and extent of use of administrative penalties,
- ▶ □ the relationship between species value and penalty amounts,
- ▶ □ the mechanisms for selecting administrative, summary and judicial mechanisms for imposition of penalties,
- ▶ □ the extent to which general criminal provisions (conspiracy, criminal enterprise, and other laws) have been effectively used in prosecution, the effect of phrasing of particular elements of the prima facie case for violation. In particular, the impact of statutory language designating mental state (negligence, reckless disregard, general intent, specific intent, strict liability) has had on successful wildlife crime prosecutions;
- ▶ □ the comparative approach to and role of procedural requirements and protections for the accused with regard to the effectiveness of prosecutions.

Finally, we should note that, as a part of this assignment, each of the Legislative Analysts provided IUCN-ELC with copies of all relevant legislation. Where we did not already have it this information has been accessed into our Legislation Library, and is available for additional research into the points addressed. Note, however, that all of the laws were provided in national languages only, with the exception of Finland, whose laws were also provided in Swedish (which may be more accessible to some library users.)

Terms of Reference for the Legislative Analyses

[Prepared by the IUCN-ELC]

Each legislative analyst shall undertake the three components – review of legislation, report, and supporting documentation – with regard to each country to which he or she is assigned:

Review of Legislation: The Analyst shall obtain and review all relevant national legislation in Germany, Austria and Liechtenstein which relates to the enforcement of that country’s legislative restrictions on the export, re-export, import, or introduction from the sea of CITES species (or of species that are endangered, threatened, or otherwise protected in their country of origin, if such provisions are used to satisfy the country’s legislative obligations under CITES.) This research shall focus on

- (i) all laws which identify or specify the nature of violations related to wildlife trade (including illegal export, re-export, import, introduction-from-the-sea, and in some cases also illegal possession of relevant specimens, etc.)
- (ii) all laws which impose penalties (including fines, imprisonment, confiscation, forfeiture, license or permit revocation, imposition of any probationary or other status on offenders, etc.);
- (iii) all laws which authorise agencies or officials to undertake CITES enforcement activities (including searches and seizures, compounding penalties, administrative actions, prosecuting offenders, etc.)
- (iv) all related laws, including those which limit the use of the powers identified in a(ii), determine which penalties apply when the same action violates more than one statute, etc.

In undertaking this research, it will be important to examine not only laws which are specifically adopted as wildlife laws and/or wildlife trade laws, but also those laws which govern the relevant powers of customs and other empowered officers.

Report: For each country identified in Point 2.a, above, the consultant shall prepare a detailed report in English, following the format set forth below, identifying and clearly explaining the various provisions for violations, penalties, enforcement powers and obligations, and empowerment and limitation of officers.

Given that these reports will be used for comparison and synthesis by a person not fluent in all EU languages, it is essential that this report provide all relevant detail, including specific identification of the *prima facie* elements of each offence, the specific penalties, and the specific provisions for compounding penalties, etc.

Where any provision or concept of interest is noted which does not fit precisely within the categories of the attached format, the consultant should note such provisions, and summarise their relevance, in the section entitled “additional comments.”

Supporting Documentation: The Consultant shall obtain copies or photocopies of all legislation examined in the course of this consultancy. All such copies shall be appended to the consultant’s report, at the time that it is submitted to IUCN.

Annex to Terms of reference:

REPORT FORMAT

PROJECT: Enforcement of International Wildlife Trade Controls in the EU

For each country, provide the following, in detail, in accordance with the Terms of Reference:

CITES Status

Date of Ratification or Accession to CITES:

Accession to Amendment:

CITES reservations currently in force:

List of Legislation Relevant to International Wildlife Trade Controls and their Enforcement:

List all legislation (laws, regulations, decrees, and other governmental documents) reviewed for this consultancy, giving for each legislative document –

- its official name and citation, followed by a translation of the name into English (if needed.)
- A very brief summary of the law's objectives and coverage.

Violations Related to Wildlife Trade and Related Activities

Specify the violations that are identified relating to

- (i) illegal export and/or re-export of specimens of species
- (ii) illegal import and/or introduction-from-the-sea of specimens of species,
- (iii) illegal possession of relevant specimens, etc.

For each violation, give the following specific information:

- precise legislative citation;
- description of the violation and the specific matters that must be proven in order to convict a violator

Where relevant, note overlaps or gaps (i.e., if a more general law also could be used to as a basis for penalising an offence which is covered under the CITES/wildlife trade legislation; or if there appear to be types of illegal trade activities that might avoid penalty due to a gap in the legislation.)

Penalties for Illegal Wildlife Trade and Related Activities

Identify, and describe in detail all penalties and penalising activities, including fines, imprisonment, confiscation, forfeiture, license or permit revocation, imposition of any probationary or other status on offenders, etc., which may apply to any of the violations described above. For each penalty or penalising activity, give the following specific information:

- precise legislative citation;
- specific description of the amounts and nature of all penalties, and the particular offences or circumstances to which they apply.

Legislation Authorising, Mandating, and/or Empowering Officials or Agencies to Undertake the Enforcement of Wildlife Trade Controls:

Identify, and describe in detail all powers and duties given to any officers or officials to undertake CITES enforcement activities, including

- (i) searches and seizures,
- (ii) compounding penalties,
- (iii) administrative enforcement activities, including license/permit revocations, etc.,
- (iv) prosecution of offenders,
- (v) etc.

For each provision relating to a power, obligation, etc., give the following specific information:

- precise legislative citation;
- specific description of the powers, authorities, obligations so created and the circumstances to which they apply.

Other Relevant Legislation

Here identify related laws, including

- (i) those which limit the use of the powers identified in the foregoing section
- (ii) those which address the questions of overlap (*i.e.*, determine which penalties apply when the same action violates more than one statute),
- (iii) etc.

For each such provision, give the following specific information:

- precise legislative citation;
- specific description of the legislative provision, and
- if not clear, a brief explanation of its relevance to the general topic of this consultancy.

Additional Comments:

Here note any other matters that may appear relevant, as well as any commentary on specific issues relating to the laws (legislative vagueness, possible problems of interpretation, etc.)

Note: It is not required that this report be written in narrative form. If it seems appropriate to the consultant, he/she may complete the report in a non-narrative or outline form, so long as it provides the necessary level of detail on each of the matters identified above.

Enforcement of International Wildlife Trade Controls in Austria

Robert Seelig (LL.M)

CITES STATUS:

Date of Ratification or Accession to CITES: Ratification in 1981, accession on April 27, 1982

Acceptance of Amendments:

Bonn Amendment (Article XI) – Acceptance registered 16 March, 1984; - in force 13 April 1987

Gabarone Amendment (Article XXI) – Acceptance registered 21 January 1985

CITES reservations currently in force: No CITES reservations in force

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

- 1) **ARTENHANDELSGESETZ (ArHG)** (*Trade in Species Act of January 30, 1998, Federal Law Gazette 1998, p. 559.*)

The federal ArHG very comprehensively regulates the enforcement (control- and sanction mechanisms) for illegal trade and possession of protected species. It replaces the “Washingtoner Artenschutzübereinkommen-Durchführungsgesetz“, BGBl. 179/1996 („CITES – Enforcement Act“). For a list of protected species and definitions it refers to the EU Regulations 338/97 and 939/97. It aims at comprehensively regulating CITES enforcement in Austria and at replacing respective state legislation which was applicable to CITES enforcement before.

Inter alia it contains reporting duties (§§ 4, 5), marking (§ 6), rights to control (§ 7), administrative and penal sanctions (§§ 8, 9, 10) and lists all competent authorities (§ 12).

The ArHG contains no list of protected species but refers to those of the annex to EU Regulation 338/97.

- 2) **ARTEN - KENNZEICHNUNGSVERORDNUNG** (*Regulation on the marking of species in the version of September 16, 1998, federal law gazette 1998, p. 2059.*)

The (federal) Regulation refers to the EU regulation 338/97 and provides for the marking of all vertebrates necessary for the issuance of certificates in accordance with Reg. 338/97. It was enacted in accordance with § 6 of the ArHG. It contains no other specific enforcement provisions.

- 3) **NIEDERÖSTRERREICHISCHES NATURSCHUTZGESETZ 2000 NÖ NSchG** (*Nature conservation Act of the state of Niederösterreich in the version of August 31 2000, 5500-0 Stammgesetz 87/00 2000-08-31*)

Until enactment of the federal ArHG, respective state legislation on environmental protection and hunting was applicable to CITES enforcement. The Nature conservation Act of the state of Niederösterreich is herein described as an example, because there is no federal Nature Conservation Act in Austria. All nature conservation legislation is within state responsibility. Since enactment of the federal ArHG, respective state legislation is no longer relevant to CITES enforcement or sanctions for violations. The Act’s main focus is protection of domestic species. However, § 18 sec. 3 NÖ NSchG refers to non-domestic species protected by international conventions and prohibits certain acts.

4) ZOLLRECHTS-DURCHFÜHRUNGSGESETZ, ZoIIR-DG (Implementing Act to the Customs Act)

The ZoIIR-DG authorises the customs authorities to control all border traffic and enforce all legislation concerning prohibitions and restrictions of possession, taking, or utilisation of goods. It requires that customs authorities assist other agencies or officials, even in areas in which the custom authorities are not explicitly mandated in legislation to do so.

The ZoIIR-DG is a very general authorisation for custom authorities to control and enforce CITES or EU Reg. 338/97 violations in Austria's interior and border areas.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

Violations relating to illegal export and re-export of specimens of species have to be read in context with the EU regulation 338/97 (Art 5) to which § 9 ArtHG refers. In Austria, however, all EU regulations are part of Austrian legislation. Austrian law (ArtHG) provides for control, enforcement, and sanction mechanisms relating to the violations described in CITES and Regulation 338/97.

1) VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES IN ADMINISTRATIVE LAW:

ArtHG

§ 3 (1) ArtHG obliges any person who is the successor to or recipient of a donated species to report such acquisition of species to the Ministry of Economic Affairs.

§ 5 ArtHG relates to "owners" (in accordance with Regulation 338/97) of species that were

1. imported to the EU before introduction of the ArtHG
2. bred in captivity or artificially bred or propagated
3. determined to be held for scientific purposes, which served the objective of conservation of that species.

Such owners are required to report these facts to the competent authority.

§ 6 ArtHG contains general provisions on the marking of species and mandates that the Ministry of Economic Affairs introduce a Regulation on the marking of species (Arten-Kennzeichnungsverordnung (Regulation on the marking of species) as amended, September 16, 1998, federal law gazette 1998, p. 2059. see below)

§ 9 (1) ArtHG addresses situations involving

- No.1: the import, export or re-export of specimens of species listed in Art 3 Regulation 338/97 contrary to the provisions of the ArtHG or in violation of Art 4, 5, 7 or 11 of the Regulation 338/97
- No.2: providing false information in order to obtain permits in accordance with Art 4, 5, 7, 8, 9, 10 or 11 of said Regulation
- No.3: violating § 6 (3) ArtHG (marking provisions), Art 8 or 9 of Regulation 338/97 or § 3 (1) , § 5 or § 7 (2) ArtHG
- No.4: violating Regulations in accordance with § 2 or § 6 ArtHG
- No.5: violating Federal Legislation in accordance with § 13 (3) ArtHG.

For each of these offenses, the violator will be fined with ATS 10.000,-- up to 100.000,--. Penal violations according to No. 1 and 2 are subject to fines from 20.000,-- up to 200.000,-- provided that the species are subject to Art 3 (2) Regulation 338/97 but fines of ATS 50.000,-- up to 500.000,-- are applicable provided the specie is subject to Art 3 (1) Regulation.

No further specification of violations is given in the ArtHG, however –

- § 9 (2) provides that the attempt is also subject to punishment.
- § 9 (4) sets forth that penal law derogates administrative law when the same act fulfils the actus reus of

penal law.

- § 9 (5) the limitation period is 3 years
- § 9 (6) all specimens of species including containers part of violations of penal law are subject to forfeiture.
- § 11 provides that life forfeited species will be treated in accordance with Art 16 (3) of the Regulation 338/97 on the cost of the violator (e.g. placing in import state or return to export state of specimens).

State legislation (example: NÖ NSchG)

State legislation of the state of Niederösterreich prohibits the purchasing, offer for sale, transport or storage of species protected under international conventions to which Austria is party, § 18 sec. 3 and 4. of the NÖ NSchG 2000.

2) VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES IN PENAL LAW:

ArtHG

§ 8 (1) ArtHG provides that import, export, transit, or re- export of specimens of species listed in Art 3 (1) Regulation 338/97 in violation of Art 4 and 5 (permits) of the Regulation 338/97 or of §§ 4 –7 and 11 of the Regulation will be penalised with imprisonment up to two years or fines up to 360 “Tagessätze” (or “day-fines,” calculated on the basis of the actual daily income of violator).

§ 8 (2) provides that purchase, offer for purchase, storage, transport and display to the public or other utilisation, sale and offer for sale will be penalised as in section (1).

According to § 8 (3), in the event of a violation all specimens, including containers are to be seized. § 11 provides that forfeited species will be treated in accordance with Art 16 (3) of the Regulation 338/97, with the cost of these measures to be born by the violator.

All of the above mentioned specific matters of administrative and penal law have to be completely proven in order to convict violators. Additionally, violators of the above mentioned provisions can be convicted only if it is proven that violators acted either negligently or deliberately (*mens rea*). Without the latter, neither administrative nor penal sanctions are possible. Where both penal and administrative law penalties/enforcement are applicable, the provisions of penal law will control. (§ 9 (4) ArtHG).

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES IN ADMINISTRATIVE LAW:

In general, for a violation of § 9 (1) ArtHG, the violator will be liable for fines in the amount of 10.000,-- up to 100.000,--.

Penal Violations of provisions No. 1 and 2 of this section are subject to higher fines:

- from 20.000,-- up to 200.000,--: where for Annex 2 species (under Regulation 338/97)
- from 50.000,-- up to 500.000,-- for Annex 1 species.

§ 9 (2) provides that the attempt to commit these offences is also subject to punishment.

§ 9 (4) sets forth that there is no violation of administrative law when the same act fulfils the *actus reus* of penal law.

§ 9 (6) all specimens acquired in a violation of penal law are subject to forfeiture.

§ 11 requires that forfeited species be treated in accordance with Art 16 (3) of EU Regulation 338/97. The cost of these measures is to be borne by the violator.

State legislation (example: NÖ NSchG)

§ 35 sec 4 of the NÖ NSchG 2000 authorises state authorities to confiscate specimens taken in violation of NÖ NSchG provisions, and to declare them to be forfeited.

§ 35 sec. 1, No. 24 NÖ NSchG 2000 provides for fines up to AUS 200.000,-- for violation of the above provisions.

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES IN PENAL LAW:

ArtHG

Violation of Art 8 (1) ArtHG is penalised with imprisonment up to two years or fines up to 360 “Tagessätze” (day-fine).

§ 8 (2) provides for the same penalties as in section (1).

According to § 8 (3) all species, including its containers are seized. § 11 provides that forfeited species will be treated in accordance with Art 16 (3) of the Regulation 338/97 on the cost of the violator.

LEGISLATION AUTHORIZING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS:

1) Marking of species

ArtHG

§ 6 ArtHG provides that a Regulation on the marking of species has to be enacted in accordance with Regulation 338/97. The Arten-Kennzeichnungsverordnung (Regulation on the marking of species) as amended September 16, 1998, (federal law gazette 1998, p. 2059) provides for detailed marking procedures. Responsible authority for the marking is the “Vollzugsbehörde” (enforcement agency) Bundesministerium für Land- und Forstwirtschaft, Umwelt- und Wasserwirtschaft, BMLFUW (Federal Ministry for Land, Forestry, Environment and Water).

It regulates the marking of species and lists all methods of marking in accordance with Art. 36 EU Regulation 939/97, and the role of a central Database. All costs for marking must be borne by the owner of species.

2) Rights to control (access and examine)

§ 7 (1) ArtHG grants the right to access property and buildings, stop transports and conduct controls to the competent authorities (custom authorities) and individual experts.

3) Rights and duties to Information

§ 7 (2) ArtHG: Any owner of protected species has the obligation to inform the competent authorities (custom authorities) upon request i.e. on the origin of species. It also obliges the owner of species to provide access to all books and records.

4) Seizures, Confiscations and Forfeiture

ArtHG

§ 7 (4) ArtHG grants the right to seizure and confiscation to the competent authorities at the costs of the violator to secure forfeiture.

NÖ NSchG

§ 35 sec 4 of the NÖ NSchG 2000 authorizes state authorities to confiscate and declare forfeited species subject to

violations of NÖ NSchG provisions.

ZollR DG

§ 29 of the ZollR DG authorizes the customs authorities to assist all competent authorities in controlling and enforcing prohibitions and restrictions concerning possession, taking, or utilization of goods even if the customs authorities are not explicitly mandated by name in legislation to do so. Customs authorities can also independently conduct controls. Customs authorities have the right to seize and confiscate illegal materials (§ 29 subsec. 3 ZollR-DG). They can also conduct all other necessary measures in case of a suspected or actual violation of CITES or EU Regulation 338/97.

(During exercise of their powers in Austria's interior, Customs authorities have seized 3.300 live animals in the years 1998-2001 in Vienna, Burgenland and Niederösterreich. More species have been seized at Austria's borders.)

[NOTE: ADDITIONAL INFORMATION ON BORDER CONTROLS IN AUSTRIA WAS PROVIDED FOR THIS PROJECT BY OFFICIAL SOURCES, AT THE REQUEST OF, AND COLLATED BY, TRAFFIC-EUROPE. THAT INFORMATION IS FOUND IN THE "STATISTICAL INFORMATION AND FACTUAL SUMMARIES ON THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS IN AUSTRIA" FOUND ELSEWHERE IN THIS VOLUME. TRY]

5) Compounding Penalties/ Prosecution of Offenders

As a general matter, the application of penalties is not within the discretion of any administrative authority. Only in cases of very little guilt, may penalties be compounded penalties by the BMLFUW or the public prosecutor.

The Agencies do have authority with regard to prosecution under administrative law; whereas prosecution under penal law is exclusively the responsibility of the public prosecutor. However, when administrative penalties are appealed, these actions are also solely under the authority of the public prosecutor. In practice, administrative penalties are of far greater relevance than penal sanctions.

§ 12 ArtHG lists all competent authorities involved. As a general rule, the Bundesminister für wirtschaftliche Angelegenheiten (Federal Ministry of Economic Affairs), which is the Austrian CITES Management Authority, is competent for implementing the ArtHG, as well as EU Regulation 338/97 and EU Regulation 939/97. The competent authority with regard to the imposition of penal sanctions is the Bundesminister für Justiz (Ministry of Justice).

OTHER RELEVANT LEGISLATION

- 1) NaturschutzGesetze (Protection of the Environment Act) and Jagdgesetze (Hunting Laws). Since the introduction of the comprehensive ArtHG, the Naturschutzgesetze and Jagdgesetze are no longer of any relevance to CITES enforcement in Austria. Until then, most relevant legislation could be found in respective state legislation.
- 2) § 9 (4) ArtHG addresses the question of overlap as stated above. It provides that there is no violation of administrative law when the same act fulfills the actus reus of penal law.
- 3) The Austrian Constitution limits the use of governmental power similarly to other European Constitutions. In Practice, only excessive use of- but not the proper exercise of powers given to the competent authorities is restricted by the constitution.

ADDITIONAL COMMENTS:

The ArtHG will be revised in the months following the completion of this report. A draft will be submitted to the Ministry for the environment in July or August 2001. It will mainly contain stricter sanctions and penalties under

administrative and penal law. It will also focus on the further centralisation (at the federal level) of legislative and executive competencies on wildlife trade issues. It is also expected to provide that the federal customs authorities will be solely responsible for all enforcement measures in the future.

The ArtHG overrules individual state legislation where such legislation exists. Since enactment of the ArtHG, the legislative and executive competencies have all resided with the Federal authorities. Individual states never enacted implementing regulations on enforcement legislation governing protected species under international conventions.

In Austria, the permanent scientific authority is the Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft BMLFUW (Federal Ministry for Land, Forestry, Environment and Water).

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Enforcement of International Wildlife Trade Controls in Belgium

Erwin Francis

CITES STATUS:

Date of Ratification or Accession to CITES: Law of July 28, 1981 “containing the approval of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and of the annexes, done in Washington on March 3, 1973, and of the Convention’s Amendment, agreed upon in Bonn on June 22, 1979” authorised ratification of the Convention, which happened on 3 October, 1983. The Convention went into effect as to Belgium on 1 January, 1984

Acceptance of Amendments:

Bonn Amendment: As above (amendment already in force.)

Gabarone Amendment: 30 July, 1985

CITES reservations currently in force: Only those currently shared with 12 other EU countries, e.g. –

Vulpes vulpes griffithi; Vulpes vulpes montana; Vulpes vulpes pusilla; Mustela altaica; Mustela erminea ferghanae; Mustela kathiah; Mustela sibirica

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT

(1) The law of July 28, 1981 containing the approval of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and of the annexes, done in Washington on March 3, 1973, and of the Convention’s Amendment, agreed upon in Bonn on June 22, 1979.

This law implements the CITES-Convention into the Belgian legislation. It was only published in the Belgian National Gazette (Moniteur) on December 30, 1983 and came into force on January 10, 1984. This is the basic law as to CITES legislation in Belgium, summarised (per article) as follows:

Article 1: Implements the CITES-Convention into the Belgian legal system.

Article 2: Orders the King (= the Government) to take the measures needed for further implementation of the Convention.

Article 3: Appoints the Management Authority according to article IX of the Convention. That Authority is the Ministry of Agriculture, the veterinarian service for animal specimens and the service for the protection of plants for the plant specimens

Article 4: States that it is prohibited to possess, possess for sale, to offer for sale or to buy readily identifiable, living or dead specimens mentioned in annex 1 of the Convention, except the derogations allowed by the King.

Article 5: Qualifies and penalises the offences. Whoever acts in violation of the Convention or of the measures taken in execution thereof to import, export, re-export, or introduce-from-the-sea specimens enumerated in the annexes I, II or III of the Convention, or infringes upon the article 4 of this law, is punished to an imprisonment of 15 days until 3 months and/or to a fine of 1.000 x 200 BEF up to 100.000 x 200 BEF (= ± 5.000 EURO – 500.000 EURO).

Article 6: In case of violation of article 5, the specimens must be either returned to the State of export (at the latter’s expenses), or seized and detained or, if necessary, slaughtered or destroyed. If possible, the State of export and

eventually the Scientific Authority or the Convention Secretariat should be consulted. In case of conviction, the court will confiscate any specimens that were not returned or destroyed and requires the violator to pay all expenses not ultimately paid by the State of export.

Article 7: Appoints the officers and officials competent to undertake CITES enforcement activities. All police agents, customs agents, engineers and personnel of the Administration of Waters and Forests, engineers-controllers and technical assistants of the Administration of Horticulture and Agriculture, engineers and veterinarian inspectors from the Administration of Veterinarian Inspection, veterinarians of the control services, engineers and controllers of the Service Inspection of raw material from the Administration of the Economical Services, inspectors and controllers of foodstuffs, inspectors and controllers of the General Economical Inspection and other agents appointed by the Minister of Agriculture.

The reports drawn by those agents and officers serve as *prima facie* evidence of the facts they have observed and registered (that is, they are presumed true, until sufficient contrary evidence is given.)

Authorised officers (as listed above) are also empowered to take samples and have them examined in approved laboratories. While performing their functions, they have free access to factories, shops, depots, offices, transportation means, industrial sites and elevation and breeding premises, auctions, markets, mines, refrigeration installations, stock yards, stations and companies in open air. They also have a power of access to inhabited places, however this power is limited, and they are only allowed to access such places between 5:00 a.m. and 9:00 p.m., and must obtain prior authorisation from a “police-court” judge. Similar requirements apply where the officers intend to visit public premises outside of the hours for public visitation. Finally, in collecting information needed for the exercise of their function, and evaluating it, they may call upon the help of experts chosen from a list established by the Ministry of Agriculture.

(2) The Royal decree of December 20, 1983 containing the implementation of the Convention on International Trade in Endangered species of Wild Fauna and Flora.

This decree further implements the CITES-regulations in the Belgian legal system. It was published in the National Gazette (Moniteur) on December 30, 1983 and came into force on January 1, 1984 (technically before the above-mentioned law).

The decree relates to the possession (chapter I), the transport and commerce (chapter II) and the import in the European Union, the export, the re-export and the transit (chapter III) of specimens. It reproduces, to a large extent, the dispositions set out by the Convention and the European regulation nr. 3626/82 enacted by the Counsel on December 3, 1982.

Chapter IV (final dispositions) states that:

- The Minister of Agriculture must establish a Scientific Authority, composed of maximum 15 specialised personalities, in order to give advice in all cases mentioned in this decree, concerning all problems related to the implementation of the Convention which will be presented by the Minister of Agriculture or by the implied service. The Authority can also make suggestions relating to the Convention and its application.
- All violations on the decree are punished according to the dispositions of the articles 5 and 6 of the law of July 28, 1981 (see above) (article 30 of the decree).

(3) The Royal decree of April 19, 1985 allowing derogations in pursuance of article 4 of the law of July 28, 1981 containing the approval of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and of the annexes.

This decree specifies the parameters of derogations to the general prohibition mentioned in article 4 of the law of July 28, 1981 (see above) which apply to specimens that were born or bred in captivity. It was published in the National Gazette on May 29, 1985 and came into force retroactively, as from January 1, 1984.

(4) The Minister's decree of July 31, 1989 appointing public officers in pursuance of article 7 of the law of July 28, 1981 containing the approval of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and of the annexes, done in Washington on March 3, 1973, and of the Convention's Amendment, agreed upon in Bonn on June 22, 1979.

This decree adds the controllers, the inspectors and the engineers of the Service for Sea fishing at the Administration of the economical services to the list of officers and officials competent to undertake CITES enforcement activities (article 7, law of July 28, 1981 – see above). It was published in the National Gazette (Moniteur) on August 23, 1989 and came into force on the same day.

(5) The Minister's decree of April 18, 1990 concerning the inventory of the stocks of the African elephant's ivory.

This decree provides a model for the inventory by which African elephants ivory stocks were to be registered. Inventory provisions do not apply to worked ivory in the form of (1) antiques, (2) music instruments and (3) furniture or objects in which ivory is not the primary component. It was published on May 4, 1990 and became effective on the same day.

(6) The Royal decree of November 14, 1993 on the protection of Guinea pigs.

This decree regulates the possession and the use of animals as “Guinea pigs”. It prohibits animal testing that uses animals listed in Appendix I of the Convention, and/or in Annex A of E.U. Council Regulation nr. 338/97 (December 9, 1996.) It includes an exception for tests that (i) comply with the dispositions of the above mentioned regulation and (ii) *either* are directed at goals which further the preservation of the species involved *or* serve biomedical purposes of essential importance (the latter is applicable only when the concerned species appears to be the only one fit for those purposes.)

Article 22 states that violations are punished according to the law, meaning the law of August 14, 1986 concerning the protection and the well being of animals. Article 35 of this law provides for an imprisonment from one month until 3 months and/or a fine of 36 x 200 BEF until 1.000 x 200 BEF (= ± 180 EURO – 5.000 EURO).

This decree was published on January 5, 1994 and became effective on the same day.

(7) The Law of January 20, 1999 for the protection of the marine environment in the sea areas under Belgian jurisdiction.

This law aims at the preservation of the unique character, the biodiversity and the unspoiled nature of the marine environment. It enacts measures to protect that environment and to repair damage to it and alleviate disruption.

According to article 10 (v), the King shall establish a list of protected species in the sea areas. For the wild living populations of those species and for the derived specimens, a system of strict protection applies, including a prohibition on possession and transportation of specimens of listed species. The law includes specific exceptions for (a) accidentally captured, wounded or dead sea mammals, (b) situations described in the law of July 28, 1981 and the E.U. regulation nr. 338/97.

Violations of article 10 are punished with a fine of between 500 x 200 BEF to 100.000 x 200 BEF (± 2.500 EURO – 500.000 EURO). In case of recidivism or when the violations take place between sundown and sunset, the punishment is doubled.

This law was published on March 12, 1999 and became effective on March 22, 1999.

(8) The Royal decree of May 3, 1999, containing the statute of the Veterinarian Services.

This decree states that:

Article 2: the general inspections conducted by Veterinarian Services (Ministry of Agriculture) must also address the implementation of the law of July 28, 1981 (see above).

Article 3 § 2: the Minister of Agriculture can appoint, at the approved border-control posts, veterinarians in order to control the compliance with the regulations set out in the Convention.

This decree was published on September 25, 1999 and became effective on November 1, 1999.

(9) The Royal decree of July 18, 1977 relating to co-ordination of the general dispositions concerning customs and excises (published September 21, 1977, effective October 1, 1977), **confirmed by the law of July 6, 1978 concerning customs and excises** (published August 12, 1978, effective August 22, 1978).

This law contains a general regulation on custom and excise taxes. It also states the offences, the punishments and the powers of customs officers to undertake enforcement activities.

(10) The law of August 14, 1986 concerning the protection and the well being of animals (published December 3, 1986, effective December 1, 1987)

This law contains a set of measures, prohibitions and penalties in the field of the protection of the well being of animals in general.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

A. Law of July 28, 1981

- (i) It is prohibited to export and/or to re-export specimens mentioned in the annexes I, II or III of the Convention, when such export or re-export is done in violation of the Convention or of the measures taken in execution thereof (Article 5 of the law of July 28, 1981).
- (ii) It is prohibited to import and/or introduce from the sea specimens mentioned in the annexes I, II or III of the Convention, when such export or re-export is done in violation of the Convention or of the measures taken in execution thereof (Article 5 of the law of July 28, 1981).
- (iii) It is prohibited to possess, to possess for sale, to offer for sale or to buy readily identifiable, living or dead specimens mentioned in annex 1 of the Convention, except the derogations allowed by the King (Article 4 and 5 of the law of July 28, 1981).

According to these legal terms, the possession (eventually for sale), the offer for sale or the purchase is only prohibited for specimens mentioned in Annex I and not for those enumerated in Annex II and III. For the possession of Annex II and III specimens, it is possible (but rarely done) to apply article 224 of the Royal decree of July 18, 1977, confirmed by the law of July 6, 1978 concerning customs and excises (see above). That article sanctions the circulation of merchandise not accompanied by the required documents and of merchandise of which it can be established that it was not declared during import, export, transit or transport.

B. Royal decree of December 20, 1983

Further, article 30 of the Royal decree of December 20, 1983 containing the implementation of the Convention on International Trade in Endangered species of Wild Fauna and Flora states that all violations on the decree are punished according to the dispositions of the articles 5 and 6 of the law of July 28, 1981 (see above).

This is an example of bad criminal legislation. Although the law of July 28, 1981 clearly specifies the offences, the Royal decree of December 20, 1983 states that every non-compliance with its numerous regulations is an offence.

The latter disposition requires a short overview of the content of the above-mentioned decree.

Chapter I. Possession

Art. 2: Everybody who possesses living animal Annex I specimens or parts or products thereof at the time of the coming into force of the law, except as to specimens that are personal possessions, must draw an inventory and send it to the Ministry of Agriculture.

Art. 3: In general – and if some conditions have been fulfilled – people will be permitted to keep the Annex I specimens they possessed at the time the law (or its modifications) came into force.

Art. 4: Where changes in the specimen population or other events occur leading to modification of the Annexes, inventories must be adjusted or added to reflect these changes.

Art. 5: If the conditions set out in the previous articles have been met and if the applicant makes a plausible showing that he possessed the specimen at the time the law came into force, the Ministry of Agriculture will provide him with a certificate for possession of the specimen, in accordance with regulation nr. 3418/83.

Art. 6: The Minister of Agriculture can authorise exceptions relating to the possession of other Annex I specimens (which were added after the law entered into force), so long as certain conditions are fulfilled.

Art. 7: The Annex I specimens that were born or bred in captivity, or artificially propagated, and that were obtained after the law entered into force, shall be considered as Annex II specimens; and their owner need not obtain any exception, so long as he meets certain conditions.

Art. 8: The possession of Annex I plants for non-commercial purposes or as part of an approved horticulture operation, is specifically permitted.

Chapter II. Transport and commerce

Art. 9: This provision specifically requires compliance with regulation nr. 3418/83, as to any transportation specimens within the E.U. In addition, where the transportation involves Annex I and CI specimens, an approval of the Ministry of Agriculture is required.

Art. 9bis: It is prohibited to exhibit for commercial purposes, to sell, to possess for sale or to offer for sale Annex C1 specimens except (i) specimens covered by a certificate delivered according to art. 22 of the regulation nr. 3418/83; and (ii) specimens (as indicated by the Minister of Agriculture) that were born in captivity or artificially propagated.

Art. 10: Every person who, for commercial purposes, imports, exports, re-exports, introduces from the sea, offers for sale, sells or buys specimens falling under the Convention, must maintain a register of those transactions.

Art. 11: A specific exception is provided, for certain parts and products of specimens and for plant specimens from approved horticulture operations.

Chapter III: the import in the European Union, the export, the re-export and the transit

Art. 12: In case of any import into the E.U., or any export, re-export and transit of specimens of the annexes I, II, III, C1 and C.2 from the EU, the documents mentioned in the regulations nr. 3626/82 and nr. 3418/83 must be presented.

Art. 13: Contains the conditions according to which import licenses are delivered.

Art. 14: According to the nature of the specimens, the Minister of Agriculture can specify the customs offices in which such documents and specimens must be presented, and fix the hours of presentation.

Art. 15: The person concerned must notify the customs office at least 48 hours before the arrival of the specimens. The Ministry of Agriculture has the option of ordering or conducting an inspection or testing of the shipment. The specimens must be transported directly to the place of destination mentioned on the import license.

Art. 16: Contains the conditions under which export licenses and re-export certificates may be issued.

Art. 17: The person concerned must notify the customs office at least 48 hours before departure of the specimens. The Ministry of Agriculture has the option of ordering or conducting an inspection or testing the shipment.

Art. 18: For the animal specimens mentioned in article 7, the import license can be issued only if the applicant presents, along with his application, appropriate certification from the Authority of the State of export, showing that the specimens were born or bred in captivity. With regard to the export of such specimens, an export license can be issued, if the person had reported the birth of the specimen.

Art. 19: For plant specimens mentioned in article 7, no license for import or export is required when they are accompanied by appropriate documentation showing they were artificially propagated.

Art. 20: The specimens mentioned in chapter I, art. 2-5, can under certain conditions be exported, re-exported or imported on the basis of article 5.

Art. 21: These provisions do not apply to personal possessions, or are included in a shipment of such possessions, if the limitations mentioned in art. VII,3 of the Convention are met.

Art. 22: The Ministry of Agriculture can, under certain conditions, grant exemptions for the import, export or re-export of specimens belonging to a zoo, a circus, a menagerie or an exhibition.

Art. 23: The concerned persons return any unused licenses and certificates within 15 days of their expiration date. The Ministry of Agriculture can also revoke licenses or certificates documents if required so by the Convention.

Art. 24: In order to be accepted by the Ministry, foreign licenses and certificates must be in the form set out under the Convention. The Ministry can demand a certified translation, before issuing the requested license or certificate.

Art. 25: The Minister of Agriculture must establish a Scientific Authority, composed of maximum 15 specially identified persons, to advise in all cases mentioned in this decree, concerning all problems related to the implementation of the Convention presented by the Minister of Agriculture or by authorised officers acting under this law service. The Authority can also make suggestions relating to the Convention and its application.

Arts. 26 - 29 (..)

Art. 30: All violations on the decree are punished according to the dispositions of the articles 5 and 6 of the law of July 28, 1981 (see above).

C. Royal decree of November 14, 1993

Article 22 of the Royal decree of November 14, 1993 on the protection of Guinea pigs, as mentioned above, refers to the law of August 14, 1986 concerning the protection and the well being of animals. Article 20 § 1 states that every animal test that does not comply with the conditions set out in this chapter, is prohibited. Article 20 § 3 states that the

King can forbid certain animal tests he decides upon. Under Article 35 of the latter law those engaging in tests in violation of articles 20, 24 and 30 are liable for penalties. The Royal decree of November 14, 1993 is a further implementation of that law.

Articles 12 and 22 of this decree, combined with article 35 of law of August 14, 1986, penalise those performing animal testing involving Appendix I/Annex A species, except if

- (i) the tests comply with the dispositions of this regulation; and
- (ii) the objective of the test is EITHER
 - research for the preservation of the species involved or
 - biomedical purposes of essential importance, for which the concerned species appears to be the only fit subject for those purposes.

D. Standard of Proof

In order to obtain a conviction of the alleged violator of any of the provisions described above, a standard level of criminal proof is required, as follows:

- Proof of the specific facts demonstrating that each required element of the offence was actually effected by the suspected person(s), and,
- Proof of the requisite state of mind of the suspected person(s) -- in this case at least negligence or recklessness. No general or specific intention is required. In principle, nobody can hide behind the allegation that he did not know the specific legislation, since Belgian law is based on the requirement that everybody must know the law (*Nemo censetur ignorare legem*). Only when somebody can plausibly demonstrate that it was impossible for him to be aware of or comply with the legal obligation involved may he be acquitted, but even then such impossibility must be shown to have been total, unforeseeable and invincible (*i.e.*, a *force majeure* – a principle that is applied very rarely).

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

The only laws that can be used to obtain punishment for persons, who violate the CITES-Convention, are:

- The Law of July 28, 1981 containing the approval of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and of the annexes, done in Washington on March 3, 1973, and of the Convention's Amendment, agreed upon in Bonn on June 22, 1979 (see above).

Article 5 of that law states that the person who – in violation of the Convention or of the measures taken in execution thereof – imports, exports, re-exports, or introduces from the sea specimens enumerated in the annexes I, II or III of the Convention or who possesses, possesses for sale, offers for sale or buys readily identifiable, living or dead specimens mentioned in annex 1 of the Convention (except the derogations allowed by the King) is subject to imprisonment for 15 days to 3 months, and/or a fine of 1.000 x 200 BEF up to 100.000 x 200 BEF (= ± 5.000 EURO – 500.000 EURO).

In any case involving a violation of article 5, government officials, as mentioned in article 7, shall either return the specimens to the State of export (at the latter's expenses), or seize the specimens and, if necessary, slaughter or destroy them.

In the case of living specimens that are seized and not slaughtered or destroyed, they must be impounded by the Management Authority (cfr. Art. 3). After consultation with the State of export and either the Scientific Authority or the CITES Secretariat, the Management Authority shall decide whether to (i) return the specimens to the State of export at the latter's expense, or (ii) send them to a

detention facility or to any other place that meet the standards of the Convention with regard to the care for living specimens; or (iii) have the animals slaughtered or destroyed.

In the case of non-living specimens, the Management Authority shall hold such species or, if necessary, have them destroyed.

Upon conviction, the court shall order confiscation of any specimens that were not returned or destroyed. In addition, it shall require the violator to pay all expenses of detention, repatriation, or destruction that eventually were incurred, except those paid by the State of export, including the costs of professional care and services, transportation to the detention facilities, slaughtering/destruction of the species, and for a reasonable per day fee for the period of detention.

- The law of August 14, 1986 concerning the protection and the well being of animals, applies penalties where
 - (a) Annex I animals are used as Guinea-pigs if the set out conditions are not respected (see above) and,
 - (b) the animals involved suffer harm, death or injury.

So, for example, the latter law penalises persons who:

- knowingly act in a way not foreseen by this law, and who by doing so intentionally causes the useless death, mutilation, injury or pain of an animal (art. 35, 1°),
- organise, collaborate in, participate in or bet on animal fights or shooting practices on animals (art. 35, 2°),
- willingly abandon an animal (art. 35, 3°),
- perform painful surgery or amputations without respecting the legal conditions (art. 35, 4°),
- ..

Since violations on the CITES-Convention (such as smuggling exotic animals) sometimes cause harm or death to animals (where, for example, animals are transported in deplorable circumstances), the law of August 14, 1986 can be used to obtain a supplementary citation.

The penalties, the possibilities for seizure and confiscation, the special investigation powers and the appointed government officials to report the violations foreseen in this law are much the same as those described in the law of July 28, 1981.

- The Royal decree of July 18, 1977 containing co-ordination of the general dispositions concerning customs and excises, confirmed by the law of July 6, 1978 concerning customs and excises.

Article 224 states: The dispositions mentioned in the articles 220, 221 and 222 apply to the traffic of merchandise transported without valid documents in the territory and, moreover, to the traffic of merchandise if it can be established in any possible way that the suspect has failed to make a required declaration relating to the import, export, transit or transport of such merchandise, except that, as for excise merchandise, only the penalties and fines foreseen by the specific laws will apply if there was no fraudulent import or export.

LEGISLATION AUTHORISING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS:

Article 7 of the law of July 28, 1981 appoints the officers and officials competent to undertake CITES enforcement activities. All police agents, customs agents, engineers and personnel of the Administration of Waters and Forests, engineers-controllers and technical assistants of the Administration of Horticulture and Agriculture, engineers and

veterinary inspectors from the Administration of Veterinary Inspection, veterinarians of the control services, engineers and controllers of the Service Inspection of raw material from the Administration of the Economical Services, inspectors and controllers of foodstuffs, inspectors and controllers of the General Economical Inspection and other agents appointed by the Minister of Agriculture.

The Minister's decree of July 31, 1989 (mentioned sub 3 above) adds the controllers, the inspectors and the engineers of the Service for Sea fishing at the Administration of the economical services to the above mentioned list of officers and officials competent to undertake CITES enforcement activities

The reports of these authorised agents and officers are taken as presumptive proof of the facts they have observed and registered, unless substantial evidence is offered to the contrary.

Authorised officers are entitled to take samples and have them examined in approved laboratories. While performing their functions, they have free access to factories, shops, depots, offices, transportation means, industrial sites, elevation and breeding facilities, auctions, markets, mines, refrigeration installations, stock yards, stations and companies in open air. However, they are permitted to enter inhabited places only between the hours of 5:00 a.m., and 9:00 p.m., and only if they have obtained authorisation from a judge from the police court. This authorisation is also a prerequisite where the officer wishes to enter premises which are not accessible for the public outside specified hours.

Authorised officers are specifically empowered to collect all information needed for the exercise of their function and to make useful findings thereon, with the help of experts chosen from a list established by the Ministry of Agriculture. Customs officers have the same powers according to the Royal decree of July 18, 1977 regarding co-ordination of the general dispositions concerning customs and excises, confirmed by the law of July 6, 1978 concerning customs and excises

OTHER RELEVANT LEGISLATION

A. Royal decree of July 18, 1977

The above mentioned Royal decree of July 18, 1977 regarding co-ordination of the general dispositions concerning customs and excises, confirmed by the law of July 6, 1978 concerning customs and excises, can be used in conjunction with CITES-violations (unlawful possession of Annex I specimens), or to sanction the result of CITES-violations where that result is not an offence as such (*e.g.*, unlawful possession of Annex II and III specimens, when the unlawfulness results from an illegal export).

The penalty for infringement upon article 224 is stated in article 220:

- imprisonment of 4 months to one year (8 months to 2 years in case of recidivism).
- Compulsory seizure and confiscation of the merchandise and vehicles involved
- a fine of ten times the eluded taxes (art. 221 and 222).

Customs officers are competent to report those offences, and they can visit private premises after having obtained a permit from the judge in the police court.

B. Belgian judicial system

There is no other relevant legislation which specifically applies in case of violation of the CITES-Convention, but it is useful to give some explanation about the general Belgian judicial system in order to put into perspective the above mentioned measures and penalties.

SOME HIGHLIGHTS OF THE BELGIAN CRIMINAL INVESTIGATING SYSTEM

A. GENERAL BACKGROUND

1. Belgium is a federal state in which three languages are spoken, namely Dutch (in the North), French (in the South) and German (in the South-East). In addition to the federal government, there are three regions (the Flemish region, the Walloon region and the bilingual region (Brussels, the Capital) and three communities (the Flemish community, the French community and the German-speaking community). The regions and the communities have partial legislative authority (e.g. concerning environment, town planning, education, bird protection, etc.). The department of justice and the police have remained federal authorities.

2. Belgium is divided into 27 judicial districts. In each district there is (among others) a court of first instance, subdivided in civil chambers, one or more juvenile chambers (called "the juvenile court") and criminal chambers (called "the correctional court", to be translated in English as the "criminal court"). The latter treats criminal cases, normally in public hearings. For smaller offences and for all traffic offences, there are also several police justices per judicial district.

In each court of first instance, there is a Public Prosecutor who is in charge of the detection and the prosecution of offences inside the district. He is assisted by assistant public prosecutors, who have the same authority as himself. The Office of Counsel for the Prosecution (being the Public Prosecutor with his assistant public prosecutors) is one and indivisible. The magistrates of the Counsel for the Prosecution are at the same time senior officers of the criminal police.

In each district there are also examining magistrates, being judges of the court of first instance who have been appointed examining magistrate by the King. They can only take action if requested by the Office of Counsel, or through a complaint by a citizen (called "civil party"). After being requested, they are legally held to open a judicial enquiry into the facts as described in the request or in the complaint. However, they are not allowed to investigate other facts than those included in the request or in the plaint. If, during the investigation, other, possibly linked facts, should come to light, then the examining magistrate has to report this to the Public Prosecutor's Office, who may make new requests.

The examining magistrate has to be requested whenever coercive measures have to be taken, such as a warrant, the tapping of a telephone line, a house-search, etc.

The Public Prosecutor or the police department does not in principle have the possibility to use coercive measures against persons or to infringe upon rights and liberties. Exceptions are seizure and the possibility to deprive persons of their freedom for a period of maximum 24 hours.

As soon as the examining magistrate has been instructed, he is fully in charge of the judicial investigation. When he judges the judicial investigation to be completed, he transmits it to the Public Prosecutor. The latter then either requests additional investigative action or he makes up a final requisition, after which the case is submitted to the council chamber. Under the law of March 12th, 1998 ("the law Franchimont") suspects and civil parties are also entitled to order certain investigative acts.

The council chamber is a subdivision of the criminal court, and judges whether or not the charges against the suspects are sufficient to support an action. If the charges are insufficient, the suspects are discharged. If not, they are referred to the criminal court. The decision of the council chamber puts an end to the judicial investigation.

In more simple cases, or cases that do not require the use of coercive measures, the Public Prosecutor can directly summon the suspect to appear before the criminal court, after having himself conducted or ordered an inquiry.

B. GENERAL POSSIBILITIES FOR SEIZURE AND FORFEITURE

1. Articles 42 (-1° and 2°) and 43 of the penal code provide for the compulsory forfeiture of goods that:
 - Form the object of a crime,
 - Were used or were intended to be used in the commission of a offence (when they are the property of the condemned person),
 - Are the result of an offence.

Articles 42 (-3°) and 43bis of the penal code provide for the facultative confiscation of capital gains which have been gained directly from the offence, on the goods and values that were substituted for them, and on income generated from the invested gains.

Article 43bis of the penal code determines that, whenever the objects cannot be found in the convict's assets, the judge shall estimate their value in money and confiscate the corresponding amount.

In principle, goods that belong to third parties cannot be confiscated.

2. Under article 35 of the code of criminal procedure, the Public Prosecutor has the authority to seize anything that seems fit for forfeiture (see above) and anything that might serve to bring to light the truth.

Under the current jurisprudence, it is not possible to seize by equivalent, in other words only goods that result directly from the offence can be seized, not the goods for which an illegal origin cannot be proven.

Although goods that belong to third parties cannot be seized, in the preliminary enquiry, it is not always clear who is suspect and who is not.

SPECIAL ISSUES RELATING TO CITES LEGISLATION

1. Normally, a house-search requires a warrant, delivered by the examining judge. In order to obtain such a warrant, the public prosecutor must hand over the whole inquiry to the examining judge who then has total charge of the entire investigation. The public prosecutor has no more liberty to dismiss the case or to settle, and after getting the file back from the examining judge when the investigation has terminated, he has to defer the case to court (counsel chambers, eventually followed by a public hearing) by drawing up a requisition. It is clear that such a procedure, which requires a lot of work, is only applied when strictly needed.

The law of July 28, 1981 however installs a special system for house-searches, allowing the public prosecutor to stay in charge of the case. Every policeman or appointed official can perform a house-search for which normally a search warrant from the examining magistrate is required, after merely having obtained a permit provided by the judge in the police court. Afterwards, all reports are sent to the public prosecutor who can decide whether to bring the case before a court, to propose a settlement or to dismiss the case.

2. Compared with the general possibilities of seizure and confiscation in criminal law, the regulation on this subject in the CITES-law is more elaborate and more specific, and gives more powers and possibilities to the legal authorities than they normally have. Such dispositions are required by the specific nature of CITES-legislation and the fact that such cases sometimes involve living animals, for whose well being urgent interventions or specific measures may be necessary.

3. Normally in general criminal law, only police officers have specific powers to intervene in criminal offences and to draw up reports that are considered to contain a truthful observation of the facts until proven otherwise. In the

CITES-law, also the appointed civil servants have those powers. This is equally a consequence of the specific and complicated nature of the CITES-regulations, which requires the intervention of specialists in the field of work.

ADDITIONAL COMMENTS:

The level of punishment is too low, particularly the maximum term of imprisonment (currently 3 months.) Regardless of statistics about the level of penalties actually imposed, the reason this should be changed is based on two more important consequences:

- (1) In Belgium, an offender can be arrested and held in detention by the examining magistrate only where the statute that has been violated requires a minimum imprisonment penalty of 1 year. Hence, CITES offenders cannot be detained at the time of their apprehension.
- (2) In general, imprisonment penalties are not executed for sentences below 6 months. As a result, even CITES offenders who are convicted and given an imprisonment penalty will not be imprisoned.

As a practical matter, the only real sanctions imposed on a convicted offender will be a (considerable) fine and confiscation of properties and merchandise. However, in this connection, it should be noted that confiscation can potentially be used to force the violator to forfeit all criminal proceeds generated by CITES violations (art. 42,3° Penal Code), but that according to actual legislation (to be modified shortly) those proceeds can not be seized if the link between the actual offences and those proceeds is not established (see above).

The Belgian legal authorities (public prosecutors, courts) give in general no priority to CITES-violations. This can be explained by different reasons, among which:

- The complexity of the regulation, which requires more than standard efforts to apply it,
- The fact that the Belgian legal authorities are understaffed,
- The low level of punishment and consequently the diminished powers to act promptly and/or severely.

Most CITES-violations are reported by customs, checking shipments. Those people are helped by experts from the Ministry of Agriculture in order to identify the specimens.

So the custom officers of the National Airport in Brussels reported 25 CITES-violations in 1996, 24 in 1997, 28 in 1998, 30 in 1999, 35 in 2000 and 37 in 2001 (until summer). There is no doubt that there would be more interceptions if more customs officers were engaged. On the other hand, customs in Antwerp (harbour) draw only very few reports concerning CITES-violations, due to the fact that they are largely understaffed and need to fulfil other priorities.

It has to be noted that a number of those reports concern small parcels, personal property or souvenirs (such as umbrellas made of cactus, caviar, handbags made of animal skin, etc...). Also many reports concern shipments in transit, which makes it unfeasible to identify the offenders, since they live abroad.

In recent years, only one case has been brought to court. In December 1997, a Dutchman, arriving in Brussels by plane, had smuggled in small bags, bottles and even tooth paste tubes a number of small exotic reptiles mentioned in annex II. Some animals had died during transport. Shortly after, customs received a copy of the report of their colleagues in Taiwan, where this person was apprehended while smuggling 303 protected animals. Also in Holland two parcels containing a large number of animals were seized. The person was condemned by the Brussels criminal court to an imprisonment of 3 months and a fine of 400.000 BEF (\pm 10.000 EURO). The charges were infringement upon the law of July 28, 1981 and the law of August 14, 1986. According to Belgian legal practices (art. 65 Penal Code), when a person is convicted for more than one offence and the offences were committed with the same intention, only one punishment is pronounced, being the penalty that corresponds with the highest indictment.

In all the other cases, the seized specimens were or are to be destroyed or confined to museums at the request of the public prosecutor (who is, as mentioned before, in charge of every criminal investigation not specifically confined to an examining judge).

(Supporting documents and legislation (in Dutch or French) available upon request of the Author or of the IUCN-ELC.)

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Enforcement of International Wildlife Trade Controls in Denmark

Poul Hvilsted & Malene Buchholt

CITES STATUS:

Date of Ratification or Accession to CITES: 26 July 1977.

Accession to Amendment:

- ◆ “Bonn Amendment” of 22 June 1979: Registration of acceptance 25 February, 1981; effective 13 April 1987
- ◆ “Garborone Amendment” of 30 April 1983: Registration of acceptance: 10 January 1989.

Since 1984 the Convention has been implemented into the EC by EC Regulation (EEC) No 3626/82 of 3 December 1982 – replaced by Council Regulation (EC) No 338/97 of 9 December 1996 (Hereafter “the EC Regulation”).

CITES reservations currently in force: Denmark has made only the reservations from the Convention which are shared by 13 EU countries (excluding Austria and Ireland), e.g. –

Vulpes vulpes griffithi; Vulpes vulpes montana; Vulpes vulpes pusilla; Mustela altaica; Mustela erminea ferghanae; Mustela kathiah; Mustela sibirica

Denmark has made no reservation from the Council Regulation.

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

CITES was accessed into Danish Law on 24 October 1977. The following legislation (i.e. laws, regulations etc.) has been reviewed for this consultancy:

Naturbeskyttelsesloven (“Nature Protection Act”) – as to Consolidation Act no. 835 of 1 November 1997

This Act regulates the general protection of nature, i.e. flora, animals, forest etc. Chapter 5, Section 30 authorises the Danish Ministry of Environment to issue specific regulations to protect the use of wild fauna and flora, including regulations on conservation and branding of these species. The Ministry is further entitled to provide regulations on control/prohibition of import of certain species of wild fauna and to proscribe that authorisation must be given before any use is made of wild fauna and flora.

Bekendtgørelse om beskyttelse af vilde dyr og planter ved kontrol af handlen hermed (“Regulation on protection of wild fauna and flora by regulating trade therein”) no. 499 of 27 May 1997

This regulation has been authorised according to the “Act of nature protection” Section 30. The regulation enforces the EC Regulation (no. 338/1997) on the protection of species of wild fauna and flora by regulating trade therein.³⁶

Jagt og vildtforvaltningslov (“Act of hunting and administration of game”) as to consolidation Act no. 114 of 28 January 1997

This Act governs the protection of game by regulation of hunting and the general treatment of game. Section 10 of the Act provides regulations on conservation and management of game. The Minister of Environment is entitled to provide

³⁶ (AFTER THE FINAL SUBMISSION OF THIS REPORT, REGULATION NO. 499/1997, WAS REPLACED BY "BEKENDTGØRELSE OM BESKYTTELSE AF VILDE DYR OG PLANTER VED KONTROL AF HANDLEN HERMED (WASHINGTONKONVENTIONEN/CITES)" REGULATION NO. 84 OF 23. JANUARY 2002.)

certain regulations on authorisation. Such regulations have thus been given by regulation on commercial taxidermy, trophy and skin preparation (preservation) relating to of game (see below).

Bekendtgørelse om erhvervsmæssig konservering af visse dyrearter (“Regulation on commercial taxidermy, trophy and skin preparation (preservation) of certain game”) no. 925 of 8 November 1994

According to the “Act of hunting and administration of game” Section 10 this regulation provides further regulations on the conservation and management of game as regulated by the CITES Convention (EC Regulation 338/1997). The commercial taxidermy, trophy and skin preparation (preservation) relating to game requires an authorisation which is issued by the Danish “Skov- og Naturstyrelse” (“Danish Forest and Nature Agency”).

Dyreværnslov (“Animal Protection Act”) no. 386 of 6 June 1991

This Act provides a general protection of all animals from suffering, pain, fear, harm or significant nuisance.

Dyreopdrætslov (“Animal Breeding Act”) no. 401 of 10 June 1997

This Act regulates the general breeding of animals in order to protect animals from pain, fear, harm etc.

Dyreforsøgslov (“Act on Animal Experiments”) as to Consolidation Act no. 726 of 9 September 1993)

This Act provides restrictions on animal experiments if the animal has a vertebra. The Act thus protects the animal from pain, suffering etc.

Lov om udførsel og indførsel af levende dyr m.v. (“Act on import and export of live animals etc.”) no. 61 of 23 March 1993

This Act authorises the Minister of Foods to provide regulations on import or export of live animals, which may harm the Danish Nature.

Retsplejeloven (“Administration of Justice Act”) as to Consolidations Act no. 857 of 12 September 2000)

Chapter 61 of this Act provides regulations on criminal justice. Thus provisions on prosecution etc. are given. The Act provides the violator due process in order to respect the civil rights of the violator.

Straffeloven (“Criminal Code”) as to Consolidation Act no. 849 of 6 September 2000

This Act provides regulation, which applies if a certain act is considered a criminal act according to other legislation – e.g. legislation on wildlife trade etc. – or according to the Criminal Code itself. The Act thus specifies the conditions under which punishment may be imposed. Furthermore the Act specifies the different types of penalties, which might be used in various situations. Though the Act does not specify size/character of the penalty as the Court in every case will fix the exact sentence to be served according to the Criminal Code, Chapter 10 (which provides the general provisions). Finally the Act gives provisions on various other legal consequences of a criminal act.

Bekendtgørelse om udenretlig vedtagelse af konfiskation (“Regulation on out-of-court confiscation”) no. 850 of 27 October 1993

According to the Administration of Justice Act, this regulation states that confiscation might take place out-of-court. Thus, police officers are enabled to confiscate fauna or flora that have been illegally traded in violation of the EC Regulation.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

According to the legislation listed above, the following violations are identified:

Illegal export/re-export of specimens of species (from EC to third countries)

According to EC Regulation, Article 5, the export or re-export of the species (as listed in the regulation, annex A-D) is subject to a prior control and certain procedures – except when undertaken in compliance with these requirements, export or re-export is considered illegal according to the Regulation, Article 16.1 a.

An export permit or re-export certificate must be obtained from the local management authority of the “exporting member state” before export takes place. This applies to species listed in Annex A-C of the EC Regulation. Without the necessary document, the export is considered a violation of the Regulation – though certain *modifications* apply as to species which have been acquired before the EC regulation was implemented. Furthermore it appears from Article 7 of the Regulation, that under certain conditions the restrictions listed in Article 5 will not apply to: 1) Specimens born and bred in captivity or artificially propagated, 2) specimens in transit, 3) personal and household effects, and 4) certain activities involving scientific institutions. Reference is made to Article 7 of the EC Regulation.

In Denmark the “*local management authority*” will be “Skov- og Naturstyrelsen” (“Danish Forest and Nature Agency”) when fauna and non-living flora is exported/imported. When live flora is the subject to export/import “Plantedirektoratet” (“Danish Plant Directorate”) is the management authority.

The export permit will be issued under *certain conditions*. E.g. the export of species, listed in Annex A, will only be permitted if the species have been legally acquired, if the treatment of the species will not have a harmful effect on the conservation status of the species, and if the management authority has ensured that the transport, etc., of the species will occur in a way that minimises the risk of injury, damage to health or cruel treatment of the species. The conditions under which the permit will be issued, however, vary depending on whether the species is listed in Annex A, B, C or D. Reference is further made to the EC Regulation, Article 5.

Illegal import/introduction-from-the-sea of specimens of species (into EU from third countries)

According to EC Regulation, Article 4, also the import and introduction-from-the-sea of specimen of species will be illegal if certain procedures have not been followed.

Prior to the import (or introduction-from-the-sea) of specimens of the species listed in Annex A or B, an import permit must be obtained from the Danish management authority (“Skov- og Naturstyrelsen” or “Plantedirektoratet” – see above). If such permit has not been obtained the import will be considered a violation of the EC Regulation.

The import permit is issued under certain *conditions*. Reference is made to Article 4 of the EC Regulation. For example, the import of specimens of species listed in Annex A must not have a harmful effect on the conservation status of the species. Furthermore, the import has to be for one of the purposes listed in Article 8.3 e), f) or g), and which are not detrimental to the survival of the species concerned. Finally, the specimens must have been legally acquired by the exporter. Written documentation as to this point (export permit from the management authority of the export country) must be presented.

In the case of *introduction from the sea*, it will be a supplementary condition that any live specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment. (Article 4.1.f)

Derogations from above mentioned requirements are listed in Articles 4.5 and 7. Article 4.5 states that the conditions as to obtaining an import permit need not be fulfilled if the species have been legally introduced to the EC or if the species have been acquired more than 50 years ago. Derogations in Article 7 provide that the restrictions listed in Article 4 will not apply to: 1) Specimens born and bred in captivity or artificially propagated, 2) specimens in transit, 3) specimens which are personal and household effects, or 4) specimens being imported by certain scientific institutions). Reference is made to Article 7 of the EC Regulation. (The derogations in Article 7 are subject to definition and interpretation contained in Commission Regulation (EC) 1808/2001 (30 August 2001), at article 27.)

The import (or introduction-from-the-sea) of specimens of the species listed in Annex C or D will only be legal if an import notification is presented at the border customs prior to the import. In case of export of specimens of species

listed in Annex C, documentation for the export also needs to be enclosed in order to prove that the export has been legal according to the local legislation/Convention of the exporting state. Reference is made to Article 4.3.

The Danish Regulation on protection of wild fauna and flora (no. 499/1997)³⁷ gives certain provisions on import³⁸ of fauna or flora from non-EC countries. The Regulations states that import of live *fauna* into Denmark has to pass through customs at either Copenhagen Harbour or Copenhagen Airport. Notice of the import of live animal must be given 12 noon on the weekday before the day of arrival. Reference is made to the Regulation Section 3.1³⁹

Import of live *flora* has to pass through customs at either Frederikshavn, Esbjerg, Copenhagen Harbour, , Copenhagen Airport, Aarhus, Billund Airport or Odense. The “Plantedirektoratet” must be given 24 hours notice, when the import of flora is for commercial use. Reference is made to the Regulation Section 5.

If the above mentioned import regulations have not been observed, the import will be considered a violation of the Danish Regulation. According to the Regulation Section 7⁴⁰ such violation will be subject to public penalty.

If the item being imported is a “product” that is only partly made up of fauna/flora components – or a part of the flora/fauna, it may pass through any of the Danish customs offices.

Finally attention is drawn to the Danish consolidation Act no. 61/1988 on import and export of live animals etc. (“lov om udførsel og indførsel af levende dyr m.v.”). According to this Act, Section 3.3, the Minister of Foodstuffs may issue provisions on import or export of animals, which may harm the Danish agriculture, fishing or other “nutritious business”. This power, however, has not been used yet.

Illegal possession etc. of specimen (internal in the EU)

According to the EC Regulation, Article 8.1, “*The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale* of specimens of the species listed in Annex A shall be prohibited.” This prohibition is unique as such restriction does not appear from the CITES Convention.

Any act contrary to this provision is considered a violation to the EC Regulation according to Article 16.1.j). However *exemptions* might be granted under certain circumstances by the management authority. Reference is made to Article 8.3.

Unless the species have been imported according to the EC Regulations the above prohibition also applies to the species listed in Annex B. (Article 8.5). However, there is no restrictions on the species listed in Annex C and D.

According to Article 8.2 of the EC Regulation, the member states are entitled to prohibit *the holding* of parts of specimens, in particular live animals of the species listed in Annex A. Such prohibitions have not been given in Denmark.

However, Danish legislation governs other restrictions (however, not given according to the CITES convention) on *holding* of animals. Thus the Danish “Dyreværnslov” (“Act on Animal Protection”) no. 386 of 6 June 1991 gives all animals protection from pain, suffering, fear, harm or significant nuisance. Article 10 of the Act states, that captivity of animals may be prohibited by the Minister of Defence. Such provision e.g. has been issued on captivity of certain dogs by Regulation no. 748/1991.

Furthermore the Danish “Dyreopdrætslov” (“Animal Breeding Act”) no. 401 of 10 June 1997, regulates the breeding of animal. Thus animals, which usually are not bred in Denmark, must be bred in such way that the natural behaviour of

³⁷ (NOW REPLACED BY REGULATION NO. 84/2002.)

³⁸ And Regulation no. 84/2002 now also on export of fauna and flora. The export can pass any border in Denmark.

³⁹ (SECTIONS 4 AND 5 IN REGULATION NO. 84/2002.)

the animal is considered. The breed of such animals requires an authorisation, according to Section 1 of the Act. The authorisation is issued by Fødevarerdirektoratet (“The Food Department”). The authorisation will not be issued if the breeding of the animals is considered to obstruct the natural behaviour of the animal.

According to the EC Regulation, Article 9.1, *movement* within the EC of live specimens, listed in Annex A, has to be authorised by the management authority of the state in which the species is positioned prior to the movement. Otherwise the movement will be considered a violation of the Regulation. The authorisation is issued under certain conditions – e.g., the intended accommodation at the place of destination is adequately equipped to conserve and care for it properly. Reference is further made to the EC Regulation, Article 9.2.

The Danish Regulation on *commercial taxidermy, trophy and skin preparation (preservation)* of certain game (no. 925 of 8 November 1994) provides regulations on certain activities with regard to game. Thus – according to Section 4 - conservators have to be authorised to engage in these activities relating to species listed in the CITES convention/EC Regulation (amongst other conventions/regulations – i.e. the Bern Convention). If such authorisation has not been issued to the conservator any taxidermy, trophy preparation or skin preparation (preservation) activities will be considered a violation of the Regulation, which might be punished according to Section 19 of the Regulation. “Skov- og Naturstyrelsen” is the competent authority to issue the authorisation. Authorisation will only be issued under certain conditions – the person in charge of the taxidermy or other preparation or preservation work e.g. needs a zoological, conservator education. An authorisation will be denied or withdrawn if the person in charge is owing money to public authorities.

According to the Regulation Section 9 certain species cannot be stuffed, skinned for use or as a trophy, or otherwise preserved as a game trophy at all. This e.g. applies to the species listed in the EC Regulation, Annex B.I. Neither can species be considered under this regulation, if the fauna has been illegally damaged or killed – reference is made to Section 10 of the Regulation.

In order to enable “Skov- og Naturstyrelsen” to control the commercial activities relating to hunting trophies, the conservator must keep minutes of these activities, to the extent undertaken pursuant to Chapter 4 of the Regulation. “Skov- og Naturstyrelsen” may require to go through the minutes. If the conservator does not fulfil these requirements this violation may be fined according to Section 19 of the Regulation.

Finally, Danish legislation prohibits certain experiments with animals. The Danish ”Dyreforsøgslov” (“Act on Animal Experiments”) dictates that experiments with vertebrate animals may take place only with permission from the “Dyreforsøgstilsynet” (Animal Experimentation Inspection) – if the experiments may cause pain, suffering, fear or harm to the animal. Permission will be issued only if the experiment is intended for the purpose of medical health research, education and similar purposes. If permitted, the experiment must be carried out in accordance with certain proscriptions. Any experiment, which takes place without permission, or any experiment in contravention of the proscriptions, is considered a violation of the Act. The penalty of such violation may be a fine or even prison according to Section 16 of the Act.

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

Council Regulation (EC) no. 338/1997 according to the Danish Regulation no. 499/1997⁴¹ on Protection of wild fauna and flora by regulating trade therein

According to Article 16 of the EC Regulation the member states shall take appropriate measures to ensure the imposition of sanctions for the infringements of the Regulation. Thus Denmark has provided such provisions by Regulation no. 499/1999 § 7.⁴²

⁴⁰ Now replaced by Regulation no. 84/2002, Section 10.

⁴¹ (NOW REPLACED BY REGULATION NO. 84/2002.)

⁴² (SEE ARTICLE 10 OF REGULATION NO. 84/2002.)

According to Article 16.1 of the EC Regulation at least the following infringements is considered at violation of the Regulation:

1. Import or (re-)export without the appropriate permit (according to Article 4 and Article 5) as well as import or (re-)export with a permit which is false, falsified or invalid.
2. Failure to comply with the stipulations specified in a permit or authorisation
3. Making of false declaration or knowingly providing false information in order to obtain a permit or authorisation as well as providing false, falsified or invalid permits or authorisations in order to obtain a permit/authorisation according to the Regulation.
4. Making a false import notification, or omitting such notification entirely.
5. Shipping live specimens, which are not properly prepared so as to minimise risk of injury etc.
6. Use of specimens of species listed in Annex A for other purposes than approved in the import permit.
7. Trading in artificially propagated plants contrary to the provision laid down in Article 7
8. Illegal transit according to Article 7
9. Transactions contrary to Article 8 (purchase, offer to purchase etc. of)
10. Use of a permit or certificate for any specimen other than the one for which the permit was issued.
11. Falsification or alteration of permit issued according to the Regulation.
12. Failure to disclose rejection of an application for a community import/(re-)export permit or certificate (Article 6)

According to the Danish Regulation no. 499/1997,⁴³ where one imports a specimen into Denmark (from non-EC member states), but does not pass through one of the border customs that has been authorised in this regulation, or where one fails to notify the import to Skov- og Naturstyrelsen as stated (24 hours prior to the import of live flora/r before 12 noon on the weekday before the day of arrival for imports of live animals), the importer will be considered to have violated the Regulation, and be subject to sanctions according to its provisions⁴⁴.

The Danish Regulation states, that penalties, including fines or imprisonment shall apply to the above violations, unless a stricter penalty has been stated in other legislation (according to which, another violation has taken place). The Regulation does not specify either a minimum or a maximum amount of either type of penalty.

According to the “Nature Protection Act”, Chapter 13, additional powers may also apply:

- confiscation (Section 89.5 e.c. and Criminal Code, Section 75f)
- search (Section 89.10 as to Chapter 73 of Administration of Justice Act)
- seizure (Administration of Justice Act Chapter 74)

The most frequently used sanctions will be *fine* and/or *confiscation*. The size of fine will usually be quite huge – especially if the violation has been made of a commercial purpose. Often the fine will be equivalent to twice the market value of the specimens of the species. If the illegal species will be confiscated as well this will be taken into consideration when the fine is measured.

Regulation no. 925/1994 on Commercial taxidermy, trophy and skin preparation (preservation) activities relating to of certain game

⁴³ (REPLACED BY REGULATION NO. 84/2002.)

⁴⁴ According to Regulation no. 84/2002 the Danish Forrest and Nature Agency (fauna) or the Danish Plant Directorate (flora) may issue orders to comply with the EC Regulations or order certificates to be returned e.g. if the certificate is invalid or if the fauna is dead or escaped.

According to Section 19 of this Regulation, the activity of commercial taxidermy, trophy preparation, skin preparation and other preservation of certain wild game (including the game listed in the CITES convention) violations of this Regulation will usually be punished by fine.

However, if the violation has been wilfully committed (attempted) the penalty might be imprisonment – if there has been a violation of the interests protected by the “Act of hunting and administration of game”.

If violations have taken place more times or if the violation has been very serious, also license revocation is a relevant sanction. Finally confiscation may be used.

Animal Protection Act, Act on Animal Experiments etc.

According to this regulations also fine and imprisonment will be the relevant sanctions, in cases of violations.

LEGAL AUTHORIZING, MANAGING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS

The Danish Customs Authorities will supervise the import and export of fauna and flora which passing the Danish Boarder.

The relevant permissions or certificates must be presented to the Customs Authorities. If the Customs finds that a violation might have taken place, the case will be passed onto the management authority (“Skov- og Naturstyrelsen” or “Plantedirektoratet”). The management authority will report the violation to the Prosecution Services (Police Authorities).

According to the “Nature Protection Act”, Section 89, violations of the “Act of Nature Protection”, including violations of Regulation 499/1997⁴⁵ will be handled by the Danish Prosecution Service (Police authority) according to Chapter 73 of the “Administration of Justice Act”.

The Police Authorities will take the relevant legal procedures. The various penalties or investigation measurements will be described below.

The Police are entitled – as a part of the investigation of crime – to search premises etc. in order to find any items which indicates that a criminal act has taken place. However, such searches can only take place if a particular person can be charged of the violation (a suspect). Furthermore there must be strong reasons for such step e.g., that it is expected that important evidence will be found by the search. Thus the Prosecutor needs to obtain permission (a “warrant”) from the Court to carry out such searches.

Derogation is made as to search of commercial premises. According to the “Nature Protection Act”, Section 76, the search of commercial premises can take place without obtaining prior warrant from Court.

Any relevant evidence, which is found during the search of premises, can be confiscated according to the regulation described below.

The Police will be entitled to make Seizures as well. According to the “Administration of Justice Act”, Chapter 74, seizures can take place. The Court however needs to be involved and it needs strong reasons.

The EC Regulation further provides that confiscation of illegally imported/exported species may take place. Thus Article 8.6 provides that the member states are entitled to sell the species confiscated according to the EC Regulation. It further appears from Article 16.1 c) that such measures may take place.

⁴⁵ (REPLACED BY REGULATION NO. 84/2002.)

According to the Danish Criminal Code, Section 75, the economical gain the violator has received from his criminal act may be (partly) confiscated. Also items used in committing a criminal act may be confiscated. Thus the species which have been illegally imported/exported according to the EC Regulation may be confiscated.

According to the “Administration of Justice Act”, Section 931, subsection 5, confiscation under certain conditions can take place on an *out-of-court basis* according to Regulation no. 850 of 27 October 1993. According to this Regulation, Section 1, 12) such out-of-court confiscation may take place when there has been a violation of Regulation 499/1997 (EC Regulation). The confiscation will often be an “out-of-court confiscation” in the wildlife trade cases.

A fine may be issued upon conviction of the accused, for either the violation or the attempt to commit the violation. According to the Danish Criminal Code, Section 21, there has been an “attempt” to commit a crime if the violator intends and tries to do a crime, which however is not completed. According to the “Administration of Justice Act”, Section 931, subsection 1, such fine can be issued out-of-court – unless the violator denies that he is guilty of the relevant violation.

The sanction may be imprisonment if the violation/attempt has been wilful or grossly negligent and if there has been a violation of the interests protected by the “Nature Protection Act” – or if the violator wilfully has gained an economical advantage by virtue of the violation.

The maximum period of imprisonment will be 1 year according to the regulation – unless a longer period of imprisonment is provided according to other law or regulation.

If the violator is a corporate entity or other “legal person” (that is, not an individual), the penalty of imprisonment is applied in a different way. Of course, all the employees of the company will not have to go to prison. The Regulation, Section 7, subsection 3, states that this type of violators will be punished according to the Criminal Code, Chapter 5.⁴⁶ Chapter 5 of the Criminal Code states, that legal persons will be fined if one or more employees of the company have committed a violation (as stated above). Under certain circumstances, however, the board of the company might be held personally responsible.

Finally, the management authority is entitled to claim refund of costs from the person who engaged in the illegal trade. Thus the “Act of Nature Protection”, Section 91, states that the cost of storage etc. of the illegal species – or the cost of returning the species to the original country - can be claimed from either

- ◆ the “person” (including a company) in charge of the actual transport, or
- ◆ the person, who was the recipient of the species in Denmark.

OTHER RELEVANT LEGISLATION:

The following additional legislation regulates the trade of protected fauna, to some extent:

Bekendtgørelse om forbud mod indførsel af visse sælungetkind m.v. (“Regulation on prohibition of import of certain baby-seal skin”) no. 185 of 11 May 1983, no. 436 of 30 September 1985 and no. 223 of 28 March 1990

This regulation has been issued according to the EC Regulation 129/1983. The regulation however also regulates import of certain animals – baby-seals. The import of the baby-seals/baby-seal products listed in the regulation is strictly prohibited.

Bekendtgørelse om indførsel af hvalprodukter (“Regulation on import of whale products”) no. 433 of 23 July 1982

This regulation has been issued according to the EC Regulations no. 348/1981 and no. 3786/1981. According to this EC Regulation import-permission must be issued when whale products are imported into an EC country.

⁴⁶ (SEE ART. 10 OF REGULATION NO. 84/2002.)

(Copies (in Danish) of all relevant legislation described in this report are available, upon request, from the authors, or from the IUCN Environmental Law Centre.)

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2100 Copenhagen Ø
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Fax. (+45) 39279899

Plantedirektoratet (“Danish Plant Directorate”)

Skovbrynet 20
2800 Lyngby
Tel. (+45) 45966600
Fax. (+45) 45966610

Fødevaredirektoratet (“The Danish Veterinary and Food Administration”)

Mørkhøj Bygade 19
2860 Søborg
Tel. (+45) 33956000
Fax. (+45) ?

Dyreforsøgstilsynet (“Animal Experience Inspection”) Is this name correct?

Slotsholmsgade 10, st.
1216 Copenhagen K
Tel. (+45) 33 92 28 84
Fax (+45) 33 92 26 52

Fødevareministeriet (“Ministry of Food, Agriculture and Fisheries”)

Holbergsgade 2
1057 Copenhagen K
Tel. (+45) 33 92 33 01
Fax (+45) 33 14 50 42

Justitsministeriet (“Ministry of Justice”)

Slotsholmen 10
1216 Copenhagen K
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Enforcement of International Wildlife Trade Controls in Finland

Professor Erkki J. Hollo
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CITES STATUS:

Date of Ratification or Accession to CITES: Convention ratified on August 8th. 1976

CITES reservations currently in force: Finland has made the same reservations as nearly every other EU member state.

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

- Asetus villieläimistön ja –kasvien uhanalaisten lajien kansainvälistä kauppaa koskevan sopimuksen voimaansaattamisesta, Statutes of Finland No. 45/1976 (Decree on bringing into force the convention on international trade in endangered species of wild fauna and flora).
- Council regulation (EC) No. 338/97 on the protection of species of wild flora and fauna by regulating trade therein.
- Luonnonsuojelulaki No. 1096/1996 (Nature Conservation Act).
- Luonnonsuojeluasetus No. 160/1997 (Nature Conservation Decree).
- Rikoslaki No. 19.12.1889 (Criminal Code).
- Eläinsuojelulaki No. 247/1996 (Animal Protection Act).
- Tullilaki No. 1466/1994 (Customs Act).

OBJECTIVES AND COVERAGE:

1. Nature Conservation Act
 - Objective is to maintain biological diversity, conserve nature's beauty and scenic value, promote the sustainable use of natural resources and the natural environment, promote awareness of and general interest in nature, and promote scientific research.
 - The act shall apply to nature and landscape conservation and management.
2. Criminal Code
 - Objective and coverage: The Criminal Code defines actions that are enacted to be punishable.
3. Animal Protection Act
 - The aim of this act is to protect animals, to the greatest extent possible, from suffering, injury and pain. Its other objective is to promote the well being and the good treatment of animals.

- The act applies to all animals. In addition, the Animal Protection Act must be applied in compliance with other provisions that set restrictions for hunting, fishing or nature conservation.

4. Customs Act

- Objective and coverage: This act applies to customs duties and to customs control of various goods.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

In Finland the regulation of international trade in endangered species is based on the EU regulation. This is stated in section 44 Nature Conservation Act, which mentions that “what is provided in Council Regulation (EC) No. 338/97 on the protection of species of wild flora and fauna by regulating trade therein shall apply to the import, export, re-export and transit transporting, sale offering for sale, keeping for commercial purposes, display to the public for commercial purposes and transporting for sale of the animal and plant specimens, or parts or derivatives thereof, referred to in this regulation”.

Illegal export and/or re-export of specimens of species

Criminal Code, chapter 48, section 5 para 1,2 (Amendment, Act No. 1108/1996):

- “ Whosoever either wilfully or through gross negligence exports through Finnish territory an object against the provisions of the Nature Conservation Act, shall be sentenced for committing a nature conservation offence.”

Nature Conservation Act section 58 para 2.3:

- “ Whosoever either wilfully or through negligence exports through Finnish territory an animal or plant specimen, or a part or derivative thereof, referred to in the European Community regulation (Council Regulation (EC) No. 338/97), without a permit or certificate required by said regulation, shall be sentenced for committing a nature conservation violation.” It is worth mentioning that such a violation can’t be sentenced under this Act, if the action is punishable as a nature conservation offence according to the Criminal Code as well.

Illegal import and/or introduction-from-the-sea of specimens of species

Criminal Code chapter 48, section 5 para 1,2:

- “ Whosoever either wilfully or through gross negligence imports through Finnish territory an object against the provisions of the Nature Conservation Act, shall be sentenced for committing a nature conservation offence.”

Nature Conservation Act section 58:

- “ Whosoever either wilfully or through negligence imports through Finnish territory an animal or plant specimen, or a part or derivative thereof, referred to in the European Community regulation (Council Regulation (EC) No. 338/97), without a permit or certificate required by said regulation, shall be sentenced for committing a nature conservation violation.” As above, such an act cannot be sentenced as a nature conservation violation, if the action is punishable as a nature conservation offence according to the Nature Conservation Act.

Illegal possession of relevant specimens

Criminal Code chapter 48, section 5 para 1;2:

- “ Whosoever either wilfully or through gross negligence purchases or receives an object against the provisions of the Nature Conservation Act, shall be sentenced for committing a nature conservation offence.”

Nature Conservation Act section 58 para 2.5:

- “ Whosoever either wilfully or through negligence purchases, offers for sale, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial purposes, sells, keeps for sale, offers or transports for sale an animal or plant specimen, or a part or derivative thereof, referred to in annexes A or B of the European Community Regulation (Council Regulation (EC) No. 338/97), in contravention of article 8 of said Regulation, shall be sentenced for committing a nature conservation violation (unless the action is punishable as an offence according to the Nature Conservation Act).

Common remarks

It is common to all of these three cases of the Criminal Code that an as such illegal action cannot be considered to constitute a nature conservation offence, if the action has minor significance to the nature conservation. (Criminal Code chapter 48, section 5 para 3). In this case, the criminal and administrative rules of the Nature Conservation Act may apply.

It is also punishable to attempt to commit a wilful nature conservation offence. (Criminal Code chapter 48, section 5 para 4).

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

Fines

According to the Criminal Code (chapter 48, section 5 para1,2) the penalty from the nature conservation offence is a fine or imprisonment. The fine shall be imposed in the form of day-fines and their number may vary between 1-120.

The Nature Conservation Act requires (Nature Conservation Act, section 58) that a person who has committed a nature conservation violation, shall be sentenced to a fine. The fine, too, shall be imposed in day-fines and the scale is the same that is mentioned in connection with the nature conservation offence.

If the crime has been committed by a corporation, it may be sentenced to a corporation fine.

Imprisonment

As mentioned earlier, the punishment for a the nature conservation offence can be also imprisonment (Criminal Code chapter 48, section 5 para1,2). The duration of imprisonment depends on the level of seriousness of the action; the normal maximum is two years, in severe cases up to six years imprisonment.

Forfeiture

Criminal Code chapter 2, section 16: "The court has to make a free consideration about the amount of the economical benefit somebody has obtained for himself or another by committing a crime. This benefit shall be sentenced to forfeit to the State."

Under this provision, it is not required that the person in question has been charged with an offence. "When the crime has been committed, the goods or other property that have been used for committing the crime or that have been mainly manufactured or purchased for committing the crime, may (so it is not obligatory) be also sentenced to forfeit to the State."

Nature Conservation Act, section 59: Whosoever is guilty of a violation referred in the section 58 (nature conservation violation) shall be sentenced to forfeit to the State either what he has gained by the violation, or its corresponding monetary value. Otherwise, what is provided in chapter 2 section 16 of the Criminal Code shall apply.

License or permit revocation

According to Nature Conservation Act, section 58, “whosoever either wilfully or through negligence fails to comply with the stipulations specified on permit or certificate referred to in the European Community Regulation (Council Regulation (EC) No. 338/97), shall be sentenced to a fine for committing a nature conservation violation”.

So, it seems that the fine is the leading consequence of nature conservation violations. However, in actual cases the authorities have made decisions where they have taken into account that if the animals are treated or transferred in a manner, which is against the provisions of the Animal Protection Act, the import or the export licence has been considered to be void.

LEGISLATION AUTHORISING, MANDATING AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS

Scientific authority

The Nature Conservation Act, section 44 para 2, provides that the Finnish museum for natural history of the University of Helsinki is the scientific authority referred to in the European Community Regulation (Council Regulation (EC) No. 338/97). The Museum has several tasks that are connected with the enforcement of CITES provisions:

- a) the Museum gives its statement on licence applications that concern import and export an animal or plant specimen referred to in the annexes A and B of the European Community Regulation (No. 338/97);
- b) the Museum gives its statement on licence applications that concern transfer an animal or plant specimen inside the Community territory referred to in the annex A of the European Community Regulation (No. 338/97);
- c) the Museum gives its statement, when certain decision concerns the final placement of forfeited living specimen referred to in the European Community Regulation (No. 338/97); and
- d) the Museum keeps up with the export permits that are granted to specimen referred to in the annex B of the European Community Regulation (No. 338/97).

If the conservation status of certain specimen requires restrictions, the Museum shall inform the need to the administrative authority.

Administrative authority

Nature Conservation Act, section 44 para 2: The Ministry of the Environment acts as the administrative authority referred to in the European Community Regulation (Council Regulation (EC) No. 338/97). If necessary, the Ministry of the Environment can issue more detailed provisions on the implementation of the European Community Regulation (No. 338/97). That kind of more detailed provisions has not yet been issued.

However, the Finnish Environment Institute, which is an expertise body with very limited administrative functions, is the competent authority in all matters concerning the issue of permits and certificates. (Nature Conservation Act, section 44 para 2).

Seizure, prosecution of offenders and sentencing penalties

Nature Conservation Act, section 44 para 4: “It is the duty of customs to enforce Community regulations on importation, exportation, re-exportation and transit.” The competence of the customs authority is based on the Customs Act, Pretrial Investigation Act (Esitutkintalaki, No. 449/1987) and the Coercive Measures Act (Pakkokeinolaki, No. 450/1987). For example, in the Customs Act it is stated (section 14 para 3) that the customs authority has the right to

retain a certain object, if prevention or investigation of a crime requires that kind of proceeding. The customs authorities apply also the Council Regulation (EC) No. 338/97, article 16, paragraph 4 directly (“If a living specimen referred to in the annexes A or B arrives at customs without valid licence or certificate, the specimen must be seized and it can also be distrained”).

If there is a suspicion that the CITES provisions have been violated, the criminal pretrial investigation and the accusation proceedings will be carried out by following the normal Finnish criminal legislation (the Pretrial Investigation Act and the Coercive Means Act). The criminal procedure itself does not differ from those applicable in criminal cases under the Code of Judicial Procedure, (Oikeudenkäymiskaari 1734), and Act on Criminal Procedures, (Laki oikeudenkäynnistä rikosasioissa, No. 689/1997). If criminal law is not involved, administrative measures may be taken in order to restore legality (Nature Conservation Act section 37.) The regional environmental centre is competent to enact prohibitions, order suspension of works or prescribe, as far as possible, restoration.

OTHER RELEVANT LEGISLATION

“Specimens, parts and derivatives of animal and plant species referred to in European Community Regulation (Council Regulation (EC) No. 338/97), that are imported to Finland from countries outside of the European Community (third countries) or exported to third countries, shall pass via a designated customs office, unless provided otherwise by decree. Customs authorities shall direct specimens, parts and derivatives of animal and plant species referred in said regulation to the nearest designated customs office under customs supervision.” (Nature Conservation Act, section 44a).” These designated customs offices are mentioned in the Nature Conservation Decree, section 23a.

“If a person either wilfully or through negligence imports or exports a specimen without passing through a designated customs office, he shall be sentenced to a fine for committing a nature conservation violation. (Nature Conservation Act 58)”

In addition to what is mentioned earlier, the violations related to wildlife trade and related activities may constitute also another offence or violation. For example, a certain act can fulfil the essential elements of:

- a) smuggling (Criminal Code, chapter 46, section 4: “Whosoever imports, attempts to import, exports or attempts to export an article without a permit or otherwise against the provisions regulating the import and export, shall be sentenced to a fine or maximum two years imprisonment for committing a smuggling”);
- b) customs violation (Customs Act, section 42: “Whosoever either wilfully or through gross negligence neglects one’s obligation to report or otherwise offends the provisions of the customs Act, shall be sentenced to a fine for committing a customs violation”); and
- c) animal protection violation (Animal Protection Act, section 54: “Whosoever either wilfully or through negligence treats animals against the provisions of the Animal Protection Act” or “neglects the duties which the Animal Protection Act sets for the animal transferring, shall be sentenced to a fine for committing an animal protection violation”).

NOTE

In Finland, there are no pending or proposed amendments to the legislation related to the enforcement of international wildlife trade control. Of course, when the EU issues new provisions, Finland has to adjust its legislation to the new regulation.

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Enforcement of International Wildlife Trade Controls in France

Clare Shine

CITES STATUS:

Date of Ratification or Accession to CITES: 11/05/1978 (date of approval), 9 August 1978 (date of entry into force)

Acceptance of Amendments: 18/08/1989 (date of registration), 17/10/1989 (date of entry into force)

CITES reservations currently in force (valid from 19 January 2001): Appendix III, Fauna: *Vulpes vulpes griffithi*, *Vulpes vulpes pusilla* (includes synonym *Vulpes vulpes leucopus*), *Mustela altaica*, *Mustela erminea ferghanae*, *Mustela kathiah*, *Mustela sibirica*.

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

The following instruments have been reviewed for this consultancy:

- the three *Codes* dealing with (i) the environment, (ii) rural management and agriculture, and (iii) Customs. In France, legal measures are periodically consolidated and codified: once completed, *Codes* contain both legislative and regulatory components;
- main CITES implementing regulations;
- regulations relating to species exchanges by scientific institutions;
- regulations dealing with specific groups of CITES-listed species.

Code de l'Environnement (Environmental Code) (legislative part annexed to Ordonnance no 2000-914 of 18 September 2000, Journal Officiel of 21/09/2000)

Codification of the first Environmental Code was started in 1992 and completed in 2000. The new Code sets out principles and general rules for all aspects of environmental protection and management and establishes penalties for violations of its legislative provisions and of regulations issued thereunder. As part of the codification process, penalty provisions have been made consistent with provisions of the Criminal Code (*Code Pénal*).

Enabling provisions for the implementation of CITES and relevant EC Regulations are found in *Livre IV, Titre Ier* on the protection of wild fauna and flora. Key provisions, notably Art.412, were formerly located in the Rural Code (Art.212): they were transferred to the Environmental Code upon its adoption in September 2000 (see Ordonnance No.2000-550 of 15 June 2000).

As part of a general reorganisation of French administrative decision-making, the administration and enforcement framework for CITES is undergoing major changes. These arrangements are summarised in the final section of this report.

Arrêté du 30 juin 1998 fixant les modalités d'application de la convention sur le commerce international des espèces de faune et de flore sauvages menacées d'extinction et des Regulations (CE) no 338/97 du Conseil européen et (CE) no 939/97 de la Commission européenne

Ministerial Order of 30 June 1998 determining the modalities for implementation of CITES and EC Regulations no 338/97 of the European Council and no 939/97 of the European Commission (Journal Officiel N°183 of 9 August 1998)

This Order, issued under Art.L.412 of the Environmental Code, is the primary legal mechanism for the application in France of CITES and the relevant EC Regulations: it replaces a similar Order of 1 March 1993.

By reference to the annexes of Regulation No.338/97, the Order defines the list of species for which trade and transport are subject to permit in accordance with relevant provisions of the Environmental Code. It lays down conditions for issuing such permits as well as rules applicable to species protected under separate provisions of the Code (which may of course include native CITES-listed species).

ARRETE du 21 décembre 2000 relatif à la procédure d'agrément des institutions scientifiques dans le cadre des échanges internationaux de spécimens d'espèces relevant de la Convention sur le commerce international des espèces de faune et de flore menacées d'extinction (CITES)

Ministerial Order of 21 December 2000 on the procedure for registering scientific institutions for international exchanges of specimens of CITES-listed species (Journal Officiel of 19 January 2001)

The Order of 21 December 2000, issued under Art.L.412 of the Environmental Code, establishes a procedure for licensing scientific institutions to conduct non-commercial exchanges of specimens for scientific purposes as well as requirements for registration and record-keeping of such institutions and marking of specimens concerned.

Arrêté ministériel du 27 décembre 2000 relatif à la procédure de marquage des flancs entiers et des peaux de crocodiliens pour les échanges internationaux de spécimens d'espèces relevant de la Convention sur le commerce international des espèces de faune et de flore menacées d'extinction (CITES)

Ministerial Order of 27 December 2000 on the procedure for tagging whole sides and skins of crocodilians for international trade in specimens of CITES-listed species (Journal Officiel of 9 January 2001)

This Order, issued under Art.L.412 of the Environmental Code, relates to the tagging of crocodilian sides and skins prior to re-export and prescribes technical requirements for tagging as well as controls applicable to professional tanners.

ARRÊTE du 9 novembre 2000 fixant la liste des tortues marines protégées sur le territoire national Ministerial Order of 9 November 2000 establishing the list of marine turtles protected on national territory (Journal Officiel of 7 December 2000)

This Order, issued under Art.L.412 of the Environmental Code, relates regulating taking, possession and trade-related activities involving marine turtles is applicable throughout national territory with the exception of the overseas *départements* of Guadeloupe, Guyane and Martinique. It repeals the Order of 17 July 1991 as amended.

Arrêté du 28 mai 1997 soumettant à autorisation la détention et l'utilisation sur le territoire national d'ivoire d'éléphant par des fabricants ou des restaurateurs d'objets qui en sont composés et fixant des dispositions relatives à la commercialisation des spécimens (as amended by the Order of 30 June 1998)

Ministerial Order of 28 May 1997 establishing a permit system for holding or use of elephant ivory on national territory by manufacturers or restorers of articles made thereof and establishing conditions for trade in such specimens (Journal officiel of 1 June 1997), as amended by the Order of 30 June 1998

This Order issued under Art.L.412 of the Environmental Code, sets out permit requirements for specified professionals with regard to holding and use of and trade in ivory from African and Asian elephants.

Code Rural / Rural Code

The Rural Code is mainly concerned with rural and agricultural organisation and management and food quality and safety. Legislative provisions related to CITES have been transferred from the Rural Code to the new Environmental Code, which now provides the primary mechanism for implementation and enforcement of the EC CITES Regulations.

The Rural Code's general legislative provisions on animal welfare and control of premises holding livestock and powers of veterinary services are relevant to domestic movement and handling of CITES-listed specimens.

In addition, the regulatory provisions of the Rural Code will continue to be relevant to CITES implementation until such time as these are transferred to the Environmental Code (regulatory part).

Code des Douanes / Customs Code

The Customs Code establishes a general framework for import and export controls and provides for the organisation and activities of the Customs service. Its provisions on restricted goods (Article 215) are applicable to specimens of CITES-listed species, pursuant to a Ministerial Order of 24 September 1987 (*Journal Officiel* of 14 October 1987).

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

(I) ILLEGAL EXPORT AND/OR RE-EXPORT OF SPECIMENS OF SPECIES

Environmental Code (Journal Officiel of 21/09/2000)

A permit (“*autorisation*”) is required for the export or re-export of all or part of a wild animal and any product thereof or of all or part of a wild plant or the seeds thereof, where these are listed by joint orders of the Minister for the Environment and, as applicable, other Ministers. The conditions and procedures for issuing permits must be laid down by decree of the *Conseil d'Etat* (Article L412-1, Environmental Code, which replaces Art.L.212-1, Rural Code).

Ministerial Order of 30 June 1998 determining the modalities for implementation of CITES and EC Regulations No.338/97 of the European Council and No.939/97 of the European Commission (Journal Officiel N°183 of 9 August 1998)

The CITES Implementation Order applies to all specimens of species listed in the annexes to Regulation No. 338/97, except for any parts or derivatives exempted from the application of that Regulation (Art.1). A permit in accordance with Art.L.412-1, Environmental Code, is required for the export and re-export outside the European Community of specimens of species included in annexes A, B and C of Regulation No.338/97 of 9 December 1996 (Art.2).

Reference to “*autorisation*” is deemed to include export permits and re-export certificates issued by other competent management authorities in EC Member States, in accordance with the relevant EC Regulations (Art. 2.)

Ministerial Order of 21 December 2000 on the procedure for registering scientific institutions for the purpose of international exchanges of specimens of CITES-listed species (Journal Officiel of 19 January 2001.)

A permit or certificate is not required for loans, donations and international exchanges for non-commercial purposes of certain live or preserved specimens of species listed in the annexes to EC Regulation N° 338/97 et n° 939/97, where carried out between scientific institutions registered in accordance with this Order (Art.1). Registered institutions must use prescribed labels on packaged specimens in accordance with Art.8. A registered institution must ensure that the scientist/institution with which it plans to borrow/loan/exchange specimens in accordance with Art.1 is appropriately registered for this purpose (Art.9).

An institution's application for registration must include a description of its collection specifying, for each taxonomic level in the Annexes to Regulation N° 338/97, the types of specimen held: the competent administrative authority must inspect the premises (see further Art.3). If granted, registration lasts for a renewable period of five years (Art.4). The institution must be given a registration number to be included on each label (Art.5), and must maintain a register of specimen entries and departures from the collection (Art.6).

An institution applying for registration must accept control and inspection of its premises by the agents specified in Art.L.415-5, Environmental Code (Art.5).

Ministerial Order of 27 December 2000 on the procedure for tagging whole sides and skins of crocodilians for international trade in specimens of CITES-listed species (Journal Officiel of 9 January 2001)

Prior to any application for a re-export permit, all tanned or finished crocodilian sides/skins must be tagged after treatment by a professional tanner (Art.1). Requirements for the issue of a re-export permit and accompanying documentation are set out in Art.7.

Tag manufacture and tagging procedures must conform to technical specifications laid down by Arts.2-3. Where specimens are being re-tagged, the old tags must be left in place even if damaged (Art.3). Any person who holds and fixes tags must keep a register in the prescribed form, to include the CITES import permit details numbers for each lot of sides or skins, and hold this register for ten years after the most recent entry (Art.4). All professional tanners holding and using tags must accept control and inspection of its premises by the agents specified in Art.L.415-5, Environmental Code (Art.5).

The approved tag manufacturer may not send tags direct to any professional, but only to the *Fédération nationale de la maroquinerie* which orders, distributes and manages stocks of tags. Orders must be stamped by the Minister responsible for nature protection, who must be sent a twice-yearly report by the *Fédération* on professionals holding and using tags (Art.8).

(II) ILLEGAL IMPORT AND/OR INTRODUCTION FROM THE SEA OF SPECIMENS OF SPECIES

Environmental Code

A permit (“*autorisation*”) is required for the introduction from any place of origin and the importation under any Customs regime of all or part of a wild animal and any product thereof or of all or part of a wild plant or the seeds thereof, where these are listed by joint orders of the Minister for the Environment and, as applicable, other Ministers. The conditions and procedures for issuing permits must be laid down by decree of the *Conseil d'Etat* (Article L412-1, Environmental Code).

The references to “any place of origin” and “any Customs regime” makes the provision applicable to transit and to introductions from the sea.

Ministerial Order of 30 June 1998 determining the modalities for implementation of CITES and EC Regulations no 338/97 of the European Council and no 939/97 of the European Commission (Journal Officiel N°183 of 9 August 1998)

A permit in accordance with Art.L.412-1, Environmental Code, is required for the introduction from a territory outside the European Community of specimens of species listed in Annexes A and B of Regulation No.338/97 (Art.2, Order of 30 June 1998), except for any parts or derivatives exempted from the application of that Regulation (Art.1).

(III) ILLEGAL POSSESSION OF RELEVANT SPECIMENS, ETC.

Environmental Code

Ministerial Order of 30 June 1998 determining the modalities for implementation of CITES and EC Regulations no 338/97 of the European Council and no 939/97 of the European Commission (Journal Officiel N°183 of 9 August 1998)

A permit (“*autorisation*”) is required to produce, hold, transfer, sell, use or transport all or part of a wild animal/product thereof or all or part of a wild plant/seeds thereof, where the species concerned are listed by joint orders of the Minister for the Environment and other Ministers if applicable. The conditions and procedures for issuing permits must be laid

down by decree of the *Conseil d'Etat* (Article L412-1, Environmental Code). Breach of this provision constitutes an offence punishable under Article L415, Environmental Code (see below). (Reference to “*autorisation*” is deemed to include import permits issued by other competent management authorities in EC Member States, in accordance with the relevant EC Regulations.)

Offences concerning species listed in Annex A, Regulation No.338/97

- The CITES Implementation Order applies the permit requirement laid down by Art.L.412-1, Environmental Code (formerly Art.L.212-1, Rural Code) to the keeping/transport/offer for sale, sale, purchase, acquisition/display for commercial purposes or use for profit of specimens

A permit may only be issued for specimens, or the descendants thereof, that meet one of the following conditions (Art.3, Order):

- 1) specimens taken from the wild, born in captivity or introduced into the European Community (EC) before the entry into force, for the specimens concerned, of the provisions applicable to species listed in CITES Appendix I, Annex C1 of EC Regulation No. 3626/82 of 3 December 1982 or Annex A of Regulation No.338/97;
- 2) specimens lawfully introduced into the EC in accordance with Regulation No.338/97 and intended for use for purposes that will not harm the survival of the species concerned;
- 3) live animals born and reared in captivity of a species listed in Annex VIII, Commission Regulation No.939/97, marked in accordance with the requirements in this annex for certain species;
- 4) live animals born and reared in captivity, marked in accordance with Article 36, Commission Regulation No.939/97, and accompanied by a certificate issued by a breeder licensed for this purposes by a competent management authority of an EC Member State, pursuant to Arts.32 b and 33-1 of that Regulation;
- 5) animals born and reared in captivity in the EC for which the Director of the *Muséum national d'histoire naturelle*, for specimens born and bred in France, or a competent scientific authority for another EC Member State, for specimens born and bred in another EC Member State, is satisfied that the breeding conditions established by Art.24, Regulation No.939/97, have been met;
- 6) specimens derived from the artificial propagation of plant species;
- 7) specimens necessary, in exceptional circumstances, for scientific progress or essential biomedical purposes, where it appears that the species in question is the only one that meets the objectives and where there are no specimens of this species born and reared in captivity;
- 8) specimens for breeding or reproduction intended to contribute to the conservation of the species concerned;
- 9) specimens for research and educational activities for the protection or conservation of the species;
- 10) animals or plants originating from an EC Member State that have been taken from the wild in accordance with applicable legislation in the country concerned.

The permit requirement is waived where the holder of a specimen can prove, upon request of the agents duly authorised under Art.L.415-5, Environmental Code (replacing Art.215-5, Rural Code) that s/he has met the conditions of paragraphs 1, 3-6 or 10 of Article 3.

Stricter requirements may be applied where a listed species is also designated as a protected native species under Art.L.411-1, Environmental Code. A permit may not be issued for such species without special authorisation pursuant to Art.L. 411-2.4° (Art.3, para.4): this is basically limited to scientific purposes. The procedure for designating native species is laid down in Art.R.211-1 *et seq.*, Rural Code.

Subject to this provision, certificates issued by competent management authorities in other EC Member States in accordance with the EC Regulations shall be deemed to be equivalent to permits (“*autorisation*”).

- The CITES Implementation Order applies the permit requirement laid down by Art.L.412-1, Environmental Code (formerly Art.L.212-1, Rural Code) to the manufacture or restoration of articles composed of or including such specimens

A general permit, by way of derogation from Art.3, may be issued to manufacturers or restorers of articles composed of or including specimens of Annex A-listed species that meet the criteria set out in Art.3, para.2.1) above, but only for species or populations of species designated by Ministerial Orders after consultation with the National Council for Nature Protection.

The issue of a general permit is subject to prior declaration of stocks, which must be verified by the Customs Service. Permit-holders must keep a register showing the entry and departure of these specimens. Commercial use of such articles must comply with conditions laid down by relevant Orders, particularly with regard to marking (Art.4).

- The CITES Implementation Order applies the permit requirement laid down by Art.L.412-1, Environmental Code (formerly Art.L.212-1, Rural Code) to transport or movement of live specimens

A permit is required to move or transport live specimens of Annex A-listed species away from the place of detention specified in the import permit, certificate issued pursuant to Regulation No.338/97 or permit issued under this article based on such a permit/certificate (Art.7, which specifies competent authorities and permit conditions). An exception may be made for urgent veterinary treatment, provided that the animal is returned directly to its place of detention.

Stricter requirements apply where a listed species is also designated as a protected native species. A permit may not be issued where the transport of a specimen of such a species is prohibited under Art.L.411-1, Environmental Code, unless special authorisation has been issued pursuant to Art.L. 411-2 (4°) (Art.7, para.6).

Subject to this provision, documents issued by competent management authorities in other EC Member States in accordance with the EC Regulations shall be deemed to be equivalent to permits (“*autorisation*”) (Art.7, para.7).

Offences concerning species listed in Annex B, Regulation No.338/97

- The CITES Implementation Order applies the permit requirement laid down by Art.L.412-1, Environmental Code (formerly Art.L.212-1, Rural Code) to the keeping/transport/offer for sale, sale, purchase, acquisition/display for commercial purposes or use for profit of specimens commercial activities

These activities require a permit from the *Préfet* (representative of the government) of the *département* in which the specimen is held (Art.5). However, a permit is not required where the specimen holder can prove, if requested by the agents duly authorised under Art.L.415-5, Environmental Code (replacing Art.215-5, Rural Code) that such specimens were acquired (and, if they do not come from an EC Member State, were introduced) in accordance with applicable legislation on conservation of wild fauna and flora.

Stricter requirements apply where a listed species is also designated as a protected native species under Art.L.411-1, Environmental Code. Where the above activities are prohibited for designated species, a permit may not be issued without special authorisation pursuant to Art.L. 411-2 (4°) (Art.5, para.3).

Offences related to protected native species

A series of offences are established under Art.411-1, Environmental Code (replacing Art.211-1, Rural Code) in respect of specimens of wild animal and plant species designated for protection due to their special scientific interest or the need to preserve biological heritage (i.e. native species). Prohibited activities include:

- transport, hawking, use, holding, offer for sale, sale or purchase of live or dead animals of such species (Art.411-I-1°);
- transport, hawking, use, offer for sale, sale or purchase of wild plants and the holding of plants taken from the wild (411-I-2°).

The prohibition on holding does not apply where specimens were in lawful possession at the time when the prohibition applicable to that species came into force (Art.411-II).

The conditions for listing species for protection (Art.L.411-2-1°), issuing special authorisation for the capture or taking of species for scientific purposes (Art.L.411-2-4°) and licensing establishments to hold or breed such species (Art.L.411-2-6°) are specified by a Decree of the *Conseil d'Etat*.

As noted, the CITES Implementation Order of 30 June 1998 provides for stricter application of its permit requirements where specimens belong to species that are both listed in the annexes to the EC Regulations and designated as protected under the Environmental Code (see Art.3, para.4; Art.5, para.3; Art.7, para.6 above).

Offences related to introduction of alien CITES-listed species

The Environmental Code prohibits the introduction into watercourses and linked ponds of live animals of species liable to disrupt the ecological balance (Art.L.432-10, replacing Art.L.232-10, Rural Code). It subjects their transportation to permit (Art.L.432-11), which may only be issued by the Minister for Freshwater Fisheries for scientific reasons (Art.R.232-2 and 232.3).

These prohibitions apply to species listed under Art.R.232-1, Rural Code, which currently includes all species of *Rana* frogs not native to metropolitan France. This means that the transport of frogs belonging to CITES-listed species is prohibited without prior issue of a permit, as is *de facto* their importation.

REQUIREMENTS FOR FACILITIES HOLDING WILD SPECIES

The following requirements under Arts.L.413-1 to 413-5 of the Environmental Code (formerly Art.L.213, Rural Code) apply to facilities holding wild species, excluding products of marine fisheries and shell-fisheries intended for human consumption (Art.L.413-1):

- those in charge of facilities for breeding, sale, holding and transit of wild species or where live specimens are presented to the public, must be duly licensed (*certificat de capacité*) to keep such animals (Art.L.413-2);
- without prejudice to the legislation on classified installations, the establishment of any such facility is subject to licence (Art.L.413-3).

Rural Code

As noted above, the Rural Code is no longer the primary mechanism for implementing the EC CITES Regulations. However, it contains relevant legislative and regulatory provisions such as prohibitions on cruelty to animals (Art.L.214-3) and requirements for animal welfare and control of premises where livestock are held.

All establishments open to the public for the use of animals are subject to control by the competent administrative authority (Art.L.214-2, Rural Code). A veterinary inspector who finds that premises holding wild animals in captivity

are unsanitary must specify the remedial measures to be taken by the person responsible for those premises (Art.L.214-16, see further under Enforcement).

A licence from the veterinary service, reporting to the *Préfet*, is required by any person engaged in the commercial transportation of live animals (Art.L.214-12, Rural Code). Licences may not be issued unless the applicant can comply with applicable technical, sanitary and training regulations.

Any person owning or holding animals for the production of wool, leather, fur or other agricultural purposes is required to keep a breeding register which includes sanitary and medical data on the animal and details of veterinary inspections (Art.L.214-9-1, inserted by Art.12, Act n° 2001-6 of 4 January 2001 (*Journal Officiel* of 5 January 2001)). The register must be made available to duly authorised agents.

Ministerial Order of 9 November 2000 establishing the list of marine turtles protected on national territory (Journal Officiel of 7 December 2000)

It is prohibited, at any time on national territory, to transport, hawk, use, offer for sale, sell or purchase live or dead specimens of the following species of marine turtles: *Dermochelys coriacea*; *Caretta caretta*; *Lepidochelys olivacea*; *Lepidochelys kempii*; *Eretmochelys imbricata*; *Chelonia mydas* (Art.2, which also prohibits taking, killing etc.).

These transport/trade prohibitions do not apply to specimens from declared stocks that are:

- 1) stamped with the stamp/mark of a holder of a permit issued in accordance with this Order; or
- 2) transferred between two such permit holders (Art.3).

Manufacturers of articles made from specimens of *Eretmochelys imbricata* may only hold or use such specimens under a permit from the *Préfet* of the *département*. Permits may be granted, pursuant to Art.R.212-2, Rural Code for specimens imported in accordance with CITES before 1 January 1984, for specimens included in stocks of *Eretmochelys imbricata* declared to the Ministry of the Environment before 1 October 1993. They last for a renewable period of up to five years (Art.4).

Manufacturers require a similar permit for specimens of *Chelonia mydas*. Permits may be granted, in accordance with Art.R.212-2, Rural Code for specimens imported in accordance with CITES or taken from the wild on national territory before 1 January 1984, for specimens that are included in stocks of *Chelonia mydas* declared to the Ministry of the Environment before 31 December 2001 (Art.4).

Applicants for permits must make a written undertaking to accept controls by agents specified in Art.L.415-5, Environmental Code (formerly L.215-5, Rural Code) and keep a register in the prescribed form. The permit application must be accompanied by all documents proving the lawful origin of the specimens concerned (Art.4).

Ministerial Order of 28 May 1997 establishing a permit system for holding or use of elephant ivory on national territory by manufacturers or restorers of articles made thereof and establishing conditions for trade in such specimens (Journal officiel of 1 June 1997) as amended by the CITES Implementation Order of 30 June 1998

Manufacturers or restorers of articles made from raw (*brut ou débité*) ivory from *Loxodonta africana* or *Elephas maximus* may only hold or use such ivory under a permit from the *Préfet* of the *département* (Art.1).

Permits may be issued, in accordance with Art.R.212-2, Rural Code and this Order, for specimens lawfully imported before 26 February 1976, included in stocks declared to Customs before 1 June 1999 or covered by a declaration pursuant to Art.3. Such declarations must be supported by a declaration of stocks lawfully imported, in accordance with CITES and implementing instruments, between 26 February 1976 and 14 June 1989, and by any document proving the lawful origins of the ivory in stock.

Permit applicants must meet specific conditions that include:

- a written undertaking to accept controls by agents specified in Art.L.415-5, Environmental Code (formerly L.215-5, Rural Code);
- the absence of any conviction (of a natural or legal person), for actions subsequent to the publication of this Order, for violations of CITES provisions laid down in implementing instruments or this Order;
- where these exist, proof of receipt for all Customs declarations relating to raw or semi-worked ivory stocks held by the applicant.

The Order also specifies requirements for keeping registers(see further Art.1).

Declarations under Art.3 are required where a permit holder acquires raw or semi-worked ivory from a private individual (i.e. personal goods). The latter must make a Customs declaration that the specimens in question were lawfully imported before 26 February 1976, supported by any document proving the lawful origins of the ivory. The declaration must be sent to the *Préfet* of the *département* who has four months to oppose it.

The prohibition on transport, hawking, offer for sale, sale, purchase or use for commercial purposes on national territory does not apply (Art.2, Order of 28 May 1997, as amended by Art. 9, Order of 30 June 1998) to specimens from stocks declared under Art.1 or covered by a declaration under Art.3 that are

- 1) stamped with the stamp/mark of a holder of a permit issued in accordance with Art.1 or, where the placing of a stamp/mark is not compatible with the nature or purpose of the article, accompanied by a certificate drawn up by the permit holder; or
- 2) transferred between two holders of permits issued in accordance with Art.1.

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

Environmental Code (Journal Officiel of 21/09/2000)

Ministerial Order of 30 June 1998 determining the modalities for implementation of CITES and EC Regulations no 338/97 of the European Council and no 939/97 of the European Commission (Journal Officiel N°183 of 9 August 1998)

Penalties for CITES-related offences are set out in Arts.415-3 to 415-5.

Fines and imprisonment

The following offences are punishable with six months imprisonment and a fine of 60,000F:

- the production, holding, transfer, use, transport, introduction, import, export or re-export of all or any part of animals or plants in breach of the prohibitions laid down in Art.L.412-1 or regulations issued thereunder (Art.L.415-3, 3°);
- running a facility for breeding, sale, holding or transit of wild animals or for presenting live specimens of fauna to the public without the certificate required under Art.L.413-2 (Art.L.415-3, 4°);
- opening such a facility without the permit required under Art.L.413-3 (Art.L.415-3, 5°);
- damage to the conservation of wild animal or plant species in breach of the prohibitions laid down in Art.L.411-1 or in Regulations issued pursuant to Art.L.411-2 (Art.L.415-3, 1°);
- deliberate introduction into the wild of an animal or plant specimen in breach of the prohibitions laid down in Art.L.411-3 (Art.L.415-3, 2°).

The Code does not appear to provide for increased penalties in the event of second or subsequent offences (*récidive*) (see Arts.L.428-5, -6 and -7 of the Code).

Breach of Art.L.232-10 (introduction of alien freshwater species) is punishable with a fine of 60,000F.

Confiscation

Upon conviction, the judge may order the confiscation of seized articles to which the offence relates as well as any instruments and vehicles used in the commission of the offence (Art.L.415-5). S/he may also order the display or publication of part of the judgement, to be paid for by the convicted party, in accordance with Art.131-35, Criminal Code (*Code pénal*).

Offences involving species protected under L.411-1 are also punishable under Arts.428-9 and 428-11 (Art.L.415-4), which provide for the confiscation of weapons and conveyances (Art.L.428-9), or if not confiscated, an equivalent value (Art.L.428-10). The competent court may order the confiscation and, as appropriate, destruction of seized weapons and conveyances abandoned by unidentified wrongdoers (Art.L.428-11).

Rural Code

Art.L.215-12 provides that offences committed under Arts.L.214-3 to L.214-11 (animal welfare and related matters) are subject to the fixed fine procedure (*amende forfaitaire*) laid down by the Code of Criminal Procedure (*Code de procédure pénale*, Arts.L.529-530).

The transport of animals without the licence required under Art.L. 214-12 is punishable with six months of imprisonment and a fine of 50,000F (Art.L.215-13, Rural Code). Legal persons may be convicted of this offence in accordance with Art.121-2, Criminal Code and fined in accordance with Art.131-38 of that Code.

Obstructing an agent authorised under Arts.L.214-19 and L.214-20 in the performance of his/her duties is punishable with six months of imprisonment and a fine of 50,000F (Art.L.215-14, Rural Code).

LEGISLATION AUTHORISING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS:

OVERVIEW OF ADMINISTRATIVE ARRANGEMENTS FOR CITES ENFORCEMENT

Three ministries are responsible for different aspects of CITES enforcement:

- Ministry of Environment and Territorial Planning (*Direction Nature et Paysages*) through national/regional management authorities (see end of report); the *Brigade Mobile d'Intervention* (national competence, also known as the *Brigade "Convention de Washington"*); and the National Office of Hunting and Wildlife (*Office National de la Chasse et de la Faune Sauvage*), whose officers have departmental competence for controlling domestic transport, sale, handling etc.;
- Ministry of Finance, through the Customs service (*Direction Générale des Douanes et Droits indirects*) which handles international trade aspects, seizure etc. (see next part of report);
- Ministry of Agriculture (a relatively minor role), through its *Direction générale de l'alimentation* and the *Direction Service Vétérinaire* which deals with sanitary and welfare conditions of facilities holding and breeding animals, mainly at the level of the *département*.;

At present, there is no information protocol or automatic system for information exchange between the Environment and Customs departments responsible for CITES enforcement. The need to improve information systems is recognised and under consideration.

A training course for all services involved in CITES implementation and enforcement is held once a year. It lasts for a week and covers revision and updating of regulatory aspects as well as site visits and analysis of practical problems of inspection and enforcement.

All ministerial departments that have co-signed one or more of the Ministerial Orders (current Orders cover CITES Implementation, Marine Turtles, Ivory and Crocodylians) have responsibility for enforcing provisions relevant to their competence. In addition to the departments named above, current signatories include the Director of Maritime Fisheries, the Director of *l'artisanat* (crafts) and the *délégué aux arts plastiques*.

ENFORCEMENT AGENTS AUTHORISED BY LEGISLATION

Environmental Code

Art.L.415-1 lists the agents competent to investigate and proceed against offences under Arts L.411-1, L.411-2, L. 411-3 (domestic handling and movement of designated protected species), L.412-1 (CITES implementation) and L. 413-2 à L. 413-5 (animal holding facilities). In addition to the police, these include:

- authorised Customs personnel (Art.L.415-1, 1°);
- civil servants and agents authorised by the Minister for the Environment (Art.L.415-1, 2°);
- agents of the State/National Forestry Office authorised to take action regarding offences related to protection of animals and plants and to sanitary inspection (Art.L.415-1, 3°);
- authorised agents of *inter alia* the National Office of Hunting and Wildlife (Art.L.415-1, 4°);
- agents responsible for maritime fisheries/public maritime domain (under the Decree of 9 January 1852) with regard to protection measures for the public maritime domain or territorial waters (Art.L.415-1, 5°).

Rural Code

In addition to conferring powers of many of the above categories of agents, the Rural Code authorises veterinary inspectors, whether employed or under contract to the State, to investigate and formally report offences within their respective *départements* related to the holding of wild animals in captivity under Arts.L.214-3 to L.214-18 and regulations made thereunder (Art.L.214-19 and L.214-20).

RECORDING/PROSECUTION OF OFFENCES

Environmental Code

Official reports drawn up by officers and agents designated under Art.L.415-1 are deemed to be good evidence unless and until proved otherwise. They must be sent to the State prosecutor (*procureur de la République*) within three days of their completion, otherwise they are deemed invalid (Art.L.415-2).

Specific rules of criminal procedure apply (Arts.17-21*bis*, Decree of 9 January 1852) to offences committed in the public maritime domain or territorial waters.

Rural Code

Equivalent provisions exist under Art. 214-23, section III.

SEARCHES AND SEIZURES

Environmental Code

For all offences listed in Art.415-3, investigating/prosecuting agents may seize the article to which the offence relates as well as any instruments and vehicles used in the commission of the offence. The defendant must bear the cost of transport, maintenance and custody of seized articles (Art.L.415-5).

For offences involving species protected under L.411-1, weapons and conveyances used may be seized in accordance with Art.428-9 (Art.L.415-4). Similar powers exist to seize weapons and conveyances abandoned by unidentified wrongdoers (Art.L.428-11).

Rural Code

Art. L.214-23 lists inspection, control and intervention powers available to officers and agents authorised under Arts.L. 214-19 to L.214-20, though these are not primarily concerned with CITES-listed species. The powers include:

- access to premises and installations (except dwellings) where animals are kept (Art. L.214-23, I.1°);
- inspection at any time of vehicles transporting animals and in professional use at the time of control. If carried out at night except at a specified Customs point, the agents concerned must be accompanied by a police officer (Art. L.214-23, I.2°);
- compilation of relevant information and documents at the premises or during an interview (Art. L.214-23, I.4°);

The State prosecutor must be kept informed of investigations into suspected offences under Arts.L.214-3 to L.214-18 and implementing texts and may formally oppose these (Art. L.214-23, II).

Authorised officers and agents may at any time make necessary arrangements for the slaughter, turning back, shelter, feeding and rest of animals during controls carried out at specified Customs points. The cost of such measures is born by the owner, addressee, importer, exporter or, failing this, any other person participating in an import or export transaction (Art. L.214-23, V).

ADMINISTRATIVE PENALTIES: SUSPENSION/REVOCAION OF LICENCES, CLOSURE OF FACILITIES

Environmental Code

In addition to the criminal penalties that may be imposed under this part of the Code (i.e. for possession/holding offences), the Minister for the Environment may prescribe administrative sanctions that include the closure of the facility (Art.L.413-5).

Rural Code

In addition to the criminal penalties imposed under the Code in relation to facilities open to the public for the use of animals, the competent administrative authority may prescribe administrative sanctions that include the closure of such facilities (Art.L.214-2).

Under Art.L.214-9, where an authorised agent records a violation of infectious disease controls or the rules applicable to intra-Community exchanges or the import or export of live animals, the *Préfet*:

- must require the party concerned to comply with relevant obligations within a specified period and invite that party to submit its observations within the same period;
- may suspend or revoke, temporarily or permanently, the operating licence (*certificat de capacité*);

- in the event of non-compliance at the expiry of the specified period, order the suspension of the activity in question until the operator complies with the order. During any suspension, the party concerned must ensure the upkeep of any animals under his or her control.

Under Art.L.214-16, in the event of non-compliance with remedial measures prescribed by a veterinary inspector for unsanitary premises holding wild animals in captivity, the veterinarian must report on these measures to the mayor of the relevant commune and to the *Préfet*. The latter may order the performance of such measures within a specified time period, at the cost of the responsible party: in an emergency, the mayor may order temporary measures.

At regulatory level, Arts.R.213-44-46 set out the procedure to be taken against unlicensed institutions.

Ministerial Order of 21 December 2000 on the procedure for registering scientific institutions for the purpose of international exchanges of specimens of CITES-listed species (Journal Officiel of 19 January 2001)

In cases of non-compliance with the provisions of this Order, permits issued by the competent administrative authority may be withdrawn at any time on the basis of a statement giving reasons (Art.4).

Ministerial Order of 9 November 2000 establishing the list of marine turtles protected on national territory (Journal Officiel of 7 December 2000)

In cases of non-compliance, permits issued under this Order may be suspended or revoked in accordance with the provisions of Art.R.212-3 of the Rural Code (Art.4).

Ministerial Order of 27 December 2000 on the procedure for tagging whole sides and skins of crocodylians for international trade in specimens of CITES-listed species (Journal Officiel of 9 January 2001)

In cases of inadequate or irregular attachment of tags, the Minister must suspend the supply of tags to the professional concerned for a minimum of one year. During the suspension, the marking of flanks and skins is carried out at the professional's expense by a person designated by the President of the *Fédération nationale de la maroquinerie* (Art.6).

In cases of inadequate or irregular ordering, distribution or stock management of tags, the Minister may terminate the mandate of the *Fédération nationale de la maroquinerie*, after the latter has been given an opportunity to respond to a written statement of reasons and proposed actions (Art.9).

Ministerial Order of 28 May 1997 establishing a permit system for holding or use of elephant ivory on national territory by manufacturers or restorers of articles made thereof and establishing conditions for trade in such specimens (Journal officiel of 1 June 1997) as amended by the Order of 30 June 1998

In cases of non-compliance, permits issued under this Order may be suspended or revoked in accordance with the provisions of Art.R.212-3 of the Rural Code (Art.1).

OTHER RELEVANT LEGISLATION

Customs Code

“Customs territory“ (*territoire douanier*) includes the territories and territorial waters of continental France, Corsica, French islands adjacent to the coast and the overseas *départements* of Guadeloupe, Guyane, Martinique and La Réunion (Art.1.1).

Offences under the Customs Code

The Customs Code establishes offences related to illegal export or import (including introduction from the sea) and to domestic holding or transport of illegally exported goods. These constitute *délits* (the more serious category of criminal offence, cf *contraventions*) and are punishable under Art.414 (Art.408).

With regard to *international trade*, it is an offence under Art.414:

- to smuggle goods (*contrebande*), i.e. import or export goods without going through Customs points or breach legislative or regulatory provisions that prohibit export or re-export (Art.417); or
- to import or export “prohibited goods” without the necessary declaration.

“Prohibited goods” are goods whose import or export is prohibited for any reason or subject to restrictions or special procedure (Art.38.1). Where import/export is subject to the presentation of a permit or certificate, goods are deemed to be “prohibited” if they are not accompanied by the prescribed document or are presented with an invalid document (Art.38.2). It is prohibited for the person named on any import/export permit to lend, sell, transfer or make any agreement concerning the said permit (Art.38.3).

“Without the necessary declaration” covers any false declaration intended to avoid applicable prohibitions, as well as false declarations as regards currency, value or origin of the goods, the designation of the real recipient or sender, with regard to offences committed with the help of false, inaccurate, incomplete or inapplicable bills, certificates or any other documents (Art.426).

With regard to *national possession and transport*, certain categories of goods are subject to special rules under Article 215. This specifically applies to specimens of CITES-listed species (by virtue of Art.1, Ministerial Order of 24 September 1987, *Journal Officiel* of 14 October 1987) and requires that:

- any person holding or transporting goods prohibited under international agreements designated by Order of the Minister for the budget must, at the request of a Customs officer, produce receipts to prove that such goods were lawfully imported into the Customs territory of the European Community or prescribed documents to prove that they were obtained from natural or legal persons lawfully established within the said territory (Art.215.1);
- persons who held, transported, sold, transferred or exchanged such goods or drew up certificates of origin must also present such documents at the request of Customs agents, if so required within three years either of the goods leaving their control or of the date of issuing a certificate of origin (Art.215.2);
- these provisions do not apply to goods that were imported, held or acquired within the Customs territory prior to the date of publication of the relevant Ministerial Order (i.e. 14 October 1987 for CITES specimens) (Art.215.3).

Goods covered by Art.215 are deemed to be *contrebande* in the absence of proof of origin or presentation of one of the documents required under that Article or if the documents presented are false, inaccurate, incomplete or inapplicable (Art.419.1).

Penalties under the Customs Code

Fines and imprisonment

Offences involving “prohibited goods” that relate to smuggling (*contrebande*) or import/export without the necessary declaration are punishable with a prison sentence of up to three years and a fine of one or two times the value of the article the subject of the fraud (Art.414.1).

The same penalties apply to transporters/holders who were aware that those giving them certificates of origin could not lawfully do so or that those who sold, transferred, exchanged or gave them the goods were not able to prove that these were lawfully held (Art.419.3).

Attempts to commit offences are subject to the same penalties as offences (Art.409).

Seizure and confiscation

Art.414 also provides for confiscation of the goods concerned, the means of transport used and any articles used to conceal the offence, in the context of offences involving prohibited goods that relate to smuggling or import/export without the necessary declaration. Confiscation is also available for offences under Art.419.3.

Such goods may be seized from any place, and any person referred to in Art.215 must be prosecuted and punished in accordance with Art.414 (Art.419.2).

Enforcement under the Customs Code

Customs officers have extensive powers of investigation and enforcement with regard to offences covered by Arts.414-429, as summarised below:

- to inspect goods, means of transport and persons (Arts.60-63);
- to enter and search for goods subject to Art.215 in public or private premises, and carry out inspections of dwellings. They may seize goods and documents connected with offences, but must be accompanied by a police officer (Art.64.1).
- to require the communication of any papers or documents relevant to their operations (see detailed provisions in Art.65.1-5, mainly relating to transport and warehouse/storage operations);
- on condition of reciprocity, to supply competent authorities in other countries with information, certificates, official reports and other documents likely to prove the breach of laws/regulations applicable to the entry or exit from their territory (Art.64-6);
- to have access to post offices and inspect postal consignments relating to imports or exports that are prohibited or restricted (Art.65.2-3).

Any such visit must be authorised by the competent judge, on the basis of a well-founded application, except where offences are actually being committed. The judge retains control over any visit and may personally visit the premises. An inventory of goods and documents seized must be drawn up and annexed to the official report. (See further conditions laid down in Art.64.2.)

Prosecution of offences and burden of proof

Proceedings for Customs offences may be brought even where no goods have been seized or where declared goods are not covered by any report. For purposes of evidence, Customs officers may use information, formal reports and other documents supplied or drawn up by competent authorities of other countries (Art.342).

The presumption in Art.419.1 that goods covered by Art.215 (i.e. all specimens of CITES-listed species) are *contrebande* in the absence of proof of origin/presentation of a prescribed document or if the documents presented are false, inaccurate, incomplete or inapplicable, means that the burden of proof is effectively reversed. It is for the defendant in any criminal proceedings to prove that his or her holding or transport of the specimen concerned was lawful.

ADDITIONAL COMMENTS:

The institutional framework for CITES implementation in France has been significantly changed as a result of Decree (*décret*) n° 97-34 of 15 January 1997, supported by Decree n° 97-1206 of 19 December 1997, and is still in transition.

These Decrees basically provide for decentralisation of individual administrative decision-making to the *Régions*, of which there are 22 in metropolitan France and four in France's overseas territories (*domaines et territoires d'outre-mer*, or *DOMTOM*). With regard to CITES enforcement, the date for commencement of these provisions was postponed for three years to provide for the installation of new computer systems, software and reporting protocols and special training sessions.

From 1 January 2001, the issue of CITES permits throughout France (except for the *Ile de France* region, see below) is carried out at the level of the *Région*. The respective *Directions régionales de l'environnement (DIREN)* act as decentralised Management Authorities, who notify the *Ministère de l'Aménagement du Territoire et de l'Environnement* (the Ministry of Territorial Planning and Environment) where a permit application is refused or with regard to any legal proceedings.

For *Ile de France*, which includes Paris and in which half of all CITES permits are issued, the Ministry still acts as Management Authority but its competence is gradually being transferred to the *Région*. This progressive transfer will begin with fine leather goods (*maroquinerie*) and tanneries (the biggest volume of CITES-related transactions in France relates to the re-export of luxury goods).

The effect of these changes is that competence for issuing CITES permits and enforcing the EC CITES Regulations is now shared between national and sub-national management authorities. The Ministry will continue to act as CITES focal point and handle all international contact and policy input, but in other respects its role will shift towards technical assistance and compilation of data on CITES implementation at the regional level.

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Enforcement of International Wildlife Trade Controls in Germany

Robert Seelig (LL.M)

CITES Status:

Date CITES ratification entered into force: June 20, 1976

Acceptance of Amendments:

Bonn Amendment (Article XI) – Acceptance registered 7 May, 1980; entered into force on 13 April 1987

Gabarone Amendment (Article XXI) – Acceptance registered 20 March, 1985

CITES reservations currently in force: No appendix I and II reservations in force. Appendix III reservations: *Vulpes vulpes griffithi*, *Vulpes vulpes montana*, *Vulpes vulpes pusilla*, *Mustela erminea ferghanae*, *Mustela sibirica*, *Arctictis binturong*, *Civettictis civetta*

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

Formerly, the Implementing Act to CITES “Gesetz zum Washingtoner Artenschutzübereinkommen” of May 22, 1975 contained administrative sanctions for violations of CITES and authorisation to enact regulations on the protection of species. It is no longer in force.

- 1) **GESETZ ÜBER NATURSCHUTZ UND LANDSCHAFTSPFLEGE, BNatSchG; (Conservation of Nature and Landscapes Act) as published 21 September 1998, as last amended May 8, 1999, Federal Law Gazette I p. 2994**

The BNatSchG restructured German legislation on the protection of species. Within the German legal system the Federal Conservation of Nature and of Landscapes Act provides for a legal framework on the federal level. Respective state (Länder) legislation fills in this framework, providing further details on the execution of the BNatSchG.

However, in accordance with section 4 BNatSchG certain provisions of the federal BNatSchG are directly applicable and do not need to be filled out by state legislation. Included in this category are the provisions dealing with enforcement of CITES and relevant EU legislation. (§ 4 BNatSchG.) Further, in section 20 d, BNatSchG clarifies that enforcement of international conventions, too, is within the authority of the federal ministry of environmental protection. Consequently, detailed control and sanction mechanisms are to be found in sections 22 – 26 BNatSchG, and state legislation contains no provisions relevant to trade in species protected under CITES.

State legislation does, however, contain provisions on the protection of domestic species, although it does not address trade in such species. (State regulations in accordance with sections 20e sec. 5, 20 g sec. 6 and 7 BNatSchG).

In general, the BNatSchG contains restrictions with regard to the import, export, introduction and possession of protected species, as well as access to such species. It also addresses matters relating to environmental planning, species and habitat conservation, preservation, and development. All of these latter provisions are further implemented by respective state legislation.

The amended version of May 8, 1998 implemented the EU Fauna-Flora-Habitat - Guideline (FFH). Furthermore it brought the Act into conformity with the EU Regulation 338/97. *Inter alia*, it adapted administrative and penal sanctions. It now provides most core provisions concerning the identification of violations, imposition of penalties,

authorisation of agencies to undertake enforcement measures. The Act supplements the EU regulation and refers to the Regulation's definitions. The BNatSchG introduced restrictions on trade and possession of species, reporting and bookkeeping duties as well as penal provisions.

A Revised version BNatSchG entered into force by the end of 2001 (Details on the revision see below, additional comments). The acts objectives can also be found in Art 1 and 2 thereof.

Unofficial translation of Article one:

- (1) The conservation, preservation and development of nature and landscapes, both in populated and non-populated areas, shall be such as to effectively serve the following purposes:
 1. to maintain the efficiency of the balance of nature,
 2. to preserve the exploitability of nature's resources,
 3. to conserve fauna and flora, and
 4. to safeguard the variety, particularity and beauty of nature and landscapes,as a basis for mankind's existence and as a prerequisite to recreation in nature and in landscapes.
- (2) The requirements resulting from para. 1 shall be weighed one against the other, as well as against other demands of the community on nature and landscapes.
- (3) Agriculture and forestry, when pursued properly, play a crucial role in the conservation of cultivated areas and areas designed for recreational purposes. As a general rule, both serve the purposes of the present Act.

2) *BUNDESARTENSCHUTZVERORDNUNG, BArtSchV, (Regulation on the Conservation of Species) In the version published on 14 October 1999 (Federal Law Gazette I p. 1955, 2073, last amended on December 21, 1999, Federal Law Gazette I p. 2843)*

This Regulation supplements the above mentioned mechanisms of the BNatSchG. The Regulation mainly aims at protecting endangered species, by specifying certain requirements for the marking of protected species, and certain reporting duties. It lists species not protected under Annexes A and B of EU regulation 338/97. It contains no enforcement or sanction mechanisms, however its § 13 refers to § 30 II, No. 1 BNatSchG. It does not contain restrictions on imports and exports of protected species, since such matters are no longer subject to the German regulation now that the EU regulation is in force. It contains restrictions for alien species listed in § 3 BArtSchV.

3) *STRAFGESETZBUCH, StGB (German Penal Code) in the version of August 15, 1998, Federal Law Gazette I p. 3322)*

Two sections of the Penal Code are relevant to the present report. They provide for fines or imprisonment for violations of the Conservation of Nature and of Landscapes Act. Section 329 (3) No. 6, 7 provides for a basic definition of violations and fines or imprisonment; and section 330 contains a "qualified" form of violation. Violations of section 330 (1) No. 3, 4 result in imprisonment.

The Penal Code contains general penal provisions and covers all aspects of criminal law. Sections concerning environmental crimes are relatively new. It simultaneously aims at sanctioning human misbehaviour and protection of environmental goods.

4) *ZOLLRECHTSÄNDERUNGSGESETZ (Amendment to the Customs Act) of December 21, 1992 (Federal Law Gazette I, 2125 of December 24, 1992).*

The objective of the (federal) Act and this amendment is to define the customs authorities' duties and authorise them accordingly. The amendment has to be read in context with EU legislation, especially with the EU Regulation 2913/92 and 2454/93, (392R2913 Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, Official Journal L 302 , 19/10/1992 p. 0001 – 0050). The Act generally authorises to control all transnational commerce. Whereas the Act contains a variety of enforcement measures (controls, searches, seizures, confiscations) it contains no specific sanction mechanisms.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

For all violations relating to illegal trade, sale, export, re-export, import and introduction from the sea, concerning species mentioned in Regulation 338/97, German law refers to EU Regulation 338/97 (Art 4, 5). German administrative law refers to the Regulation 338/97 for definitions of CITES violations, whereas Penal law also refers to BNatSchG provisions but also contains detailed definitions of violations.

The Regulation 338/97– as all EU regulations - is part of German legislation. Article 4, 5 and 8 provide for a variety of checks, permit requirements and documentation duties. German law (BNatSchG, StGB) provides for sanctions and penalties for the violation of obligations as described in CITES and Regulation 338/97.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES IN ADMINISTRATIVE LAW:

Section 30 BNatSchG contains all relevant provisions for the imposition of administrative fines. Section 30 (2) a provides administrative fines for infringement of Regulation 338/97 Articles 4,5 and 8 thereof. In detail:

- Section 30 (2) a No. 1 sanctions the deliberate or negligent import, export or re-export of specimens of listed species in violation of Art 4 and 5 of the Regulation 338/97.
- Section 30 (2) a No. 3 sanctions actions which contravene Art 8 (1) or (5) of said regulation (control of commercial activities).
- Section 30 (2) a No. 2 addresses infringement of import notifications in accordance with Art 4 and 5 of the Regulation 338/97.
- Section 30 (2) a No. 4 provides penalties for contravention of an enforceable obligation according to Art. 11 para 3 (permits or certificates that stipulate conditions and requirements to ensure compliance with the Regulation 338/97)
- Section 21 (f) BNatSchG regulates the possession of species of Fauna and Flora specially protected under the Regulation 338/97. It notes that it is illegal to possess, trade in, offer for purchase, store, transport and display to the public any specimen of a specially protected species.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES IN PENAL LAW:

- If any of the above mentioned violations of section 30 (2) a No. 1, No. 2 BNatSchG is committed for commercial purposes or habitually, section 30 a (1) BNatSchG prescribes imprisonment up to three years or fines.
- Violations of section 30 a (2) and section 30 (2a) No. 1, No. 3 BNatSchG (affect strictly protected species (previously species threatened with extinction, or “Annex A species”) may result in imprisonment up to five years, or the imposition of fines.
- Section 30 a (3) and (2) BNatSchG provide for imprisonment of at least three months but not exceeding five in cases where it is shown that strictly protected species are being affected habitually.

Sections 329 and 330 of the Penal code provide:

Section 329 (3) : Whoever, contrary to an ordinance or an enforceable prohibition enacted to protect a nature conservation area, an area provisionally set aside as a nature conservation area, or a national park:

“...kills, traps, hunts or in whole or in part destroys or removes the eggs of animals of a specially protected species within the meaning of the Federal Nature Conservation Law;

damages or removes plants of specially protected species within the meaning of the Federal Nature Conservation Law;

shall be punished with imprisonment for not more than five years, or a fine.

(4) If the perpetrator acts negligently, then the punishment shall be:

1. in cases under subsections (1) and (2), imprisonment for not more than two years or a fine;
2. in cases under subsection (3), imprisonment for not more than three years or a fine.

Section 330 (Especially Serious Case of an Environmental Crime)

(1) In especially serious cases an intentional act under Sections 324 to 329 shall be punished with imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator:

- ...
3. harms in a lasting way an existing population of animals or plants of species that are threatened with extinction;
 4. acts for profit....

All of the above mentioned specific matters of administrative and penal law have to be completely proven in order to convict violators. Additionally, violators of the above mentioned provisions can be convicted only if it is proven that violators acted either negligent or deliberately (*mens actus*). Without the latter, neither administrative nor penal sanctions are possible. Penal law overrules administrative law, once both laws are applicable. However, overlaps are of minor relevance as penal law only provides provisions for “qualified offences”.

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

1) Administrative penalties (fines, seizures, confiscations)

The following provisions specify the extent of administrative authority to impose penalties:

- Section 30 (2) a No. 1 and section 30 (2) a No. 3 BNatSchG: Any violation of the above provisions results in an administrative fine up to DM 100.000,--.
- Section 30 (2) a No. 2 and section 30 (2) a No. 4 BNatSchG: These violations are sanctioned with an administrative fine up to DM 20.000,--
- Section 21 f BNatSchG: Seizure: Any specimens not accompanied by the required documents (regardless of whether the importer was at fault) will result in seizure (step 1) as provisional action. The importer will be given the opportunity to submit the required documents within one month (a period that may be extended up to six months, with approval); after which, the specimens will be confiscated. Confiscation can be step 2 as a final decision whereby the ownership is transferred to the state (§ 21f, II BNatSchG) .
- Section 30 b BNatSchG: Confiscation (in addition to sanctions) .

Revocation of permits is also authorised, under sections 48 and 49 VerwaltungsVerfahrensGesetz, VwVfG (administrative procedural act, Federal Law Gazette I p. 3050). It can occur only where the competent authority, owing to alteration of legislation or to discovery of new or previously unknown facts, could refuse to grant permits. However, the relevant provisions concerning permit revocations are also found in the EU Regulations 338/97 and 1808/2001 and Art. 11, II a.

2) Penalties under Penal Law

The following provisions specify the extent of judicial authority to impose penalties under penal law:

- Section 30 (2) a No. 1, No. 2 BNatSchG section 30 a (1) BNatSchG: Imprisonment up to three years or a fine.
- Section 30 a (2) and section 30 (2a) No. 1, No. 3 BNatSchG: Imprisonment up to five years or a fine.
- Section 30 a (3) and (2) BNatSchG: Imprisonment of at least three months but not exceeding five
- Section 329 Penal Code: imprisonment for not more than five years or a fine. In case of negligence under subsections (1) and (2), imprisonment for not more than two years or a fine; in cases under subsection (3), imprisonment for not more than three years or a fine.
- Section 330 Penal Code: imprisonment from six months to ten years.

In addition, as noted above, any confiscation results in loss of ownership of species, new ownership accrues to the government. (So far, under the BNatSchG and the new Penal Code Sanctions, a total number of about 11.000 confiscations and administrative procedures are recorded.

The number of administrative proceedings and confiscations has constantly increased. In 1981 there were 902, in 1984 1.304, in 1990 6593 and in 1999 17.480 confiscations.

About 1.200 administrative fines and 100 convictions under Penal Law were reported between 1996-1999. ⁴⁷⁾

LEGISLATION AUTHORISING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS:

Enforcement of EU legislation and CITES provisions

Competences

Because of the federal structure of the Federal Republic of Germany, implementation and enforcement of legislation governing the enforcement of CITES is within the authority of different agencies on different levels. One has to distinguish enforcement authorities, scientific authorities and authorities responsible for investigations. All competences are defined in the BNatSchG.

In accordance with section 21 c Sec. 1 No. 1 BNatSchG the Ministry for Environmental Protection (BMU) is competent authority for negotiating all matters concerning other contracting states, the Secretariat of CITES and the EU Commission. It is the agency that it submits proposals to the conference of the contracting parties to CITES, for example.

According to section 21 c Sec. 1 No. 2 BNatSchG, the German agency for environmental conservation (BfN) (an agency within the BMU) is the competent enforcement agency concerning issuance of import, export and re-export permits. It grants exceptions and serves, as scientific body in accordance with CITES. In Germany, BfN is the permanent scientific authority, and BMU is the management authority. A scientific advisory council counsels the BMU and BfN. It consists of scientists and members of environmental organizations.

According to section 21 c Sec. 1 No. 4 BNatSchG, state agencies are competent authorities for all remaining tasks within the meaning of EU regulation 338/97.

⁴⁷ MORE COMPLETE STATISTICS CONCERNING PROSECUTIONS, ADMINISTRATIVE PROCEDURES, SEIZURES AND CONFISCATIONS IN GERMANY ARE INCLUDED IN THE REPORT "STATISTICAL INFORMATION AND FACTUAL SUMMARIES ON THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS IN GERMANY," CONTAINED IN THIS VOLUME. –TRY]

Enforcement of German Federal and State Law

In the respective states, authorities are structured on different levels, *i.e.* communities (Kreisbehörden), supervising agencies to communities (Regierungspräsidium) or state agencies. As many as (approximately) 180 state agencies are responsible for various components of wildlife trade enforcement. State authorities are competent for

- ◆ issuance of exemptions from prohibited marketing (§§ 20 g sec. 6, 31 BNatSchG),
- ◆ surveillance of protected species (are specimens legally obtained? § 22 BNatSchG)
- ◆ issuance of exemptions from obligations to marking and bookkeeping (§§5, 6 BArtSchV),
- ◆ surveillance of prohibited marketing and
- ◆ prosecution and sanctioning of administrative and penal law violations.

Members of state agencies responsible for enforcement meet regularly in order to harmonise enforcement measures.

Introduction to Germany / border controls

The German Customs Act contains provisions on the rights and duties of customs authorities. Section 1 subsection 3 explicitly provides for the right to control all borders in order to ensure compliance with all relevant national and EU legislation, (including the Community Customs Code and Regulation 338/97). Section 10 of the Act also provides for the right to control persons and means of transportation within the areas adjacent to the borders.

The customs authorities can search persons and vehicles, request information on the origin of goods and take samples. In case of violations the customs authorities are authorised to seize specimens of species or their parts or products. Live specimens are given into the custody of the Federal agency for the environment.

Section 21 d BNatSchG also authorises the customs authorities to controlling Germany's borders for violations of EU legislation relevant to trade in protected species.

Only certain custom offices are competent to control border traffic in species that are subject to permit requirements. They issue import notifications (Art. 4 sec. 3 and 4, Reg. 338/97) and check all presented documents for validity. Approximately 60 custom agencies are responsible for clearance of protected species. Import or export of protected species has to go through one of these 60 offices (§ 21 d subsec. 3 BNatSchG). In case of violations within the custom agencies, special investigation teams conduct all investigations.

Inner state controls for CITES violations

- 1) Rights and Duties to Information:
 - ◆ Section 23 BNatSchG contains the obligation to inform the competent authorities (custom authorities) upon request *i.e.* on the origin of species.
 - ◆ Section 5 (3) of the Regulation on the Conservation of Species (Bundesartenschutzverordnung BArtSchV) obliges the owner of species to detailed bookkeeping. The competent authorities (custom authorities) have the right to examine all books and records.
 - ◆ Section 6, II BArtSchV provides for the obligation to report possession of protected vertebrates to the competent state authorities.
- 2) Rights to Access and Examine: Section 23 (2), 1 BNatSchG authorises the competent authorities to access areas where protected species are suspected and to examine all relevant papers as well as the specie's confinements. Authorities also have the right to take blood or tissue samples in order to verify specie's origins in case of doubts about its origin.
- 3) Seizures and Confiscations: In accordance with section 22 subsec. 4 and section 21 subsec. f BNatSchG, customs authorities and state (Länder) agencies are given authority to seize, confiscate and forfeit species from

the proprietor once relevant EU legislation is violated. The measures do not have to be of a penalising character (as described above). Rather, this provisions is directed at withdrawing illegal specimens of species from trade. § 22 is an important instrument for state authorities. Owners of protected species have to prove that he possesses legally.

In accordance with section 94 of the German criminal procedure law, all matter that might serve as evidence is subject to confiscation. Customs authorities or police forces are therefore authorised to confiscate any specie or specimen of species that might serve as evidence for violations of German or EU legislation.

Compounding Penalties/ Prosecution of Offenders

Although the question whether prosecution is conducted or not under administrative law remains technically within the discretion of agencies, the public prosecutor is obliged to prosecute once the *actus reus* of penal law is met. This means that the discretion of agencies is limited, when serious administrative offences are at stake the agency's discretion is reduced to zero and it is practically obliged to step in.

Once prosecution is conducted and a violation is proven, the question of whether to apply penalties is generally not within the discretion of any authority. Only in cases of very little guilt, compounding of penalties can be decided by either the Federal Agency for Nature Conservation or the public prosecutor. Where compounding is allowed, the agencies, as well as prosecutors, generally consider it to be a mitigating factor, where the violator pays or otherwise undertakes compensation for damage caused as a result of his violation.

Prosecution under administrative law is within the authority of agencies, whereas prosecution under penal law is exclusively the responsibility of the public prosecutor. However, administrative penalties when appealed, are also solely under the authority of the public prosecutor. In practice, administrative penalties are of far greater relevance than penal sanctions. (About 1.200 administrative fines were reported between 1996-1999, as compared with 100 convictions under Penal Law.⁴⁸)

OTHER RELEVANT LEGISLATION

1) GRUNDGESETZ; GG (German Constitution, Federal Law Gazette I p. 1)

Limitations on all legislation governing the enforcement of CITES are to be found in the German Constitution. It guarantees every individual certain fundamental rights. Inter alia the constitution provides:

Articles 2, 10, 12, 14 GG provide for the protection of civil rights, including the freedom to choose a profession, freedom of action, privacy of mail and the protection of personal property. Whenever those fundamental rights are limited by law or regulation or any other act of public administration those fundamental rights have to be weighed against the interest pursued with the respective law. In practice, any governmental authority has to consider the individual perpetrator's fundamental rights.

Fundamental rights can only be restricted by law. All legislation infringing fundamental rights must therefore contain an explicit section on the limitation of the respective fundamental right. Thus, for example, section 10 (subsec. 4 and 5) of the Amendment to the Customs Act limits the fundamental rights of freedom of action and privacy of mail. All limitations have to weigh the interest affected against the purpose behind restricting legislative provision.

In practice, the protection of fundamental rights restricts only the *excessive* use of authority; it does not usually hinder proper exercise of the powers given to competent authorities.

⁴⁸ [SEE "STATISTICAL INFORMATION..." , CITED IN PRIOR FOOTNOTE. -TRY]

2) “Privileged Acts”

There are several so-called “privileges” to be found in German law. Privileges are part of German law in order to ensure that a particular piece of legislation does not disproportionately prejudice those parts of the population that are affected more severely than others by that legislation. In some cases, privileges will provide exemptions from environmental legislation for farmers, hunters fishermen that are adversely affected by that legislation.

In practice, privilege means that as long as the disturbing of, access to or possession of protected species is part of a “privileged” act or “good practice” of agriculture, hunting, fishery or forestry, the provisions protecting species of the BNatSchG are not applicable or not applicable to their full extent.

Thus, for example, the Bundesjagdgesetz (Hunting Law, Federal Law Gazette I S. 2849, last amended on January 26 1998) provides that where Annex A and B species are subject to German Hunting law, they can be hunted and possessed so long as they are hunted in accordance with law.(i.e. hunting season, quotas). The BNatSchG is not applicable in this case.

Section 3 of Art. 1 of BNatSchG is also instructive. It provides that:

(3) Agriculture and forestry, when pursued properly, play a crucial role in the conservation of cultivated areas and areas designed for recreational purposes. As a general rule, both serve the purposes of the present Act.

The BNatSchG provides in section 20 f (3) that possession of involuntarily harvested materials is legal, provided that they were obtained in accordance with the German laws governing fishery, use of soil and forestry. For example, if one was using accepted procedures to harvest hay, any protected animals or plants that were unintentionally captured or harvested in the process would not be subject to penalties for possession of those species.

However as the BNatSchG will be revised in 2001, the significance of privileges will decrease (see below under “Additional Comments”).

3) On a case by case basis, section 20 g (6) BNatSchG provides that certain acts can be exempted from the application of CITES enforcement legislation by the German Agency for Nature Conservation in order to protect domestic species or important domestic interests concerning agriculture, fishery, forestry or water or wherever it deems appropriate for conducting scientific research. The aims and objectives of CITES have to be considered.

ADDITIONAL COMMENTS:

Practical problems of controlling imports and exports of specimens result from smallness, vast variety of specimens of species protected.

German legislation concerning CITES enforcement relates to the EU regulation 338/97. The Regulation contains most definitions and provisions on trade, sale, import and export of specimens of protected species and the prohibition of their use for commercial purposes.

Most relevant definitions of violations are therefore to be found in the Regulation. The German BNatSchG had to be adjusted to the Regulation in 1998/99.

The BNatSchG was successfully revised in 2001The new BNatSchG is published for download on www.bmu.de.

Regarding the issues discussed in this Report, the most relevant new provisions are contained in the new sections 38-54 BNatSchG. Although up to now, there have been no environmental standards for privileged acts “privileges” now are restricted, by specifically defining standards for so-called good practices in agriculture, hunting, and fishing.

Also, the individual states (Länder) now have more leeway than before in the manner in which they legislatively implement the (federal) legal framework on the state level. The Revised version of BNatSchG specifically authorises the respective states to adopt legislation for listing of protected domestic species.

The Revised version also, however, refers to all EU legislation and explicitly to Regulation 338/97 for definitions. Wherever international, EU or federal legislation provide for definitions of violations the states cannot enact overlapping legislation.

Following the revision, the existing enforcement and penalty provisions of the BNatSchG remain.

(See www.bundesgesetzblatt.de for the text (in German) of all Federal Law Gazette publications mentioned in this report.)

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Enforcement of International Wildlife Trade Controls in Greece

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CITES STATUS:

Date of Ratification or Accession to CITES: The CITES Convention was ratified by the Greek Parliament on June 9, 1992 by Law 2055/1992, and published in the Government Gazette 105 /A/ on 30 June 1992. On October 8, 1992 Greece had officially applied to the CITES depository Government (Switzerland) and became the 117th Party of the Convention on January 6, 1993.

Acceptance of Amendment:

Bonn Amendment: Acceptance registered 8 October 1992; effective 6 January 1993

Gaborone Amendment: Greece's accession to the amendment of Article XXI of the Convention, as it was adopted at the second extraordinary COP in Gaborone (Botswana) is currently on process. Such acceptance must be in the form of an amendment to Law 2055/1992 that ratifies the CITES Convention. So, this amendment has to go through the Greek Parliament.

CITES reservations currently in force: In 2000, for the first time since it became a Party to CITES, Greece entered into certain reservations, regarding some specimens of *Moustela* and *Vulpes ssp*, that are listed on appendix III.

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

The first legislative measure taken by Greece, regarding the implementation of the E.U. Regulations 3626/82 and 3418/83 (consequent indirect implementation of the Convention on International Trade in Endangered species of wild Fauna and Flora), was Common Ministerial Decision (Ministers of Finance and Agriculture) No 261554/14 February 1985, Government Gazette 112/B/1985. This decision was based on article 258 paragraph 3 e of the Legislation Decree 86/1969, known as the Forest Code. Four Management Authorities were designated with authority to issue CITES permits. Penalties for the violators could range from 2 to 12 months imprisonment and at least 10.000 Greek Drachmas administrative fine. Later on, this Decision was partly amended, after Greece had ratified the CITES Convention and had proceeded to establish the following legislation.

In the year 1998, the Greek Parliament enacted Law 2637/1998, Government Gazette 2000/A/1998, which is the most significant legislative instrument relating to the implementation of the CITES Convention and consequently the EC Regulation 338/97 and 939/97. This Law is very important for the wildlife trade regulation and the protection of the non-indigenous species imported to Greece and generally all the endangered species included in the appendices that are protected by CITES Convention.

The most significant articles of the Law 2637/1998 are as follows:

Article 57 of Law 2637/1998 (amending and supplementing Legislative Decree No 86/1969 on "Forest Code" (Government Gazette 7 /A/1969))

Once this law was published, existing enclosed reserves were renamed as wildlife reserves and governed by the provisions of the Legislative Decree 86/1969 and this law.

1. Article 253 of Legislative Decree No 86/1969 as replaced by Article 3 of Legislative Decree 177 of 1975 (Government Gazette 205 /A) was amended as follows:

The phrase "...of the stock of game and wild fauna in general" shall be replaced by the phrase "of stocks of game and other species of wild fauna and species of wild flora".

2. Paragraphs 5, 6, 7 and 8 of Article 254 of Legislative Decree 86/1969 as replaced by Article 4 of Law 177/1975 (Government Gazette 205 /A/1975) were replaced by the following:

"5. The General Secretary of each Prefecture shall take a decision, published in the Government Gazette, setting up wild life reserves in forests, partial woodland, grassland, marshy land, wetland, farmland, shore lines, lake lines and coast lines, as well as on desert islands, on condition that these areas, are either essential for the sustenance, maintenance, reproduction or survival of species of wild fauna or flora, or are essential for the survival of one or more species of wild fauna or flora which are unique, rare or threatened with disappearance or constitute a representative sample of a type of biotope.

"6. Within these wildlife reserves it shall be prohibited to hunt any game or any species of wild fauna, or to collect any species of wild flora for research purposes, to destroy any type of area with natural vegetation, to destroy living species of vegetation, to fill with sand, drain or dry marshland, to pollute water sources and to incorporate wildlife reserve areas into residential or town planning. Works and projects and in particular fish farming, works in redistributed lands, tourist and industrial establishments, camps, quarries and mines, and roads may be carried out only if first preceded by an environmental impact study of type A and if granted environmental approval. By way of exception, the forestry service alone shall be permitted to collect species of wild fauna and to transfer them to stock other suitable regions.

"7. By decision of the General Secretary of each Prefecture, published in the Government Gazette, bans may be placed or limits or conditions may be placed on fishing, farming, pasture, woodcutting and the use of plant protection products and the collection and cutting for commercial purposes of plants for use as aromatics, dyestuffs, spices, honey and for flowers and decoration.

"8. Within the wildlife reserve, the forestry department can plan and carry out special works to improve the biotope of the wildlife reserve and works to meet the ecological requirements of the biological circle of the species of wild fauna and flora and in particular reforestation, keeping areas unplanted, keeping areas under traditional corps, upgrading and restoration of wetland, creating and developing plant germination areas, planting trees along farm roads and marshes. These special works shall be carried out pursuant to the provisions of article 16 of Law 998/1979 (Government Gazette 289 /A).

3. Article 255 of Legislative Decree No 86/1969 was replaced by the following:

- a) Paragraph 10 of Article 255 is replaced by the following:

10. The training of hunting dogs is allowed all over the year, only in case they are attended by hunters or dog trainers, without hunting guns, in restricted areas, which are designated by local forest service.

Races for hunting abilities of dogs are permitted under provisions and conditions referred in the Decision of the Minister of Agriculture, published in Government Gazette.

- b) Paragraph 11 of Article 255 was repealed, when this law entered into force

4. Article 258 of Legislative Decree 86/1969 was amended as follows:

- a) Case g' of par. 3 of article 258 was repealed once this law enters into force

- b) After par. 5 of Article 258, with the addition of par. 3 of Article 7 of Law 177/1975 (Government Gazette 205 /A/1975), a new paragraph 6 was added as follows:

6.a) the following is prohibited without a license:

The exportation, importation, re-exportation, re-importation, transportation, sale, purchase, advertising, rental, commercial exploitation, competition and generally the holding, marketing keeping, exhibiting, transporting, dispatching and transfer of:

- aa) species of wild flora and fauna and samples thereof, whether living or dead and whether processed or not.
 - bb) species of wild flora and fauna and samples thereof born and raised and still raise in captivity or artificially produced, processed or not, and species or samples which constitute part of personal or domestic articles and
 - cc) species of wild flora and fauna and samples thereof, whether processed or not, which are loaned or exchanged for commercial reasons between recognised scientists and scientific research institutes.
- b) Decisions by the Minister of Agriculture, published in the Government Gazette, shall specify those species of wild flora and fauna covered by the above points, the limits and conditions for granting licenses pursuant to the above point and the type of these licenses and any other details necessary for implementation of the previous point a’.
- c) In order the above license to be granted, a fee must be paid which will be considered as State Budget revenue. The amount of this fee shall be determined and readjusted by decision of the Ministers for Finance and Agriculture, published in the Government Gazette.
- c) Importers and exporters and associations thereof and companies marketing and transporting the species specified in b above, shall be entered on a special register for the issue of the above mentioned license. The Minister for Agriculture shall publish a decision in the Government Gazette specifying the conditions for entry on this register and any other details required for implementation of this point.
- e) Within the Ministry of Agriculture shall be set up a Scientific Committee on Trade in Species of Wild Flora and Fauna, consisting of:
- aa) The Head of the Directorate for Aesthetic Forests, Parks and Game in the Ministry of Agriculture who shall be replaced by his legal deputy
 - bb) One representative of the academic staff of the Forestry and National Environment Department of the Aristotelian University of Thessaloniki and a deputy
 - cc) Two representatives of the academic staff of the National Zoological Institute with their deputies.
 - dd) One representative of the academic staff of the National Botanical Institute and a deputy

Their particular institutes shall propose all the above representatives and their deputies. In addition,

An official from the Directorate for Forests, Parks and Game shall be nominated as secretary of the Committee together with a deputy.

In the Committee, upon the written invitation of the head of the Directorate for Aesthetic Forests, Parks and Game of the Ministry of Agriculture may attend, where appropriate, specialised scientists – representatives of research institutes or non governmental environmental organizations who have many years experience in the topics under discussion.

The members of the Committee and its secretary shall remain in office for three years.

The members of the Committee shall be appointed by decision of the Minister of Agriculture.

The function of the committee is to give an opinion on matters relating to point b and for any other matter relating to trade in species of wild flora and fauna. The above Committee shall represent Greece on the CITES Scientific Committee of the Member States of the European Union and the Secretariat of the International Convention in International Trade in Endangered Species of Wild Flora and Fauna (CITES).

- f) The Minister shall take a decision, published in the Government Gazette, specifying the criteria and procedure for the recognition and supervision of legal persons who receive, keep and look after species of wild fauna in “Protection centres for species of wild fauna” and any other details for the application of this point. The above legal entities are recognised as “Protection Centres for species of wild fauna” provided that their operation is not contravening the provisions in effect for public health.”

5. Article 265 of Legislative Decree No 86/1969 is amended as follows:

- a) In paragraph 4 the phrase “...of the stock of the game” is replaced with the phrase “of stocks of game and other species of wild fauna and of wild flora where appropriate, and of their biotopes.
- b) At the end of the point a’ of paragraph 4 of Article 265 the following phrase is being added : “and the works carried out and completed by the forestry service, in order to maintain, replace and manage species of wild fauna and flora and their biotopes”.
- c) At the end of point g’ of Article 265 the following phrase added: and protection of species of wild fauna and flora.
- d) At the end of point g’ of paragraph 4 of Article 265 points h’ and id’ added as follows:
- e) The preparation of studies and the carrying out of special programmes of research and management of species of wild flora and fauna and their biotopes
- f) The carrying out of public awareness campaigns on matters of protection of species of wild fauna and flora and their biotopes
- g) The carrying out of programmes to take in, keep and look after of species of wild fauna.
- h) The repatriation, re-dispatching, re-exporting expenses in the country of species of wild fauna
- i) The transporting, reception and nursing expenses of the impounding species of wild fauna and flora and their samples live or dead, processed or not, as well as the feeding of the live samples of wild fauna.
- j) The Minister for Agriculture shall take a decision, published in the Government Gazette, for the implementation of this paragraph to lay down rules and conditions on signing contracts between the Minister and other persons, who provide guarantee and adequate scientific experience in all relevant matters under the co-ordination of the central forest service of the Ministry of Agriculture

Penalties

6. In Article 287 of Legislative Decree 86/1969, amended and completed subsequently, paragraphs 22, 23 and 24 added as follows:

22. Whoever keeps, imports, transports and supplies in any way, species of Article 258 paragraph 6 point b' without license or with a falsified license shall be sent to prison from 2 months up to 1 year (2 years, in cases of recidivism.)

23. Whoever denies, obstructs or delays the inspection by the Auditing Authorities with regard to species of Article 258 paragraph 6 point b' or denies information or gives bad information, shall be sent to prison from 1 month up to 6 months.

24. Sentences of paragraph 22 and 23 are charged against of every responsible person involved in these violations, such as businessmen in personal companies, partners in general partnership, administrators in limited liability companies and whoever is in charge for co-operatives and Anonymous Companies or in lack or the above the members of the board of Directors.

7. After article 288 is added a new article 288a, as follows:

The Article 288a: dealing with the administrative sanctions as follows:

1. Persons infringing paragraph 6 (a),(b),(c),(d) and (f) of Article 258 shall be fined in an amount between 200,000 and 5,000,000 Greek Drachmas. The species of wild flora and fauna and the samples of them, whether alive or dead, processed or not, shall be seized by the forest or customs authorities and they shall be given to the nearest forest service for further procedures with responsibilities of which shall be:
 - a) Returned or re-exported to their country of origin or
 - b) Disposed of or
 - c) Kept, taken care and looked after

When the forestry authority seizes such specimens, the provisions of paragraphs 2, 3 and 4 of Article 288 of legislative decree 86/1969 shall apply.

1. If it is discovered that there has been a forgery in the license accompanying the specimens or has been falsified, the sanctions in the previous paragraph shall apply.
2. For subsequent offences the fine shall be doubled.
3. When determining the level of the administrative sanctions in this article, account shall be taken of the severity of the infringement and whether it is a second offence.
4. The fine, referred to in this article, shall be imposed by decision of the head of the regional administration responsible in accordance with the supporting information submitted. A decision shall be taken in accordance with the provisions of Articles 56 and 57 of the Criminal Procedure Code.
5. The person affected by the decision to impose a fine shall have the right to appeal to the three-member administrative court within 30 days, that period is commencing on the day following the issuing of the decision. This appeal shall not suspend the application of the decision but the chairman of the court hearing the appeal may take a decision to suspend application of the decision, in accordance with the provisions of Article 2 of Law No 820/1978 (Government Gazette 174 /A/1978) as replaced by Article 27 of Law 1406/1983 (Government Gazette 182 /A/1983), either in part or in full if he considers that errors have been committed which mean that the appeal can be accepted in part or in full of if he ascertains from specific information that the claimant is unable to pay.

Against the decisions of the administrative courts, it is possible to bring to bear legal means as provided for in the provisions of Legal Taxation Procedure Code, which shall also govern hearings and the appeals referred to the paragraph above.

6. The amount of the fine, specified in this article, may be adjusted by decision of the Minister for Agriculture, which shall be published in the Government Gazette.
7. The fines collected under this article shall be designated public revenue and collected under the Public Revenue Collection Code (K.E.D.E) and paid into the State Budget as revenue. The establishment procedure shall be taken care of by the Directorate for Forests.
8. In Article 294 after paragraph 2, a new paragraph 2 is added, as follows:
 3. In cases of offences of article 287 paragraph 22 and 23, the Authorities designated in article 258 may bring or defend the action as parties to a civil suit regardless of whether they had actually suffered a loss of property.

Article 58: Amendments and additions on the provisions of Law 1845/1989 on “Development and exploitation of agricultural research and technology” Protection of Forests and other provisions (Government Gazette 102 /A)

1. Article 36 of Law No 1845/1989 is amended to read as follows:
 - a) Point b of paragraph 1 is amended as follows:
 - b) The protection of wild fauna and their biotopes, the inspection on maintaining game rules, the guard and inspection in game areas, the protection of wild life shelters and game breeding stations, as well as the protection of fisheries resources of mountain streams and the carrying out of inspection in fishing into them.
 - c) In paragraph 1, after point f’, a new point g’ is added as follows:
 - g) The carrying out of inspections relating to the import, the movement, placing on the market and holding of any general protected species of wild fauna and flora or samples thereof, whether living or dead, processed or not, and the taking of any measures required to prevent and suppress offences.
2. Paragraphs 1 and 2 of article 39 of Law 1845/1989 are replaced to read as follows:
 1. Under article 36 of this law, there is an exception of case f, where forestry officers and forest guards carry out inspections.
 2. In the framework of protection of forests, forestry officials and officials of categories a, b, c, e, f of paragraph 1 of article 39 of this law, are obliged and responsible to draw up charging documents against any offence to forestry laws, to impound forest products of all generally protected species of wild fauna and flora and samples thereof, whether living or dead, processed or not, or collected or caught or traded or placed on the market or kept illegally, to impound all games and fishes caught in offence against the divisions on game and mountain fishery, to impound every device used in offences and to arrest, transfer and surrender any offender to the nearest police station.

The cost of transporting and feeding, as well as every necessary cost until the transportation of the specimens surrendered to forest officials for the above-mentioned offences, are charged to the State and they enter in the regular budget of Ministry of Agriculture.

The Minister for Finance and the Minister for Agriculture shall determine the amount that should be charged as daily feeding expenses with regard to surrendered specimens.
3. Paragraph 9 of article 38 of law 1845/1989 is replaced as follows:

9. Whoever walks through forests or forest grasslands, biotopes and particularly water biotopes neighbouring with forests and forest lands, either as a stroller or a camper or professional forest profiteer or shepherd and anyone who hunts or collects or catches or transfers in any direction, is obliged to show his hunting license, his CITES license, his license for transport of forest goods etc, if he is asked by a forest officer. When he is in parking and asked, he is obliged to show his identity and his car license and every driver who uses roads through forests or forest lands in general, and national or regional roads and whenever there are true suspicions that illegal forest goods, or games or species of wild flora and fauna and samples thereof, whether living or dead, processed or not or products that may cause damage or pollute the wild flora and fauna are transferred.

Nobody may act under the above inspection authority without first displaying their official documents of identification as a forest official. The inspection mentioned above, may be carried out in any place where species of wild flora and fauna and samples thereof, whether living or dead, processed or not, are being kept, transferred, looked after, exhibited or traded, and may, if necessary, be conducted in co-operation with officers of other departments.

In the case of an infringement, the apparent violator shall be notified in writing by the departments carrying out the inspection, the recipient of such notice then has 15 days to write to the inspection authority, giving an opinion or objections regarding the notified infringement.

This document is returned to the person committing the infringement with proof of receipt.

After the expiration of this deadline and irrespective of whether or not the person concerned has submitted comments, the inspection authority shall notify the forestry directorate responsible of all information relating to the infringement.

Article 59: Additions to provisions of Law 998/1979 on "Protection of forests and all forest lands in general, of the country" (Government Gazette 289 /A/1979).

1. In Article 15 of law 998/1979 after paragraph 6, a new paragraph 7 is added, as follows:

7. By decision of General Secretary of each Prefecture, all Forest Authorities can prohibit the crossing of cars through forest roads in case they want to protect wild fauna and flora and their biotopes. In such a decision, the General Secretary or Forest Authority must specify the time and place of the prohibition, as well as the nature of every exception (for farmers, shepherd, etc) and every technical work or device that will be used to indicate and enforce this prohibition (bars, signs etc)

2. In article 68 of law 998/1979, after paragraph 2 a new paragraph 3 is added, as follows:

3. All persons who have committed the infringements of decision 7 of article 15 shall be fined from 50.000 Drs. up to 150.000 Drs. and sent to prison from 2 months up to 6 months.

THE INTEGRATION OF THE CITES LEGISLATIVE FRAMEWORK

The Greek legislative framework regarding the implementation of the CITES as well as the relevant EC Regulations (338/97, 939/97) and other agreements is rounded out as follows:

Ministerial Decision No 387913/25.11.1999, Government Gazette 2099 /B/1999, (Ministry of Agriculture) anticipates the organisation and the functions of a Scientific Committee for the trade of the wild fauna and flora.

Ministerial Decision No 373986/24.12.1998, proceeded to the designation of the Scientific Committee of the wild Fauna and Flora Trade, according to the CITES demands. The above decision was amended by the Ministerial Decision No 331720/10.2.1999.

Greece issued *Ministerial Order No Γ 475/A0019/16.10.1998 (Ministry of Finance)*, reduces the entrance points of importing wildlife specimens as follows:

Greek entrance points (customs) for importing CITES specimens:

- Evzoni For live animals, plants, parts and derivatives
- Kristallopiyi For plants, parts and derivatives
- Niki For live animals, plants, parts and derivatives
- Idomeni As above
- Promachonas As above
- C Thessaloniki As above
- B Thessaloniki As above
- E Thessaloniki Airport As above
- Ormenio As above
- Kipi As above
- Alexandroupoli For plants, parts and derivatives
- A Piraeos As above
- E Piraeos As above
- I Athens Airport For live animals, plants, parts and derivatives
- J Athens Airport As above
- Kakavia As above
- Igoumenitsa For plants, parts and derivatives
- Patras As above
- Kastoria As above
- Volos As above
- Rhodes As above
- Heraklion As above
- D Customs parcels Parts and derivatives

Greek (re) export Custom's ports, all the A and B Classes

Common Ministerial Decision No 331794/12.03.1999, Government Gazette 281 /B/1999, (Ministers of National Economy and Agriculture) regulates the trade of wild fauna and flora:

- ◆ Article 2 of the Decision indicates the endangered species of the wild fauna and flora that are protected by every relevant convention, agreement as well as by the national legislation.
- ◆ The articles 3,4,5,6,7 solve a variety of application matters of the convention and the relevant EC Regulations. The article 8 gives the authority of issue permits for non-CITES specimens of the paragraph 2 of the Common Ministerial Decision (National Economy and Agriculture) No 261554/1985.
- ◆ Article 9 prohibits the possession and capture of any live animal of appendix I of the CITES or annex A of the Regulation EC 338/97 including personal or house hold species, harmonising the legislation with the article 8 of the above-mentioned regulation.
- ◆ Article 10 determines the field of implementation, as well as the Penal and administrative penalties to the offences.
- ◆ Finally, article 11 amends and supplements the Common Ministerial Decision (National Economy and Agriculture) No 414985/1985.

Common Ministerial Decision No 356354/02.06.1999, Government Gazette 1205 /B/1999, (Ministers of Finance and Agriculture) specifies the fees for issuing CITES permits by the Greek Management Authorities.

Ministerial Decision No 331739/26.02.1999, Government Gazette 194 /B/1999, (Minister of Agriculture) creates and imposes the registration of all enterprises that deal with the trade of wild fauna and flora. The CITES Administrative Authorities maintain this registry for the application and enforcement of the relevant Convention.

Ministerial Decision No 336107/14.02.2000, Government Gazette 223 /B/2000, (Ministry of Agriculture) anticipates the criteria, recognition, organisation and the function of the wild animal species hospital – reception centres.

OTHER RELEVANT LEGISLATION

The Greek Constitution (established in 1975) is sensitive to environmental matters and in articles 24 and 117, it provides guidelines for citizens seeking to urge or demand environmental protection and conservation. This Constitution was amended last spring (Government Gazette 84/A/ 17.04.2001), however no significant changes affected articles 24 or 117.

Presidential Decree 67/29.11.1980 “on the protection of endemic wild flora and fauna and the determination of the procedure for co-ordinating and controlling them” includes a list of the protected species of plants and animals. In addition, the protection and maintenance of endemic wild flora and fauna species is provided for in the article 20 of the Law 1650/1986.

Common Ministerial Decision No 414985/1985, Government Gazette 757/B/1985 for administrative measures of the wild birds.

Law 1845/1989 on the organisation of the enforcement and control mechanism for the wildlife protection has officially charged this task to the Forest Services.

Law 1165/1918, the Customs Code, articles 100, 102, 107 and 112.

Presidential Decree 127 of the year 1989 (GG 60 A 1989) " On Custom Officers" Article 1 , paragraph 3 states that custom officers , are entitled ,under the supervision of the district attorney, to proceed according to the Code of Criminal Procedure to undertake the necessary investigation of actions against the Customs law or any other specific law .

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

Few export permits are issued in Greece. The most common violations observed relate to illegal imports or possessions of CITES specimens. Information for each violation has been given in the analysis and the summaries of the above-mentioned legislation (especially by the Law 2637/98).⁴⁹

ADDITIONAL COMMENTS

Greece as an EU member – state , has to implement the CITES relevant Regulations and directives (Reg. 338/97, 939/97, 2307/97, 2214/98, 1476/99, 767/98, 1006/98, 191/2001, Directives 79/409/EEC on Conservation of Wild Birds, 92/43/EEC on Conservation of Natural Habitats and Wild Fauna and Flora – NATURA 2000 etc) of the E.U.

⁴⁹ [MORE COMPLETE STATISTICS CONCERNING ENFORCEMENT ACTIVITIES IN GREECE ARE INCLUDED IN THE REPORT “STATISTICAL INFORMATION AND FACTUAL SUMMARIES ON THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS IN GREECE,” CONTAINED IN THIS VOLUME. –TRY]

It is generally agreed that the Greek CITES relevant legislation is sufficient to meet its obligations under CITES. A proposed amendment to the Greek legislation would address the designation of the CITES Scientific Authority. Currently, the designated Greek CITES Scientific Committee (Authority) by the Article 57 paragraph 5, b, 6e of the Law 2637/1998 anticipates a member of the specific directorate of the Ministry of Agriculture that deals with the CITES Management Administration and scientists, representatives of only two university faculties, giving the impression that it is not so independent as it should be by appointing scientists, according to the Resolution Conf. 10.3 for the application of the Article IX of the Convention. Additionally, for any modification of the committee needs legislative amendment through National Parliament.

As a conclusion, it could be proposed that there might be needed more legislative flexibility and a broader amount of specialisation required of scientists to be designated to serve on the CITES Scientific Authority.

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Enforcement of International Wildlife Trade Controls in Ireland

Clare Shine

CITES STATUS:

Date of Ratification or Accession to CITES: n/a (see below)

Accession to Amendment: n/a (see below)

CITES reservations currently in force: n/a (see below)

Ireland is not yet a Party to CITES, although the Minister for Arts, Heritage, Gaeltacht and the Islands (“the Minister”) has prioritised ratification at the earliest opportunity.⁵⁰ However, Ireland has implemented CITES requirements for several years in accordance with the relevant EU Regulations, which are directly applicable in each Member State. Its implementation measures are recognised by the CITES Management Committee for the European Union.

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

The instruments reviewed for this consultancy are examined in the following order:

- enabling primary legislation (Wildlife Acts);
- secondary regulations (statutory instruments or “S.I.”);
- other relevant primary legislation (Customs Acts).

Wildlife Act 1976 (no.39 of 1976)

Wildlife (Amendment) Act 2000 (no.38 of 2000)

The 1976 Act (“the Principal Act”) covers all aspects of species and habitat conservation and protection in Ireland, including regulation of dealing in and movement of wildlife through a licensing system. It was amended by European Communities (Wildlife Act, 1976) (Amendment) Regulations, issued in 1985, 1986 and 1997, primarily to implement Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

The Principal Act was too general to provide adequately for implementation of CITES and relevant EU Regulations, as it covered all wildlife movements and did not establish specific permit requirements and offences. It has therefore been significantly modified by the Wildlife (Amendment) Act 2000 (“the Amendment Act”) which will enable Ireland to comply fully with CITES and to implement existing and future EC Regulations related to trade in wild fauna and flora.

The Amendment Act designates the Minister as the management authority with primary responsibility in relation to Council Regulation (EC) No. 338/97. The competent authority for issuing permits and certificates is the National Parks and Wildlife Service, which is part of the Department of Arts, Heritage, Gaeltacht and The Islands. The Minister may designate in writing additional management authorities and other competent authorities and one or more scientific authorities (see s.53A(1), 2(a)-(d), Principal Act, inserted by s.58, Amendment Act).

The two Acts may be cited together as the Wildlife Acts 1976 and 2000 and shall be construed together as one (section 1(2), Amendment Act).

⁵⁰ [SHORTLY BEFORE FINALISING THE EDITED TEXT OF THIS VOLUME, ON 8 JANUARY, 2002, IRELAND DEPOSITED ITS INSTRUMENT OF RATIFICATION, AND BECAME THE 157TH PARTY TO CITES. –TRY]

Wildlife Act 1976 (Control of Export of Fauna) Regulations 1979 (S.I.235 of 1979)

The 1979 Export Regulations provide for the control of exports of specified listed wild birds and wild animals and specified parts or products thereof.

Wildlife Act 1976 (Control of Importation of Wild Animals and Wild Birds) Regulations 1989 (S.I.296 of 1989)

The 1989 Import Regulations provide for the control of imports of certain live wild animals or wild birds or their eggs or spawn.

Customs Acts

The Wildlife Acts must be read in conjunction with the Customs Acts, which establish a generally applicable framework of import and export controls as well as penalties and enforcement powers. The basic law is the Customs Consolidation Act of 1876, but the collective term “Customs Acts” is used to refer to all enactments relating to Customs (s.11, Customs Act 1956).

Relevant provisions and powers under the Customs Acts are outlined in the final section of this report. Specific texts examined for this consultancy include:

- Customs Act 1956
- Customs and Excise (Miscellaneous Provisions) Act 1988
- *Instructions relating to Control and Examination of Baggage*, issued by Order of the Revenue: published June 2001.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

Introductory comments

The **Wildlife Acts 1976 and 2000**, and regulations made thereunder, are the primary mechanism for controlling international trade in wild flora and fauna and enforcing CITES. As amended, this legal framework is applicable to all CITES-listed species. The Amendment Act’s provisions on regulation of trade in wild flora and fauna and CITES Regulations are due to commence within the next few months. References in this report to “new s.53A” of the Principal Act refer to the provisions inserted by s.58, Amendment Act.

The following points are intended to assist statutory interpretation:

- Reference to “the CITES Regulations” means, where appropriate, either or both Council Regulation (EC) No.338/97, which relates to the CITES Convention, and Commission Regulation (EC) No.939/97 laying down detailed rules concerning the implementation of Regulation (EC) No.338/97, together with any amendments to or replacements of those Regulations (amended s.2, Principal Act, inserted by s.6(1)(a), Amendment Act);
- Reference to “the Council Regulation” means Regulation (EC) No.338/97 (new s.53A(1), Principal Act);
- A word or expression used in new s.53A of the Principal Act that is also used in the CITES Regulations shall, unless the contrary intention appears, have the same meaning that it has in those Regulations (new s.53(8)(a), Principal Act);
- For the purposes of new s.53A, Principal Act, references to a permit or certificate include references to-
 - (i) an import permit of the kind referred to in Article 4, Council Regulation,
 - (ii) an export permit or a re-export certificate of the kind referred to in Article 5, Council Regulation,
 - (iii) a certificate of any of the kinds referred to in Article 10, Council Regulation, or

- (iv) a label of the kind referred to in Article 7(4), Council Regulation (new s.53(8)(b), Amendment Act).

The Minister is authorised to attach conditions to licences granted or permits issued under the Wildlife Acts 1976 and 2000, to vary or revoke such conditions and, with the consent of the Minister for Finance, to prescribe fees for different classes of licences or permits (s.8, Amendment Act). Any order, designation or licence granted under the Principal Act and continuing to exist at the time of commencement of the relevant provision of the Amendment Act, shall continue to be valid, in accordance with its terms and conditions, notwithstanding any repeal or amendment by the Amendment Act (s.4, Amendment Act).

(i) ILLEGAL EXPORT AND/OR RE-EXPORT OF SPECIMENS OF SPECIES

Wildlife Acts 1976 and 2000 (specific provisions for CITES implementation)

Except for activities carried out under and in accordance with the terms of a certificate or general derogation granted pursuant to the CITES Regulations (new s.53A(6), Principal Act), it is an offence under the Wildlife Acts to do any of the following acts in contravention of the CITES Regulations:

- export or re-export any specimen of a species listed in annexes to the CITES Regulations without the required valid permits or certificates, or with forged, altered or otherwise fraudulent permits or certificates (new s.53(5)(a)(i), Principal Act);
- fail to comply with any condition or requirement of a permit or certificate (new s.53(5)(a)(iv), Principal Act);
- fail to comply with the requirements of Council Regulation Article 9, paragraphs 1, 4 or 5, relating to the holding or transport or movement of live specimens (new s.53(5)(a)(v), Principal Act);
- make false or misleading statements or declarations with a view to obtaining a permit or certificate, or of clearing specimens for export (new s.53(5)(a)(vi), Principal Act);
- furnish a document or information which is false with a view to obtaining a permit or certificate, or falsify or alter any permit or certificate, or use or furnish a false or invalid permit or certificate or one altered without authorisation (new s.53(5)(a)(vii), Principal Act);
- trade in artificially propagated plants contrary to the provisions of Article 7, Council Regulation (new s.53(5)(a)(x), Principal Act);
- use a permit or certificate for any specimen other than for which it was issued (new s.53(5)(a)(xi), Principal Act);
- fail to disclose rejection of an application for an export or re-export permit or certificate in accordance with Article 6, Council Regulation (new s.53(5)(a)(xii), Principal Act).

It is an offence to aid or abet the commission of any of the above offences (new s.53A(5)(b), Principal Act).

Wildlife Acts 1976 and 2000: other offences related to export

The Minister may, after consultation with the Minister for Agriculture, Food and Rural Development, make regulations prohibiting the **export of fauna and flora from the State to outside the European Union** without a licence (s.53, Principal Act, as amended by s.57, Amendment Act to limit its scope to exports to third countries). Such regulations may apply to all or any of the following:

- (a) any wild bird or any wild animal, at any stage of its life, of a species specified in the regulations,
- (b) the dead body or the carcass either of a wild bird or wild animal of a species so specified,
- (c) any part, other than the carcass, or any product or derivative of a wild animal or wild bird which is a part, product or derivative so specified,
- (d) the eggs or spawn of a species of wild animal or wild bird which is so specified,

- (dd) any part, product or derivative of the eggs or spawn of a wild animal or wild bird which is a part, product or derivative so specified (inserted by s.57(a)(5), Amendment Act);
- (e) wild plants which are of a species which is so specified,
- (f) the flowers, seeds, spores or roots of any such wild plant,
- (g) any part, other than the flowers, seeds, spores or roots, or any product or derivative of any such plant which is a part, product or derivative so specified.

The Amendment Act provides a basis for restricting exports to third countries to specified points of export. The Minister is required, pursuant to Article 12(1), Council Regulation (EC) No. 338/97, to designate in writing the ports, airports and other places through which export of wild animals, wild birds or the eggs or spawn of wild animals or wild birds or plants, flowers, roots, seeds or spores of such plants may be made from the State to outside the European Union, and may prescribe different places for different species (new 53(1A)(a), Principal Act). S/he may make a similar designation for the export of any part, product or derivative of species specified in the regulations from the State to outside the European Union (new 53(1A)(b), Principal Act).

The Minister, or duly authorised person, has general powers to grant a licence to export anything the export of which is prohibited by regulations made under s.53(1) (s.53(2)-(3), Principal Act).

Wildlife Act 1976 (Control of Export of Fauna) Regulations 1979 (S.I.235 of 1979)

The 1979 Export Regulations were made pursuant to s.53, Principal Act (see above) and predate the Amendment Act. They prohibit the export, without a licence from the Minister for Fisheries and Forestry, of specified wild birds and wild animals, live or dead, (including game species) and specified parts or products of certain wild birds and wild animals.

The following species are covered (Regulation 4):

- (a) any protected wild bird of any species other than a carrier pigeon or racing homing pigeon,
- (b) the dead body or carcass of any such bird,
- (c) the eggs (whether whole or blown) or the feathers of any such bird,
- (d) any stuffed specimen of any such bird,
- (e) any protected wild animal of any species of fauna listed in the Fifth Schedule to the Act,
- (f) the dead body or carcass of any such animal,
- (g) any stuffed specimen of any such animal or any part thereof,
- (h) the skull, antlers or teeth of any deer,
- (i) the eggs or spawn of the natterjack toad,
- (j) the skin or fur, or any piece or cutting (including the head, tail or paw) of any skin or fur, or any article of wearing apparel or any rug or cover made wholly or partly of any skin or fur, of any badger, deer, fox, otter, pine marten, red squirrel or seal.

Regulation 5 exempts certain exports from the scope of Regulation 4:

- (a) the export by a person ordinarily resident outside the State of specimens of game which an officer of the Custom and Excise is satisfied—
 - (i) have been shot and killed by that person under and in accordance with a valid hunting licence, and
 - (ii) are not being exported in the course of a business,
- (b) the export by a person of any article of wearing apparel made wholly or partly of any skin or fur of any of the species specified in Regulation 4(j) where such article forms part of the baggage of such person and is shown to the satisfaction of an officer of the Custom and Excise to be a personal effect of such person.

Nothing in the Regulations restricts, prejudices or affects the Live Pigeons (Prohibition of Export) Order, 1971 (S.I. No. 138 of 1971) which prohibits the export, except under licence from the Minister for Agriculture, of live pigeons to places other than Northern Ireland.

(ii) ILLEGAL IMPORT AND/OR INTRODUCTION FROM THE SEA OF SPECIMENS

Wildlife Acts 1976 and 2000: specific provisions for CITES implementation

Except for activities carried out under and in accordance with the terms of a certificate or general derogation granted pursuant to the CITES Regulations (new s.53A(6), Principal Act), it is an offence under the Wildlife Acts to do any of the following acts in contravention of the CITES Regulations:

- import or introduce from the sea any specimen of a species listed in annexes to the CITES Regulations without the required valid permits or certificates, or with forged, altered or otherwise fraudulent permits or certificates (new s.53(5)(a)(i), Principal Act);
- fail to comply with any condition or requirement of a permit or certificate (new s.53(5)(a)(iv), Principal Act);
- fail to comply with the requirements of Council Regulation Article 9, paragraphs 1, 4 or 5, relating to the holding or transport or movement of live specimens (new s.53(5)(a)(v), Principal Act);
- make false or misleading statements or declarations with a view to obtaining a permit or certificate, or of clearing specimens for import (new s.53(5)(a)(vi);
- furnish a document or information which is false with a view to obtaining a permit or certificate, or falsify or alter any permit or certificate, or use or furnish a false or invalid permit or certificate or one altered without authorisation (new s.53(5)(a)(vii), Principal Act);
- fail to make an import notification or make a false import notification contrary to Article 4, Council Regulation (new s.53(5)(a)(viii), Principal Act);
- use any specimen of a species listed in Annex A to the CITES Regulations otherwise than in accordance with the authorisation given at the time of issue of the import permit or subsequently, (new s.53(5)(a)(ix), Principal Act);
- trade in artificially propagated plants contrary to the provisions of Article 7, Council Regulation (new s.53(5)(a)(x), Principal Act);
- use a permit, certificate or import notification for any specimen other than for which it was issued (new s.53(5)(a)(xi), Principal Act);
- fail to disclose rejection of an application for an import permit or certificate in accordance with Article 6, Council Regulation (new s.53(5)(a)(xii), Principal Act);
- engage in transit or transshipment of any specimen of a species listed in annexes to the CITES Regulations without the required valid permit or certificate or document, or without satisfactory proof of the existence of such permit or certificate or document, as appropriate (new s.53(5)(a)(xiii), Principal Act).

It is also an offence to aid or abet the commission of any of the above offences (new s.53A(5)(b), Principal Act).

Wildlife Acts: other offences related to import

The Minister may, after consultation with the Minister for Agriculture, Food and Rural Development, make regulations prohibiting the **import of fauna and flora to the State from outside the European Union** without a licence (s.52, Principal Act, as amended by s.56, Amendment Act to limit its scope to imports from third countries). Such import regulations are potentially broader in scope than export regulations as they are not limited to wild plants: they may apply to all or any of the following:

- (a) any wild bird or any wild animal, at any stage of its life, of a species specified in the regulations,

- (b) the dead body or the carcass either of a wild bird or wild animal of a species so specified,
- (c) any part, other than the carcass, or any product or derivative of a wild animal or wild bird which is a part, product or derivative so specified,
- (d) the eggs or spawn of a species of wild animal or wild bird which is so specified,
- (dd) any part, product or derivative of the eggs or spawn of a wild animal or wild bird which is a part, product or derivative so specified (inserted by s.56(a)(iv), Amendment Act);
- (e) any plant of a species so specified,
- (f) the flowers, seeds, spores or roots of any such plant,
- (g) any part, other than the flowers, seeds, spores or roots, or any product or derivative of any such plant which is a part, product or derivative so specified.

Lawful imports may be restricted to specified points of import (see new s.52(1A)(a)-(d), Principal Act, inserted by s.56(b), Amendment Act). This basically reproduces the provisions of s.53(1A) (see (ii) above), except that regulations are applicable to all plants, not just wild plants.

The Minister, or duly authorised person, has general powers to grant a licence to import anything the importation of which is prohibited by regulations made under s.52(1) (s.52(2)-(3), Principal Act).

Where an animal, plant or other thing is imported in contravention of s.52, an officer of Customs and Excise may require any person (being the importer or carrier concerned) to export the animal, plant or other thing within a specified time. Failure to comply with such requisition constitutes an offence and the animal, plant or other thing shall be killed or otherwise disposed of as the Minister directs (s.52(4), Principal Act).

The Amendment Act provides an additional legal basis for controlling species' imports where necessary to protect native fauna and flora. It authorises the Minister to issue regulations prohibiting the introduction of any species of wild bird, wild animal or wild flora or any part, product or derivative of such wild bird, wild animal or wild flora which may be detrimental to native species (new s.52(6)(a), Principal Act, inserted by s.56(d), Amendment Act). "Introduction" is not defined by either of the Wildlife Acts, but it is clear from the context that it includes importation.

Wildlife Act 1976 (Control of Importation of Wild Animals and Wild Birds) Regulations 1989 (S.I.296 of 1989)

The 1989 Import Regulations were made pursuant to s.52, Principal Act (see above) and predate the enactment of the Amendment Act. Regulation 3 prohibits the importation of live wild animals or wild birds or their eggs or spawn except under licence issued by the Minister. The Regulations do not apply to live fish or their eggs or young (Regulation 4).

(iii) ILLEGAL POSSESSION OF RELEVANT SPECIMENS, ETC.

Wildlife Acts 1976 and 2000: specific CITES-related provisions

The holding or possession of any specimen of a species listed in annexes to the CITES Regulations may be prohibited by regulations issued by the Minister. It is an offence to hold or possess any such specimen contrary to such regulations (new s.53A(4)(a)-(b), Principal Act), or to aid or abet the commission of such an offence (new s.53A(5)(b), Principal Act).

New s.53A also establishes specific offences with regard to domestic movement of and trade in certain specimens. Except where carried out under and in accordance with the terms of a certificate or general derogation granted pursuant to the CITES Regulations (new s.53A(6), Principal Act), it is an offence to do any of the following acts in contravention of the CITES Regulations:

- purchase, offer to purchase, acquire for commercial purposes, display to the public for commercial purposes, use for commercial gain, sell, keep for sale, offer for sale or transport for sale contrary to Article 8, Council Regulation a specimen of a species listed in Annex A to the CITES Regulations (new s.53A(5)(a)(ii), Principal Act);
- purchase, offer to purchase, acquire for commercial purposes, display to the public for commercial purposes, use for commercial gain, sell, keep for sale, offer for sale or transport for sale contrary to Article 8 of the Council Regulation a specimen of a species listed in Annex B to the CITES Regulations that has been imported or acquired contrary to the CITES Regulations (new s.53A(5)(a)(iii), Principal Act);
- fail to comply with the requirements of Council Regulation Article 9, paragraphs 1, 4 or 5, relating to the holding or transport or movement of live specimens (new s.53A(5)(a)(v), Principal Act);
- trade in artificially propagated plants contrary to the provisions of Article 7 of the Council Regulation (new s.53A(5)(a)(x), Principal Act).

It is an offence to aid or abet the commission of any of the above offences (new s.53A(5)(b), Principal Act).

Wildlife Acts: other offences related to possession etc.

The Wildlife Acts also establish measures to regulate and control domestic movement of and trade in certain species, which may include native CITES-listed species. These mainly apply only to species designated as “protected” under the Principal Act, namely:

- all wild birds, nests and eggs unless listed in the Third Schedule to the Principal Act (s.19);
- any animal of a species of fauna listed in the Fifth Schedule or otherwise specified by regulations (s.20, 23);
- species of flora listed in orders issued by the Minister (s.21).

Offences related to protected flora

It is an offence, without a licence granted for scientific, educational or other purposes, to take, purchase, sell or be in possession of any specimen or the flowers, roots or other part of a specimen of a protected species (s.21(3)(a-b), s.21(4), Principal Act).

In legal proceedings, a presumption that the sale was in contravention of s.21(3) applies where the prosecutor shows that the accused:

- (a) sold a plant, or the flowers, roots or other part of a plant, of the same species as the plant, flowers, roots or other part of a plant to which the alleged offence relates; or
- (b) claimed, expressly or by implication, by advertising or otherwise, that the plant, flowers, roots or other part sold came from or was wholly or partly grown in a place covered by a protected flora order at the time when the alleged offence was committed (s.21(6)).

It is a defence for the defendant to show that the plant, flower, root or other thing to which the alleged offence relates was lawfully imported (s.21(7)).

Offences related to sale, purchase and possession of certain birds

It is an offence to sell, purchase or possess a live perching bird (order Passeriformes) of a species which occurs in a wild state in the State, Northern Ireland, Great Britain, the Channel Islands or the Isle of Man (s.31(2), Principal Act). This prohibition does not apply to specimens of species listed in the Third Schedule, Principal Act, or to close-ringed specimens bred in captivity (i.e. fitted with a continuous metal band or ring slipped over its foot and on to its leg while a fledgling). It is a defence to prove that a bird was lawfully acquired before the commencement of s.31 or was lawfully acquired from a person who so acquired it before such commencement.

Regulation and licensing of falconry (order Falconiformes) is covered by s.41, Principal Act. It is prohibited, except under licence, for a person to engage in falconry or have in his possession or under his control any eagle, hawk or falcon or the eggs or young of any eagle, hawk or falcon.

Offences related to wildlife dealing

Wildlife dealing is defined as “the business of buying for resale any wild birds or wild animals whether alive or dead, or any part, product or derivative of such birds or animals and includes engaging in taxidermy in respect of such birds or animals” (s.2(3), Principal Act, substituted by s.6(2), Amendment Act).

It is an offence (s.45(1), Principal Act, as amended by s.51, Amendment Act) for any person who is not a licensed wildlife dealer to sell, keep for sale, transport for the purpose of sale or exchange, offer for sale or exchange, purchase for resale or exchange, or engage in taxidermy in respect of-

- (a) a protected wild bird or protected wild animal, at any stage of its life, whether alive or dead, or any parts, products or derivatives of such wild bird or wild animal,
- (b) the eggs of a protected wild bird or the eggs or spawn of a protected wild animal, or any parts, products or derivatives thereof,
- (c) fauna, at any stage of its life, whether alive or dead, set out in Part I or II of the First Schedule to the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997)

or to publish or cause to be published any advertisement, catalogue, circular or price list likely to be understood as conveying that such person buys or sells, or intends to buy or sell, or engages in taxidermy in respect of any protected wild bird or protected wild animal.

It is also an offence for a person who is not a licensed wildlife dealer to have in his possession a protected wild bird or a protected wild animal, whether alive or dead, or the eggs of a protected wild bird or the eggs or spawn of a protected wild animal or any part, product or derivative thereof (s.45(2), Principal Act), except as provided for under s.45(3) and (8) and under sections 22(5), 23(7)(d), 31 and 42, Principal Act. Such exemptions basically relate to situations where the specimen concerned is held for propagation purposes, has been lawfully acquired, killed or captured or is a close-ringed specimen of a live perching bird.

It is an offence for any person who owns, manages or is otherwise in charge of premises in which meals are provided for reward (hotels, restaurants, registered clubs etc.) to purchase a protected wild bird/animal except from a licensed wildlife dealer, unless such person is himself such a dealer (s.45(4), Principal Act). A record must be kept in prescribed form of all purchases of protected wild birds/animals made in relation to the premises concerned and made available for inspection at the premises by an authorised person on demand at any reasonable time ((s.45(5)-(6), Principal Act).

It is an offence to deal in wildlife without a wildlife dealer's licence, except in specified circumstances (s.47, Principal Act). The procedure and requirements for obtaining a licence are set out in s.48, Principal Act, as amended by s.53, Amendment Act. The Minister has general powers (s.46, Principal Act, as amended by s.52, Amendment Act) to make regulations to control licensed wildlife dealing, *inter alia* with regard to premises; form and validity of licences; restriction to certain species of fauna; conditions for the practice of taxidermy; record keeping; supply of information to the Ministry; display of licence; cage standards etc). Regulations that relate to a species of fish or aquatic invertebrate animal may only be made after consultation with the Minister for Agriculture and Fisheries (s.46(5)).

Offences related to domestic transport

Rules for the domestic transport of packages containing any protected wild bird or protected wild animal, the dead body, carcass or any other part thereof, eggs of a protected wild bird or flora specified by regulations are set out in s.51, Principal Act, as amended by s.55(a) Amendment Act. Subject to limited exceptions (s.51(4)), it is an offence to consign or transport a package that is not marked in the manner required by s.51(2). The Minister may by regulations apply this section to other species of flora and wild fauna (new s.51(5)).

Offences relating to non-native species

The Minister may issue regulations prohibiting the possession or introduction of any species of wild bird, wild animal or wild flora or any part, product or derivative of such wild bird, wild animal or wild flora which may be detrimental to native species (new s.52(6)(a), Principal Act, inserted by s.56(d), Amendment Act).

New s.52(7) prohibits specific actions related to exotic species (s.52(8)), except where carried out under a licence granted by the Minister. It is an offence to:

- (a) turn loose, wilfully allow or cause to escape any species of wild animal or the spawn of such wild animal or wild bird or the eggs of such wild bird,
- (b) transfer any species of wild animal or the spawn of such wild animal or wild bird or the eggs of such wild bird from any place in the State to any other place in the State for the purpose of establishing it in a wild state in such other place,
- (c) plant or otherwise cause to grow in a wild state in any place in the State any species of flora, or the flowers, roots, seeds or spores of flora.

(IV) MISCELLANEOUS OFFENCES

These are laid down by s.69, Principal Act, as amended by s.63, Amendment Act. They relate to attempts; breach of regulations under the Act or of permit conditions; failure to supply correct name and address on a lawful demand; failure to comply with a requirement made by a member of the Garda Síochána/authorised person; impeding, obstructing or assaulting a member of the Garda Síochána/authorised person exercising any power or function conferred by or under the Wildlife Acts; and supplying information that the person knows to be false in a material particular or recklessly giving information which is so false.

It is an offence to conceal from a person lawfully exercising a power under s.72-73 of the Wildlife Act any specimen of flora or fauna or part, product or derivative of such specimen mentioned in s.72(7) or 73(1) of this Act (new s.69(5), Principal Act, inserted by s.63, Amendment Act) and to use, allow or cause to be used a vessel, aircraft or mechanically propelled vehicle as an aid to the commission of an offence under the Wildlife Acts or regulations made thereunder (new s.69(7A), Principal Act).

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

Introductory note: *summary conviction* is delivered by a lower court and *conviction on indictment* by a higher court (which deals with more serious offences).

Wildlife Acts 1976 and 2000

Fines and imprisonment

Penalties for CITES-related offences, and for certain offences related to designated species, are established by s.74(3) Principal Act, as amended by s.68(c-d), Amendment Act.

A person guilty of an offence under Part II (domestic Wildlife Conservation and Protection measures) or under section 45, 47, 51, 52, 53, 53A or 58(3)(b) of the Act in relation to:-

- (a) any specimen of a species of fauna specified in the Fourth Schedule, Principal Act (namely buzzards, eagles, falcons, harriers, hawks, kites, osprey and owls; pine marten, red deer, seals and whales);
- (b) any specimen of a species listed in annexes to the CITES Regulations, or

- (c) any specimen of a species of flora or fauna declared by regulations under this section to be a species to which s.74(3) relates (in cases where a species is in danger of extinction or requires special protection because of a threat to its existence in all or part of the State, see s.74(4))

is liable (i) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or (ii) on conviction on indictment to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 2 years or to both.

Lesser penalties apply to the other offences described in this report. S.74(1) as amended provides that a person guilty of an offence shall be liable on summary conviction-

- (a) in the case of a first offence, to a fine not exceeding £500 or to imprisonment for a term not exceeding 3 months or to both,
- (b) in the case of a second such offence, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both, and
- (c) in the case of a third or subsequent such offence, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both.

Forfeiture

The Wildlife Acts provide for discretionary forfeiture with regard to any offence committed thereunder (s.76(1) Principal Act, amended by s.69, Amendment Act). This power relates to:

- *inter alia*, any specimen of fauna or flora, any part, product or derivative of such a specimen, any firearm, any mechanically-propelled vehicle or any vessel or aircraft or other thing
- that has come into the possession of a member of the *Garda Síochána* or an authorised person, and
- in respect of which, or with which, or by means of which that member or authorised person reasonably suspects an offence to have been committed under the Wildlife Acts, or where an offence has been committed or is alleged to have been committed thereunder.

An application for forfeiture may be made to the “appropriate court” (see below) by the Minister or, where criminal proceedings have been instituted, by the person who instituted such proceedings. The court may order the forfeiture of the thing at its discretion where it is satisfied that an offence has been committed (whether or not any person has been convicted of the offence).

The “appropriate court” varies depending on the estimated value of the thing to be forfeited: jurisdiction lies with the District Court (up to £5,000), the Circuit Court (up to £30,000) and with the High Court in any case. (s.76(1)(b), as amended). “Estimated value” is defined:

- where the thing may be sold legally, as the estimated amount of money which, in the opinion of the court, a willing purchaser would pay to a willing seller, after deduction for the estimated costs incidental to such a sale, and the estimated amount of any tax or duty owing to the State in respect of that thing;
- where the thing cannot be sold legally, the estimated value, if any, is what the court considers appropriate.

Where a lower court (District/Circuit) forms the opinion during a hearing that the estimated value of the thing to be forfeited exceeds the threshold (£5,000/£30,000 respectively) or that for any reason it should decline jurisdiction, the application may be transferred to a higher court (s.76(1)(c), as amended).

Forfeiture orders may not be made unless the court is satisfied that in the circumstances all practicable steps have been taken to notify any person of the proceedings relating to the application for the order and who, in the opinion of the court, should be given the opportunity of being heard by it on that application (s.76(1)(e)(i), as amended). The court may make such order for costs relating to an application as it considers appropriate (s.76(1)(e)(ii), as amended).

A court may not order forfeiture if a person claiming to be the owner of or otherwise interested in the thing applies to be heard by the court, unless s/he has been given an opportunity to show cause why the order should not be made (s.76(2)).

Where the court orders forfeiture, the thing must be sold or disposed of in such other manner as the court thinks (extract of s.76(4) as amended). Where a firearm or vehicle, vessel or aircraft is sold pursuant to this section, the net proceeds of the sale shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance shall direct (s.76(5) as amended).

Judicial appeal against seizures (for seizures, see next section of Report)

Any person aggrieved by a seizure and detention under this Act, including any seizure or detention to which the CITES Regulations relate, may appeal to a Judge of the District Court (s.77, Principal Act, as amended by s.70, Amendment Act).

The Judge may confirm the seizure and detention or, if not satisfied that the document or other thing was properly seized, order the person who made the seizure to return the document/thing seized and order the Minister to pay to the person such compensation (if any), costs (if any) and expenses (if any) as he considers reasonable having regard to any loss, costs and expenses incurred by the person by reason of the seizure and detention.

Disposal of things seized

A person who seizes any document/thing pursuant to this Act may not dispose of it without the written consent of the owner or person in apparent charge or control of it.

Disposal (by destruction or otherwise) of any thing other than a document is subject to a direction given by a Judge of the District Court (s.78(1)(a) and (b) Principal Act, as amended by s.71, Amendment Act).

Upon an application, the Judge may give a direction to this effect where satisfied that the thing concerned is likely, before it can be used as evidence in proceedings for an offence under this Act, to become unfit for human consumption, or ought not to be further detained for any other reason (s.78(2)-(3) as amended).

Seized articles of a perishable nature may be sold or otherwise destroyed as appropriate (new s.78(3A)). The person causing an article to be sold shall defray all expenses incurred in its seizure, removal, storage and sale out of the proceeds of sale, except where a court has otherwise decided or proceedings relating to the thing so sold have been instituted but not concluded. The said person shall pay the surplus of such proceeds to the person who at the time of the seizure was the owner of it.

Moneys payable pursuant to a disposal shall be paid to the Minister (s.78(8)).

Revocation of permits and licences

The only provisions under the Wildlife Acts for revocation of permits relate to firearms certificates (s.75, Principal Act, not amended) and wildlife dealers' licences.

Where the holder of a wildlife dealer's licence is convicted of an offence under the Wildlife Acts, the court concerned may revoke the licence in addition to any other punishment that it imposes in respect of the offence (s.49(1), Principal Act, amended by s.54, Amendment Act). The court registrar or clerk is required to send the Minister a copy of the court's order (s.49(2)). Subject to the completion of any appeal against revocation, the Minister may publish notice of the revocation in such manner as he considers appropriate (s.50, Principal Act).

LEGISLATION AUTHORISING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS:

Wildlife Acts 1976 and 2000

Searches and seizures

Regarding exports, any authorised officer of *An Post* (Irish Postal Service) may detain, examine and if necessary open any postal packet containing, or suspected of containing, any thing which is being exported in contravention of s.53. If the detained packet does contain any such thing, the officer must dispose of the packet and its contents in accordance with the instructions of the Minister (new s.53(4), Principal Act, inserted by s.57(c), Amendment Act).

Regarding imports, equivalent powers for postal officers to detain any postal packet containing, or suspected of containing, any thing which is being imported in contravention of s.52 are established under new s.52(4A), Principal Act (inserted by s.56(c) Amendment Act).

General enforcement powers are set out in s.72, Principal Act as amended by s.65, Amendment Act. These powers are available to members of the *Garda Síochána* and “**authorised persons**”. The latter are appointed by the Minister for such purposes of the Wildlife Acts and/or the CITES Regulations as he may specify. The Minister may limit the exercise of functions by authorised persons as regards their nature or the time, place and circumstances in which they may be exercised (see further s.72(1) as amended). Persons authorised by the Minister must be given a certificate of authorisation and when exercising a power under this Act (see below) must produce such certificate for inspection if requested by any person thereby affected (s.72(5)).

s.72(2) as amended provides that a member of the *Garda Síochána*/authorised person who has reasonable grounds for suspecting that a person has committed an offence under any provision of the Wildlife Acts may, at all reasonable times:

- stop and search any person who is suspected by the member/authorised person of being in any way concerned in the offence;
- require the person to give his name and address;
- if considered necessary, demand that person to produce for examination *inter alia*-
 - (a) any specimen of fauna or flora or any part, product or derivative of any such specimen, or
 - (b) any licence or permission granted by the Minister under the Wildlife Acts, or
 - ...
 - (d) any permit or certificate issued for the purposes of the CITES Regulations together with any supporting documents in the person's possession and any permit or certificate to which Article 11 of Council Regulation (EC) No. 338/97 relates,

The member/authorised person may seize and retain any specimen or part, product or derivative of a specimen or any thing so produced which appears to him to be something which might be required as evidence in proceedings for an offence under this Act.

Under new s.72(2A), a member/authorised person with reasonable grounds to suspect from a person's activity that an offence under the Act is being/has been committed by the suspected person in the presence of the member/authorised person, and that the suspected person has/had at the time of being so suspected, in his possession, or under his control any thing capable of being used to commit an offence, may:

- (a) require the suspected person (i) to desist from continuing or recommencing that activity and (ii) to furnish his name and address and, if requested, to verify the information given; and

(b) arrest or cause the arrest of the suspected person if that person continues or recommences that activity, fails to furnish his name or address or gives a name or address which in the circumstances there are reasonable grounds to suspect is false or misleading,

Where an authorised person arrests a suspected person, s/he must, as soon as practicable in the circumstances, deliver the suspected person into the custody of a member of the Garda Síochána to be dealt with according to law.

A member/authorised person has powers to enter and search land, other than a dwelling, to which a suspected offence relates (new s.72(3), Principal Act). These search powers also apply to any vehicle, vessel or aircraft or any mechanically-propelled vehicle used or suspected of being used to transport, export or import any specimen of fauna or flora or any part, product or derivative of any such specimen contrary to any provision of the Wildlife Acts. The member/authorised person may:

require the person who for the time being is in control of the vehicle, vessel or aircraft to bring it to a stop or refrain from moving it (new s.72(3)(a));

require the person in control, or any other person on the vehicle etc., to give his name and address and produce any book, record or other document which relates to any specimen of fauna or flora or any part or product of fauna or flora and which is in the person's possession or under his control and, if known to the person, the name and address of the owner of any specimen of fauna or flora or any part or product of fauna or flora found in the course of the search ((new s.72(3)(c));

inspect and take copies of any entry in any book, record or other document thus produced ((new s.72(3)(d));

seize and detain any vehicle, vessel, aircraft or mechanically-propelled vehicle which he reasonably suspects of being used in committing an offence under the Wildlife Acts and which appears to him to be something which might be required in evidence in proceedings for such an offence ((new s.72(3)(e));

require, if considered necessary to determine the identity or ancestry of any specimen of fauna, the taking of a sample of blood or tissue but only if (i) the sample is taken by a registered veterinary surgeon and (ii) in the surgeon's opinion the taking of such a sample will not cause lasting harm to the specimen ((new s.72(3)(f)).

The member/authorised person may seize and detain any thing found in the course of the search which is reasonably suspected to be connected with an offence under the Acts or any document found which is a record or other document which may be required as evidence in proceedings for such an offence.

Without prejudice to the above provisions, the member/authorised person may enter on any land, excluding dwellings, at any time to exercise powers conferred by s.72(2) and s.72(3)(a) (s.72(4)). Nothing in s.72 as amended shall operate to prejudice any power to search or to seize or detain property which may be exercised by a member of the Garda Síochána apart from the said section.

S.66(1), Amendment Act, specifies that without prejudice to powers conferred by s.72, Principal Act, an authorised person may at any reasonable time enter on, inspect and survey any land (other than any dwelling thereon) for any purpose in connection with the performance by the Minister of functions under this Act and the Principal Act. There are certain exemptions to this general power (see s.66(2)), but these are not relevant to CITES enforcement.

Search warrants are another part of the enforcement arsenal. (s.73, Principal Act, as amended by s.67, Amendment Act.) A Judge of the District Court may issue a warrant if satisfied by information on oath of an authorised person/member of the Garda Síochána that there are reasonable grounds for suspecting that:

- a person is in possession on any premises or other land of *inter alia* any specimen of fauna or flora, any part, product or derivative of any such specimen or anything liable/believed to be liable to forfeiture under this Act; and
- as regards the specimen, part, product, derivative or thing, an offence under this Act has been or is being committed (s.73(1) as amended).

Warrants must be expressed to authorise the person who swore the relevant information (member of the Garda Síochána or authorised person) who may be accompanied by other persons as reasonably necessary (see further s.73(2)). However, an authorised person may only exercise powers under a warrant that regard a dwelling if accompanied by a member of the Garda Síochána (s.73(3)).

The search may be carried out at any reasonable time or times within seven days of the issue of the warrant. The warrant holder may

- (i) enter and search, if need be by force, the premises or other land named in the warrant;
- (ii) require any person on such premises or other land to give his name and address;
- (iii) require a person in occupation or control of or concerned in the management of the premises or other land to give his name and address and to produce (A) any thing mentioned in s.73(1) and (B) any books, records or other documents which relate to such thing and are in any such person's possession or under his control, and if known to such person, to give the name and address of the owner of any thing so produced,
- (iv) inspect and, if he thinks fit, take copies of any entry in any book, record or other document produced in pursuance of a requirement made pursuant to the warrant.

The member/authorised person may seize and detain any thing found in the course of a search under warrant which is reasonably suspected to be connected with an offence under the Acts or any document found which is a record or other document that may be required as evidence in proceedings for such an offence (see further s.73(2)).

PROSECUTION OF OFFENDERS AND BURDEN OF PROOF

Summary proceedings for the offences under the Wildlife Acts described in this report may be prosecuted by a person who is neither the Minister nor a member of the Garda Síochána with the consent of the Minister or an officer of the Minister nominated by the Minister for the purpose (s.70(1), Principal Act, as amended by s.64 Amendment Act). Such proceedings may be instituted at any time within one year after the date of the offence (s.70(3), Principal Act).

S.71, Principal Act, relates to the onus of proof in proceedings for offences under the Act. Where an action does not constitute an offence if carried out under the requisite permit or is otherwise a lawful action, it is for the defendant to prove the existence of any permit required under this or any Act (s.71(a)) or that the act which is the subject of the proceedings was caused by or the result or effect of a lawful action (s.71(b)).

OTHER RELEVANT LEGISLATION

Relationship between Wildlife Acts and other legal instruments

Instruments relating to agriculture, fisheries, disease control and public health

The import/export provisions of sections 52-53, Principal Act, do not restrict, prejudice or affect the functions of the Minister for Agriculture and Fisheries under the Destructive Insects and Posts (Consolidation) Act, 1958, the Diseases of Animals Act, 1966, or the Fisheries Acts, 1959 to 1974, or the functions of the Minister for Health under section 31 of the Health Act, 1947, as amended by section 34 of the Health Act, 1953 (s.52(5), Principal Act).

With regard to exports, s.53(5), Principal Act further specifies that the regulatory and licensing powers established under s.53 are to be exercised without prejudice to the functions of the Minister for Agriculture and Fisheries under the Agricultural and Fishery Products (Regulation of Export) Act, 1947, or functions currently vested in the Minister for Industry and Commerce.

Instruments relating to Customs

The Wildlife Act 1976 specifies that no order or regulation made or thing done under the Principal Act shall absolve the importer, exporter or other person concerned with the import or export of any animal, plant or other thing from complying with the relevant requirements of the Customs Acts in regard to the animal, plant or other thing concerned (s.54, Principal Act).

In the context of CITES, the Amendment Act specifies that:

- nothing prevents the application of the Customs Acts to offences committed under the said Acts in relation to the import, export, or any attempt thereat, of prohibited specimens in contravention of new s.53(A)(3) (s.53A(7), as amended by s.58 Amendment Act);
- nothing prevents the prosecution under the Customs Acts for offences committed under the said Acts in respect of a contravention of s.53A of this Act (s.70(4) Principal Act, as inserted by s.64(b) of the Amendment Act).

Offences under the Customs Acts

It is an offence to:

- export any goods, or to bring or send any goods to any place for the purpose of exportation, in contravention of any enactment or statutory instrument, or to attempt to do so (s.3(1)(a)-(d), Customs Act 1956);
- knowingly be concerned in dealing with any goods (the exportation of which is prohibited or restricted by any enactment or statutory instrument) with intent to evade such prohibition or restriction (s.3(1)(e), Customs Act 1956);
- keep any goods at any place for the purpose of facilitating their exportation in contravention of any enactment or statutory instrument (s.3(1)(f), Customs Act 1956);
- aid, abet or assist another person or conspire with another person to commit any of the above offences;
- import any goods, the importation of which is prohibited or restricted by any enactment or statutory instrument. Such goods are deemed to be included in the goods listed in the Table of Prohibitions and Restrictions Inwards (s.42, Customs Consolidation Act 1876) and are thus subject to the provisions of 1876 Act (see below with regard e.g. to seizure) (s.2, Customs Act 1956).

The Customs and Excise Tariff of Ireland, Part 2, lists all prohibited and restricted goods as regards importation and exportation.

Penalties under the Customs Acts

Fines and imprisonment

The penalties applicable upon conviction for offences related to illegal export or import are established under s.186, Customs Consolidation Act 1876 as amended. These are:

- *a sentence of imprisonment of up to five years; and/or*
- *a fine of up to £10,000 or of three times the 'street value' of the goods concerned (i.e. the notional value if resold in Ireland).*

Seizure of goods liable to forfeiture

Seizure of goods is the first step in a process which may lead ultimately to the condemnation of the goods as forfeited, i.e. the goods become the property of the State, unless such action by Revenue is successfully challenged in court (s.19.1, *Instructions relating to Control and Examination of Baggage*, June 2001 ("the Baggage Instructions")).

A legal basis for seizure of goods liable to forfeiture (illegally imported/exported goods) is established by s.202, Customs Consolidation Act 1876 and s.5, Customs Act 1956. These powers also apply to conveyances on or in which the goods are found (s.6, Customs And Excise (Miscellaneous Provisions) Act 1988).

A notice of seizure must be given to the owner, suspected owner or to the person in whose control the goods lie. The notice must specify clearly the goods to which it relates and the grounds on which they have been seized (s.207, Customs Consolidation Act 1876, as amended by s.6, Customs Act 1956).

The Baggage Instructions set out current rules for the recording and custody of seizures (s.19.4.3) and the reporting of seizures to the Anti-Fraud and Prosecution Unit (s.19.10). Special rules apply to the disposal of 'minor seizures' of perishable material (see 19.8).

The procedure for claims in relation to a seizure is laid down by s.7, Customs Act 1956.

Proceedings for forfeiture and condemnation of goods may be brought in any court of competent jurisdiction in the name or at the suit of the Attorney General (s.9, Customs Act 1956).

Prosecutions and burden of proof

In any proceedings under the Customs Acts brought by the Director of Public Prosecutions or a Customs officer that relate to goods exported or goods seized under those Acts, the onus of proof rests with the defendant as regards questions arising as to compliance with any prohibition/restriction on the exportation of goods or as to whether—

- (i) the goods are or were subject to any prohibition or restriction on their exportation, or
- (ii) the goods were lawfully brought to, sent to or kept at any place for the purpose of exportation, or
- (iii) the goods were lawfully dealt with in any other manner for the purpose of exportation (s.9, Customs And Excise (Miscellaneous Provisions) Act 1988).

Enforcement powers under the Customs Acts

General information

The Customs and Excise Service, part of the Office of the Revenue Commissioners, is responsible for the enforcement of import and export controls. The Customs Act 1956 defines an "officer of Customs and Excise" to include a member of the Garda Síochána and any person in the public service who is for the time being employed in the prevention of the illegal importation or exportation of goods (s.1). Detailed information may be obtained from the Customs and Excise Enforcement Procedures Manual.

The enforcement of laws relating to goods which are prohibited/restricted on importation into the EC from third countries is effected through normal Customs controls and interventions. With specific regard to CITES, the role of Customs is:

- to ensure that all imports from third countries and exports/re-exports to third countries of specimens covered by the CITES Regulations have the required permits/certificates; and
- to prevent smuggling of the specimens (section 18.8.3, Baggage Instructions).

The role of Customs is different with regard to intra-Community movements of specimens covered by the CITES Regulations. The Baggage Instructions provide generally that national import/export prohibitions and restrictions that relate to intra-Community movements "cannot be controlled in the traditional manner without having reasonable grounds for suspecting that a national law is being breached" (section 18.2). Intra-Community movements of CITES specimens come under the responsibility of the National Parks and Wildlife Service. Where Customs officers find specimens in the course of a baggage search and suspect them of being brought in from another Member State without proper documentation, they should report the matter immediately to that Service (section 18.8.3).

Powers to require information and conduct searches

In cases of suspected illegal export, Customs officers may request any person, in whose possession or control, on/in whose land or premises or in the immediate vicinity of which the goods are found, to supply certain information and documents (name, intended use and destination of goods, whether or not licences have been applied for or obtained) (s.4(1), Customs Act 1956). Failure or refusal to provide such information or document constitutes an offence (s.4(2), *ibid.*).

Search warrants (books or documents) may be issued in relation to suspected transactions in contravention of the Customs Acts, upon application by a Customs Officer to a Judge of the District Court. The Customs officers may remove documents reasonably believed to relate to illegal transactions and any goods found on the premises the importation of which is prohibited (s.5, Customs And Excise (Miscellaneous Provisions) Act 1988).

Detention

Detention means the holding of goods by Customs as a temporary measure, e.g. when there is a suspicion that the goods may be smuggled but there is insufficient evidence to warrant immediate seizure, the goods may be held pending enquiries by Customs (s.19.1, Baggage Instructions).

The Customs and Excise (Miscellaneous Provisions) Act 1988 authorises a Customs officer to detain goods suspected of having been irregularly imported into Ireland or of being irregularly exported therefrom (s.7(1)). The officer may also detain any conveyance and/or thing used in the import, export or conveyance of the said goods (s.7(2)). The period of detention, which may not exceed one month, is to enable the officer to make enquiries to determine whether or not the detained goods should be seized as liable to forfeiture under the Customs Acts or released (s.7(3)).

The Baggage Instructions specify that goods may be detained pending production of a valid import licence/permit, or pending re-exportation, and that the owner of the goods, if known, must be notified of the reason for the detention (s.19.3.3). Rules for the recording and custody of detentions are set out in s.19.3.4.

ADDITIONAL COMMENTS:

As sections 56-58 Wildlife (Amendment) Act 2000 have not yet commenced, it is too early to comment on the practical effectiveness of Ireland's legal framework for enforcement of wildlife trade controls. Based on discussions with Customs and Wildlife departments, there appear to be no prosecutions pending with regard to CITES-related offences.

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Enforcement of International Wildlife Trade Controls in Italy

M.T. Cirelli

CITES STATUS:

Date of Ratification or Accession to CITES: 2 October 1979 (entry into force 31 December 1979)

Acceptance of Amendment:

Bonn amendment to art. XI: registration 22 June 1979, entry into force 13 April 1987

Gaborone Amendment to art. XXI: registration 23 January 1986

CITES reservations currently in force: Appendix III species *Vulpes vulpes griffithi*, *Vulpes vulpes montana*, *Vulpes vulpes pusilla*, *Mustela erminea ferghanae*

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

- *Law 19 December 1975, n. 874: Ratifica ed esecuzione della convenzione sul commercio internazionale delle specie animali e vegetali in via di estinzione* (Law 19 December 1975, No. 874: Ratification and implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna)

The law authorises the President to ratify the Convention.

- *Decreto del ministro del commercio con l'estero 31 dicembre 1983: "Attuazione del regolamento (CEE) n. 3626/82 del 31 dicembre 1982 e del regolamento (CEE) n. 3418/83 del 28 novembre 1983 concernenti l'applicazione nella Comunità europea della Convenzione di Washington sul commercio internazionale delle specie di flora e fauna selvatiche, loro parti e prodotti derivati, minacciati di estinzione* (Decree of the Minister of Foreign Trade 31 December 1983: Implementation of regulation (EEC) No 3626/82 of 31 December 1982 and regulation (EEC) No. 3418/83 of 28 November 1983 concerning the application of the Washington Convention on International Trade in Endangered Species of Wild Flora and Fauna, and Parts and Products thereof.)

This decree specifies authorisations and procedures required for the import, introduction from the sea, export and re-export of CITES species, implementing the EC regulation for the uniform application of CITES in the Community.

- *Legge 24 novembre 1981, n. 689: modifiche al sistema penale* (Law 24 November 1981, No. 689: amendments to criminal law)

This law is cited in a number of occasions *infra* as relevant provisions on violations are examined. In particular, it establishes the regime applicable to administrative violations and introduces various amendments of the Criminal code and the Code of criminal procedure.

- *Decreto ministeriale 17 gennaio 1991: Divieto di vendita di parti e prodotti di rinoceronte* (Ministerial decree 17 January 1991: Prohibition of sale of rhinoceros parts and products)

The decree, pursuant to a resolution adopted under CITES, forbids sale of rhinoceros parts and products.

- *Legge 7 febbraio 1992, n. 150: Disciplina dei reati relativi all'applicazione della convenzione sul commercio internazionale delle specie animali e vegetali in via di estinzione, firmata a Washington il 3 marzo 1973, di cui alla legge 19 dicembre 1975, n. 874, e del regolamento (CEE) n. 3626/82, e successive modificazioni, nonché norme*

per la commercializzazione e la detenzione di esemplari vivi di mammiferi e rettili che possono costituire pericolo per la salute e l'incolumità pubblica (Law 7 February 1992, No. 150: provisions on offences regarding the implementation in Italy of the Convention on International Trade of Endangered Species of Wild Flora and Fauna, signed in Washington on 7 March, 1973, referred to in Law 19 December 1975, No. 874, and Regulation (EEC) No. 3626/82, as amended, and rules on trade and keeping of live mammals and reptiles which may endanger public health and security.)

This law, as currently amended, is the principal law to be examined for the purpose of this exercise, as it spells out offences and penalties relating to the implementation of CITES and EC Regulation No. 3626/82. Its contents are examined in detail in the following sections of this report concerning offences and penalties.

- *Norme per la protezione della fauna selvatica omeoterma e il prelievo venatori* (Law 11 February 1992, No. 157: provisions on the protection of wildlife and hunting)

This is the principal Law regulating the management of wildlife and hunting. The responsibility for this matter in Italy is shared between the State and the regions, and numerous regional laws have therefore been adopted within the framework of this law. Section 21 of the law prohibits the possession, sale and purchase of any specimens of wildlife, except if authorised (i.e., mainly if obtained from hunting or utilised as live decoys in compliance with the law).

- *Decreto ministeriale 4 settembre 1992: Modalità relative ai controlli in ambito doganale in attuazione dell'articolo 8, comma 2, della legge 7 febbraio 1992, n. 150, concernente l'applicazione in Italia della convenzione di Washington del 3 marzo 1973.* (Ministerial decree 4 September 1992: Procedures for customs controls for the implementation of section 8 para. 2 of law 7 February 1992 No. 150, concerning implementation in Italy of the Washington Convention of 3 March 1974.)

The decree establishes that bodies set up for this purpose within the State Forestry Corps are to co-operate with customs officials in the identification of concerned species in the customs offices designated for the import and export of CITES species. Agreements are to be entered into for this purpose between the Ministry of Agriculture (under which the State Forestry Corps is placed) and the regional authorities. Officials of the Ministry of the Environment or experts authorised by the Scientific Commission which acts as the CITES scientific authority may also be consulted for the identification of specimens of CITES species. The decree includes further details on exchange of documentation between customs offices, the Ministry of Foreign Trade and the CITES certification service of the Ministry of Agriculture.

- *Decreto-legge 12 gennaio 1993, n. 2: Modifiche ed integrazioni alla legge 7 febbraio 1992, n. 150, in materia di commercio e detenzione di esemplari di fauna e flora minacciati di estinzione* (Decree-law 12 January 1993, No. 2: amendments and additions to law 7 February 1992, No. 150, concerning trade and possession of specimens of endangered species of fauna and flora.)

This law amends law 150/1992 on a number of minor issues. It also sets out the composition of the Scientific Commission established under law 150/1992, specifying that this Commission acts as the scientific authority envisaged in CITES and in Council regulation (EC) No. 338/97. The Commission includes twelve experts designated by recognised research institutions, two other experts designated respectively by WWF and another recognised environmental organizations and one representative of the State Forestry Corps.

- *Decreto legislativo 3 marzo 1993 n. 93: Attuazione delle direttive n. 90/675/CEE and 91/496/CEE relative all'organizzazione di controlli veterinari su prodotti e animali in provenienza da Paesi terzi e introdotti nella Comunità europea* (Legislative Decree 3 March 1993, No. 93: Implementation of directives No. 90/675/EEC and 91/496/EEC on the organization of veterinary controls on products and animals introduced from third countries into the European Community.)

This decree provides in detail for veterinary controls to be operated on any animals being imported into the European Community.

- *Decreto ministeriale 28 maggio 1993: Determinazione della misura degli importi dei diritti speciali di prelievo dovuti ai sensi dell'art. 8-quinquies della legge 7 febbraio 1992, n. 150 e successive modificazioni* (Ministerial decree 28 May 1993: Setting the level of fees due under law 7 February 1992, No. 150, sec. 8-quinquies, as amended.)

The decree sets out fees due for the various applications for licences and other documentation to be issued under CITES (export/import licences, declarations of possession of specimens etc.)

- *Decreto ministeriale 18 febbraio 1994: Modalità e criteri per il monitoraggio della mortalità di animali vivi di specie incluse nell'Allegato A, appendici I e II, del regolamento CEE n. 3626/82 del Consiglio del 3 dicembre 1992, e successive modificazioni, durante il trasporto internazionale* (Ministerial Decree 18 February 1994: Provisions for the monitoring of the death rate during international transport of live specimens of species included in Annex A, Appendices I and II, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended.)

This decree makes the State Forestry Corps responsible for inspections regarding the death rate of CITES species at the customs entry points specified in Legislative decree 3 March 1993, No. 93. Reports, which are to be set out in the specified format, are sent to the Ministry of Environment, which is to report to the CITES Secretariat yearly in this regard..

- *Decreto ministeriale 23 marzo 1994: Istituzione del registro delle istituzioni scientifiche previsto dall'articolo VII, paragrafo 6, della Convenzione sul commercio internazionale delle specie di flora e fauna selvatiche minacciate di estinzione (CITES)* (Ministerial Decree 23 March 1994: Establishment of the registry of scientific institutions referred to in article VII, Paragraph 6, of the Convention on International Trade in Endangered Species of Wild Flora and Fauna)

The decree provides for the creation of the Registry within the Ministry of Environment and establishes conditions for registration of institutions. Registration is subject to the binding opinion of the CITES Scientific Commission created under Law 150/1992. Registered institutions are obliged to use labels of a specified format for forwarding CITES-related materials to other registered institutions. Registration may be revoked in case conditions for registration are no longer met or of any behaviour which the Scientific Commission considers to be in violation of the purposes of CITES.

- *Decreto ministeriale 11 aprile 1994, n. 454: Ordinamento e servizi del Ministero del commercio con l'estero and decreto ministeriale 18 settembre 1997, n. 394: Regolamento integrativo al decreto ministeriale 11 aprile 1994, n. 454* (Ministerial Decree 11 April 1994, No. 454: Organization and services of the Ministry of Foreign Trade, and Ministerial Decree 18 September 1997, No. 394: Amendments to Ministerial Decree 11 April 1994, No. 454.)

These decrees include the issue of CITES authorisations for import among the functions of this Ministry.

- *Decreto ministeriale 19 aprile 1996: Elenco delle specie animali che possono costituire pericolo per la salute e l'incolumità pubblica* (Ministerial decree 19 April 1996: List of animal species which may endanger public health and security.)

This decree prohibits the possession of the listed animal species which are considered to constitute a risk for public health and security.

- *Decreto legislativo 31 marzo 1998, n. 112: Conferimento di funzioni e compiti amministrativi dello Stato alle regioni ed agli enti locali, in attuazione del capo I della Legge 15 marzo 1997, n. 59* (Legislative decree 31 March 1998, No. 112: Administrative functions and responsibilities of Regions and local authorities for the implementation of Part I of Law 15 March 1997, No. 59.)

This decree lists (in sections 69 and 70, which are the only relevant ones for the purposes of this report) the environmental protection functions which are exclusive responsibilities of the State or the regions, and those which are shared between

them. Conservation of wild flora and fauna specifically protected by international agreements and EC provisions is a responsibility of the State, as is the listing of endangered species of wild flora and fauna. Control over trade and possession of species of wild flora and fauna is a responsibility of the regions, except as it relates to CITES provisions.

- *Legge 9 dicembre 1998, n. 426: Nuovi interventi in campo ambientale* (Law 9 December 1998, No. 426: New undertakings in the environmental sector.)

The law provides for the funding and implementation of a number of activities for environmental improvement, including also numerous amendments of various existing pieces of legislation. Some of these relate to Law 150/1992, introducing minor changes (e.g., three more members appointed by the permanent Conference for State-Region relations may participate in the Scientific Commission, and funding for the functioning of the Commission is provided).

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

Note: in Italian legislation there is a distinction between administrative and criminal violations. Both kinds of violations, with related penalties, may be established exclusively by law (including regional laws, but only for the case of administrative violations). It is the law which determines whether a particular violation is “criminal” or “administrative”.

The substantive differences between administrative and criminal violations, are

- that administrative violations are not reported in a person’s criminal record,
- that they may be committed by legal as well as natural persons, and
- that they are normally judged by administrative authorities - although appeals against administrative decisions may always be filed with the courts.

Criminal violations themselves are divided into “*delitti*” and “*contravvenzioni*”:

“*delitti*” are violations which are punishable by “*reclusione*” (imprisonment from fifteen days to twenty-four years) and/or “*multa*”, (fine) and

“*contravvenzioni*” are violations which are punishable by “*arresto*” (which also means imprisonment, from 5 days to three years) and/or “*ammenda*” (which also means fine).

Although the former are, in general, more serious criminal violations, there is no significant substantive difference between the two categories, as is shown also by the overlapping ranges in duration of imprisonment and amount of fines.

One distinction between “*delitti*” and “*contravvenzioni*”, as well as administrative violations, is that “*delitti*” are punishable only if intentionally committed (unless the law expressly prescribes that a certain action or omission must be punished even in the case of negligence), while “*contravvenzioni*” and administrative violations are punishable regardless of whether they are committed intentionally or through negligence. There are no “*delitti*” envisaged in Law 150/1992 - all of the violations established in it are either “*contravvenzioni*” or administrative violations.

(I) ILLEGAL EXPORT AND/OR RE-EXPORT

Law 150/1992, sec. 1.1: export or re-export of specimens of species listed in Annex A, Appendix I and Annex C, Part 1, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended, in violation of the decree of the Minister of Foreign Trade of 31 December 1983, is a criminal violation (*contravvenzione*).

Law 150/1992, sec. 1.3: export or re-export of objects “derived from” any specimen of the species listed in Annex A, Appendix I and Annex C, Part 1, of Council Regulation (EEC) No. 3626/82 of 3 December 1982 for personal or domestic

use, except for leather goods for personal use and shoes, is permitted subject to the issue of a certificate under art. VII, para. 3 of CITES, by the CITES Certification Service of the State Forestry Corps.

Law 150/1992, sec. 2.1: export or re-export of specimens of species listed in Annex A, Appendices II and III - except for those included in Annex C, part 1 - and in Annex C, part 2, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended, in violation of the decree of the Minister of Foreign Trade of 31 December 1983, is a criminal violation (*contravvenzione*).

(II) ILLEGAL IMPORT AND/OR INTRODUCTION FROM THE SEA OF SPECIMENS OF SPECIES

Law 150/1992, sec. 1.1: import of specimens of species listed in Annex A, Appendix I and Annex C, Part 1, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended, in violation of the decree of the Minister of Foreign Trade of 31 December 1983 is a criminal violation (*contravvenzione*).

Law 150/1992, sec. 1.2: import of objects “relating to” the species referred to in the previous para. for personal or domestic use without submitting the documentation prescribed under CITES issued by the foreign State where the object has been acquired is an administrative violation. “Objects for personal or domestic use” are defined in sec. 8-sexies as products derived from specimens of species included in Annex A, Appendices I, II and III and Annex C, parts 1 and 2 of regulation (EEC) No. 3626/82, as amended, belonging to a natural person and not offered for sale or trade.

Law 150/1992, sec. 2.1: import of specimens of species listed in Annex A, Appendices II and III - except for those included in Annex C, part 1 - and in Annex C, part 2, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended, in violation of the decree of the Minister of Foreign Trade of 31 December 1983, is a criminal violation (*contravvenzione*).

Law 150/1992, sec. 2.2.: import of objects relating to the species referred to in the previous para. for personal or domestic use without submitting the documentation prescribed under CITES, if required, is an administrative violation.

(III) ILLEGAL POSSESSION OF RELEVANT SPECIMENS ETC.

Law 150/1992, sec. 1.1.: sale, exhibition for sale, keeping or offering for sale, transport, including on behalf of third parties, or any form of possession of specimens of species listed in Annex A, Appendix I and Annex C, Part 1, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended, in violation of the decree of the Minister of Foreign Trade of 31 December 1983, is a criminal violation (*contravvenzione*).

Law 150/1992, sec. 2.1: sale, exhibition for sale, keeping or offering for sale, transport, including on behalf of third parties, of specimens of species listed in Annex A, Appendices II and III - except for those included in Annex C, part 1 - and in Annex C, part 2, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended, in violation of the decree of the Minister of Foreign Trade of 31 December 1983, is a criminal violation (*contravvenzione*).

Law 150/1992, sec. 3: the provisions of sections 1 and 2 apply also in the case of transit or trans-shipping on the Italian territory of live or dead specimens of species referred to in the same sections and parts and products thereof.

Law 150/1992, sec. 5. 1: within ninety days of the entry into force of the law, persons having in their possession specimens of species listed in Annex A, Appendix I and Annex C, Part 1, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended, must file a report with the State Forestry Corps and, upon verification that the import of such specimens has been lawful, are issued a receipt. For species which may subsequently be included in the same lists, the term is ninety days following publication in the Italian Official Gazette (sec. 5-bis 4). An exemption is granted (sec. 5-bis 1) for the case of possession of objects for personal or domestic use. If these objects, however, are subsequently offered for sale, prior reporting under sec. 5.1 is compulsory (sec. 5-bis.1 and 5-bis.6). Another exemption is granted for research institutions which have been registered in accordance with art. VII para. 6 of CITES. Breach of these provisions is an administrative violation.

Law 150/1992, sec. 5.2: persons referred to in section 5.1 must notify the death or any changes in the places of custody of the specimens referred to in the same section to the State Forestry Corps.

Law 150/1992, sec. 5.3: upon import or re-export of specimens of species listed in Annex A, Appendices II and III - except for those included in Annex C, part. 1 - and in Annex C, part 2, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended, the required signatures on the import and export licences and import and re-export certificates must be requested from the State Forestry Corps, pursuant to CITES.

Law 150/1992, sec. 5.5: specimens of species listed in Annex A, Appendix I and Annex C, Part 1, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended, and species exempted by Regulation (EEC) No. 3626, as amended, must be marked in compliance with international standards, as will be directed by the CITES certification service of the State Forestry Corps.

Law 150/1992, sec. 6.1: possession of live mammals and reptiles, whether wild or bred in captivity, which may endanger public health and security, is a criminal violation (*contravvenzione*). Such species are to be specified in ministerial decree (sec. 6.2).

Law 150/1992, sec. 6.3: persons who are in the possession of species referred to in section 6.1 on the date of entry into force of the decree referred to in it must file a report with the “prefettura” (State office responsible for public security within each province) responsible for the area concerned within ninety days. The head of the “prefettura”, in consultation with competent health authorities, may authorise such possession upon verification that premises which are adequate for the survival of the animals and public health and security are available. Breach of this provision is an administrative violation

Law 150/1992, sec. 6.6: exemptions from the provisions of sections 6.1 and 3 are granted to specified entities (zoos, protected areas, aquariums etc.) declared to be appropriate by the Scientific Commission and other entities (circuses, mobile exhibitions of wild animals etc.) declared to be appropriate by the public health and security authorities on the basis of criteria established by the same Commission.

Law 150/1992, sec. 8-bis: a report on any birth or reproduction in captivity of specimens of species listed in Annex A, Appendices I and II and Annex C, Part 1 and 2, of Council Regulation (EEC) No. 3626/82 of 3 December 1982, as amended, must be filed within ten days of the event with the CITES certification service of the Ministry of agriculture. This service may verify the actual relations between the new-borns and other specimens in the possession of the person who filed a report, who must co-operate for this purpose. Breach of this provision is an administrative violation.

Law 150/1992, sec. 8-ter: pursuant to Resolution 8.14 adopted under CITES, this provision required firms which were in possession of whole *Crocodylia* skins to file a report with the Ministry of agriculture to allow the preparation of an inventory and to obtain their free marking before 31 March 1993. Breach of this provision was an administrative violation.

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

Penalties for violations under sec. 1.1.: imprisonment (*arresto*) from three months to one year or fine (*ammenda*) from fifteen million to two-hundred million Lire (Euro 7,747 to 103,290).

In the case of a second offence, imprisonment (*arresto*) from three months to two years or fine (*ammenda*) from fifteen million Lire (Euro 7,747) to six times the value of the animals, plants or parts or products thereof which are the object of the violation. In the case of conviction of a commercial firm, its licence must be suspended for a period from three months to eighteen months (Law 150/1992, sec. 1/1).

Penalties for violations under sec. 1.2: “administrative penalty” from three million to eighteen million Lire (Euro 1,549 to 9,296). Objects illegally imported must be confiscated by the State Forestry Corps (Law 150/1992, sec. 1.2).

Penalties for violations under sec. 2.1: fine (*ammenda*) from twenty million to two-hundred million Lire (Euro 10,329 to 103,290).

In the case of a second offence, imprisonment (*arresto*) from three months to one year or fine (*ammenda*) from twenty million Lire (Euro 10,329) to four times the value of the animals, plants or parts or products thereof which are the object of the violation. In the case of conviction of a commercial firm, its licence must be suspended for a period from four months to twelve months (Law 150/1992, sec. 2.1).

Penalties for violations under sec. 2.2: administrative penalty from two million to twelve million Lire (Euro 1,003 to 6,197) (Law 150/1992, sec. 2.2).

Confiscation of "live or dead specimens of wild plants or animals or parts or products thereof" is envisaged in case of any violation of sections 1.2. (Law 150/1992, sec. 4.1).

Penalties for violations under sections 5 paragraphs 1, 2, 3 and 5-bis, and sec. 5-bis para. 4, unless the fact constitutes a criminal offence: administrative penalty from six million to eighteen million Lire (Euro 3,098 to 9,296) (sections 5.6 and 5-bis 5). The reference to sec. 5 para. 5-bis is probably a mistake, as that para. establishes only an obligation (presumably for the administration) to establish a specific registry of specimens whose possession must be reported. It should perhaps be a reference to sec. 5 para. 5, which requires marking, for whose violation there is no applicable penalty.

Penalties for violations under sec. 5-bis 6: administrative penalty from two million to twelve million Lire (Euro 1,033 to 6,197) (Law 150/92, sec. 5-bis. 7).

Penalties for violations under sec. 6.1: imprisonment (*arresto*) up to three months or fine (*ammenda*) from fifteen million to two-hundred million Lire (Euro 7,747 to 103,290) (Law 150/1992, sec. 6.4).

Penalties for violations under sec. 6.3: administrative penalty from ten million to sixty million Lire (Euro 5,164 to Euro 30,987) (Law 150/92, sec. 6.5).

Penalties for violations under sec. 8-bis: administrative penalty from five-hundred-thousand to two million Lire (Euro 258 to 1032), unless the action constitutes a criminal offence (Law 150/1992, sec. 8-bis. 1-bis).

Penalties for violations under sec. 8-ter: administrative penalty from five million to eight million Lire (Euro 2,582 to 4,132).

LEGISLATION AUTHORISING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS:

(I) SEARCHES AND SEIZURES

The Italian code of criminal procedure envisages three types of seizure ("sequestro"):

The powers of search of "*polizia giudiziaria*" (any bodies empowered by law to carry out police functions for the enforcement of any legislation) are set out in detail in the code of criminal procedure. There are no specific provisions for CITES-related legislation, so all police bodies are in theory empowered, although in practice the State Forestry Corps is usually called upon to act.

The Police and administrative authorities empowered to enforce provisions whose breach constitutes an administrative violation are generally more limited, including requests for information, inspection of places (other than private homes) and seizure (*sequestro cautelare*) of relevant objects (Law 689/1981, sec. 13).

“*sequestro probatorio*” (sections 253 to 265): the seizure of the object of a crime and other related objects may be ordered by the courts when required as evidence of the crime;

“*sequestro preventivo*” (sections 321 to 322-bis): when there is a risk that continued possession of objects related to a crime can lead to a continuation or aggravation of the crime or facilitate the commission of other crimes, seizure may be requested by the prosecutor and authorised by the judge. In particularly urgent cases seizure may be carried out by the police or other authorised enforcement officials and must subsequently be reported to the prosecutor, who must validate it or order the release of concerned objects within forty-eight hours.

“*sequestro di polizia*” (sections 354-355): the police and other authorised enforcement officials must ensure that the signs of criminal activity, any related objects and the condition of places and objects are not altered before inspection by the prosecutor. If there is a danger that they could be altered or lost and the prosecutor cannot immediately examine them, they may seize the object of the crime and other related objects. A report is forwarded within forty-eight hours to the prosecutor, who must within the following forty-eight hours validate the seizure or order the release of concerned objects.

(II) COMPOUNDING PENALTIES

The Italian legislation envisages “*oblazione*” as a general option to “extinguish” *criminal violations* (unless expressly excluded in the law) in the following cases:

where a “*contravvenzione*” is punished exclusively by a fine (*ammenda*), *oblazione* is possible by paying one third of the maximum amount envisaged as a fine (sec. 162 of the criminal Code).

where a “*contravvenzione*” is punished alternatively by a fine (*ammenda*) or (*arresto*), *oblazione* is possible by paying one half of the maximum amount envisaged as an “*ammenda*” (sec. 162-bis of the criminal Code, as modified by Law 689/1981).

Similarly, for *administrative violations*, a reduced payment (“*pagamento in forma ridotta*”) equal to one third of the maximum amount envisaged as a penalty, or twice the minimum amount, whichever is more favourable, is possible within sixty days since a violation is committed or its commission is notified to the concerned person (Law 689/1981, sec. 16).

(III) ADMINISTRATIVE ENFORCEMENT ACTIVITIES, INCLUDING LICENCE/PERMIT REVOCATIONS

(IV) PROSECUTION OF OFFENDERS

The following are the basic phases of Italian criminal procedure.

The prosecutor is obliged to undertake criminal proceedings upon receipt of the news that a crime has been committed. He/she appoints the specified body (“*polizia giudiziaria*”) considered to be the most appropriate to carry out relevant investigations (it could for example be the State Forestry Corps for the case of wildlife-related offences). Investigations must be concluded within six months - a term which may be extended for other six-month periods twice, upon authorisation from the pre-trial magistrate (“*giudice per le indagini preliminari*”).

Upon conclusion of the investigations the prosecutor may request that the case be filed (“*archiviazione*”) or to proceed to the “preliminary hearing”. The pre-trial magistrate may accept either of such requests or, in both cases, request further investigations.

At the preliminary hearing the judge (“*giudice dell’udienza preliminare*”) may decide whether the accused person should be sent to trial or not.

It is during this hearing that alternative options to a trial may be requested by the concerned parties: for example, *oblazione* or "*patteggiamento*" (application of a penalty agreed between the accused person and the prosecutor. It may involve benefits such as a one-third reduction of the penalty which could theoretically have been applied and suspended sentence).

Unlike previous phases, trials are usually public. In the case of "*contravvenzioni*", there is usually a single judge ("*tribunale monocratico*"). Appeals against the tribunal's decisions may be filed with the court of appeals. Against the decisions of the court of appeals it is possible to file a "*ricorso per cassazione*", which can challenge the legal rulings but not the findings. The supreme court of "*cassazione*" may confirm the decision or reject it and forward the proceedings before another court of appeals, establishing the legal principles upon which the new court's decision will have to be based.

OTHER RELEVANT LEGISLATION

Legislation on criminal and administrative violations concerning the case in which one action violates more than one legal provision establishes the following:

- if a subject is regulated by more than one provision establishing criminal violations, the provision which more specifically relates to the case must be applied, in application of the general principle "*lex specialis derogat legi generali*". In this case, the more general rule would apply only if the more specific one did not exist, so the violation of more than one provisions is only apparent. The principle applies both to criminal and to administrative offences, and even if the same action apparently violates both a provision which establishes a criminal violation and a provision which establishes an administrative one, the more specific one applies, regardless of whether it is criminal or administrative. An exception is made for cases in which the administrative violation is envisaged in a regional law, in which case the national law always prevails (Criminal code, sec. 15, and law 689/1981, sec. 9);
- if a single action does violate more than one provision, or violates the same provision more than once, the applicable penalty is that envisaged for the most serious violation, increased up to three times. This applies both to criminal violations (Criminal code, sec. 81 para. 1) and to administrative ones (law 689/1981, sec. 8);
- in the case of more than one violation of the same or different provisions, even if committed at different times, if such violations may be considered to be in execution of a single criminal scheme, the penalty which applies is the one envisaged for the most serious offence, increased up to three times ("*reato continuato*") (criminal code, sec. 81 para. 2).

A specific list of aggravating and mitigating factors which may be taken into account in sentencing is set out in the Criminal code (sections 61 and 62). The court may also take into account mitigating factors which are not listed (sec. 62-bis).

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Enforcement of International Wildlife Trade Controls in Luxembourg

Robert Seelig (LL.M)

CITES STATUS:

Date of Ratification or Accession to CITES: March 12, 1984 (effective date)

Accession to Amendment:

Bonn Amendment (Article XI) Acceptance registered: August 29, 1989; effective October 28, 1989

Gabarone Amendment (Article XXI) Acceptance registered: August 28, 1989

CITES reservations currently in force: No appendix I and II reservations in force. Appendix III reservations: *Vulpes vulpes griffithi*, *Vulpes vulpes montana*, *Vulpes vulpes pusilla*, *Mustela erminae ferghanae*,

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

- 1) **LOI DU 19 FÉVRIER 1975 PORTANT APPROBATION DE LA CONVENTION SUR LE COMMERCE INTERNATIONAL DES ESPÈCES DE FAUNE ET DE FLORE SAUVAGE MENACÉ D'EXTINCTION ; SIGNÉE A WASHINGTON LE 3 MARS 1973.** (Act implementing CITES) *Memorial, Journal Officiel Du Grand-Duché de Luxembourg (official Journal of Luxembourg) April 18, 1975 A-No 21 p. 517.*

The Act contained only one Article until 1989 (Act of April 21, 1989 see below) ratifying CITES. The only article provided “approval” of CITES and ordered that the Act of February 19, 1975 shall “be enforced and observed by all concerned.” The Act contained no further provisions. All legislation was to be found in the convention and later in relevant EU regulations.

- 2) **LOI SUR LE COMMERCE DES ESPECES DE FAUNE ET DE FLORE SAUVAGES** of April 21, 1989 (Trade in Wild Species Act), *Memorial, Journal Officiel Du Grand-Duché de Luxembourg (official Journal of Luxembourg) May 26, 1989 A-No 33 p. 598- 600.*

This Act provides for comprehensive Luxembourg legislation on control and enforcement of wildlife trade. It approves the Bonn (June 22, 1979) and Gaborone (April 30, 1983) amendments and supplements the prior act of February 19, 1975 (act ratifying CITES).

It contains comprehensive provisions on the competent authorities (Art 3, 4, 5), enforcement and penalties, rights to access (Art 6), to seize and examine as well as rights to inquire information (Art 7), marking of species (Art 8), confiscation (Art 10, 12), illegal conduct under CITES (Art 11), administrative and penal sanctions (Art 12).

The Act is the most relevant legislation and contains most core provisions relevant to this report.

- 3) **RÈGLEMENT GRAND-DUCAL DU 21 AVRIL 1989**, *Memorial, Journal Officiel Du Grand-Duché de Luxembourg (official Journal of Luxembourg) May 26, 1989 A-No 33 p. 601.*

The Regulation’s aims are twofold:

- ◆ To implement CITES and

- ◆ to enforce all EU regulations relevant to the application of CITES (Art 1).

In Art 4 it lists competent authorities for the enforcement of the Regulation. It contains no further detailed provisions on enforcement or sanction mechanisms but completely refers to those of the relevant EU regulations. Since the Regulation dates back to 1989, it does not specifically refer to EU Regulation 338/97.

- 4) **RÈGLEMENT GRAND-DUCAL DU 21 AVRIL 1989**, *Memorial, Journal Officiel Du Grand –Duché de Luxembourg (official Journal of Luxembourg) May 26, 1989 A-No 33 p. 602.*

The Regulation lists all competent experts charged with ascertaining violations of the Trade in Wild Species Act. It contains no enforcement or sanction mechanisms.

- 5) **LOI DU 11 AOÛT 1982 CONCERNANT LA PROTECTION DE LA NATURE ET DES RESSOURCES NATURELLES**. (*Conservation of nature and natural resources Act*). *Memorial, Journal Officiel Du Grand –Duché de Luxembourg (official Journal of Luxembourg) August 20, 1982, p. 1485.*

According to Art 1, this Act aims at conserving, protecting and restoring the natural environment, landscapes, fauna and flora, and natural resources.

Chapter three deals with the protection of fauna and flora. Articles 20 and 24 provide for limitations on trade with species protected under international conventions. Chapter 8 (Arts. 44 – 47) contains penal provisions.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

Violations relating to illegal export and re-export of specimens of species are defined in Article 5 of EU regulation 338/97. Article 5 of Luxembourg's Trade in Wild Species Act of April 21, 1989 refers to community regulations in providing that all community regulations are enforced by competent authorities (listed in Art 5 of the Act of April 21, 1989). The relevant provisions of Regulation 338/97 concerning introduction of species and export or re-export can therefore be considered as applicable and enforceable under the Luxembourg Act of April 21, 1989.

Article 11 of the Act of April 21, 1989 holds that it is illegal to possess, sell, to offer for sale or to purchase protected species. However, Article 11 only comprises specimens of species that are "easily identifiable". (It refers to Annex I of CITES and to Annex C I of EU regulation 3628/82). There is no explicit provision on import, export, re-export or introduction from the sea to be found in the Act.

A noticeable legislative limitation exists in Article 11. Possession of specimens that are personal items is exempted from Article 11.

Limitations on illegal import, export or re-export of specimens of species are set forth in the Conservation of nature and natural resources Act of 1982. Art 20 provides that plants and animals protected by international conventions can only be purchased, imported, offered for sale, exported, or kept in captivity if these activities are undertaken in accordance with the provisions of those conventions. This provision refers to CITES and its provisions on trade. Article 24 provides that the burden of proof concerning the origin of specimens is with the owner, vendor or person transporting specimens.

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

- 1) Article 12 of the Act of April 21, 1989 contains penal provisions. Any violation of said act or EU or national regulations are subject to imprisonment from 8 days up to six months or fine from 2.500,- up to one million francs.

Art 12 further provides that penal sanctions in accordance with the penal code are also applicable to violations of the Act of April 21, 1989. However, there is no overlap between the penal code and the penal provisions of the Act of April 21, 1989, because the Act provides that if there is any more restrictive provisions on this topic in any other legislative source, that provision would derogates the Act of April 21, 1989. The Penal Code contains no specific reference to CITES and no specific penal provisions on illegal wildlife trade.

Finally, Article 12 also authorises confiscation of specimens, following conviction, unless the specimens were sent back to the country of origin or were otherwise disposed of. All costs for experts, transport, destruction accrue to the violator.

2) In case that examination of samples results in conviction, Article 7 (4) provides that all costs of for such measures accrue to the violator.

3) The Conservation of nature and natural resources Act of 1982 contains penal provisions in its Articles 44-47. Violations of this Act are punishable by fines of 2.500,-- up to 1.000.000,-- Francs, or imprisonment from 8 days up to six months. (Art. 44.)

LEGISLATION AUTHORISING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS:

1) Article 5 of the Act of April 21, 1989 identifies police officers, customs authorities, veterinary authorities, agricultural authorities, water and forest authorities as competent authorities for the enforcement of wildlife trade controls. Article 6 grants these authorities the right of access at any time of day and night to factories, shops, depots, offices, means of transportation, breeding facilities, cultures, markets, refrigeration facilities, train stations, or open air facilities. The affected person has the right to be present at all times during such visits.

2) Article 7 contains the right of the competent authorities (Art. 5) to gather samples of specimens for examination and analysis. The authorities have the right to inquire any information and documents necessary to their examination.

3) Article 10 (1) provides that specimens subject to a violation of the Act shall be either sent back to the exporting state, seized or destroyed if necessary.

It provides that seized live specimens will – after consultation with scientific bodies and authorities of the exporting state - be sent to the exporting state.

4) Article 10 (2) contains a very general authorisation. It grants the right to the administrative agency to detain specimens if there is any doubt about whether the species may be traded in, or about any other violation. Such detention shall last until clarification, but for no longer than three months. After the three month deadline, the administrative agency has to decide on “an appropriate measure in accordance with the objectives of CITES”.

5) Article 10 (3) provides that seizure and withholding of specimens has to be confirmed by a judge within five days.

6) According to Article 10 (3) all measures can be repealed in accordance with Art 46 of the August 11, 1982 Act on Nature Conservation and Natural Resources.

There is no specific legislation relating to customs (i.e. custom code) that provides for general authorisation of customs authorities. Art 10 of the Act of April 21, 1989 is the only legislative authorisation for the competent customs authorities (see also below under “Additional Comments”).

Approximately 6-10 cases of CITES violations are prosecuted per year in Luxembourg.⁵¹

OTHER RELEVANT LEGISLATION

REGLEMENT GRAND-DUCAL DU 19 AOÛT 1989 CONCERNANT LA PROTECTION INTÉGRALE ET PARTIELLE DE CERTAINES ESPÈCES VÉGÉTALES DE LA FLORE SAUVAGE. Memorial, Journal Officiel Du Grand –Duché de Luxembourg (official Journal of Luxembourg) A 1989 p. 1103.

This regulation deals only with domestic species of Luxembourg. Violations involving these species will be penalised as violations against CITES enforcement provisions. Article 6 refers to Articles 44-47 of the Act of August 11, 1982 and contains no other enforcement or sanction mechanisms with regard to violations of CITES or Reg. 338/97.

ADDITIONAL COMMENTS

The *LOI SUR LE COMMERCE DES ESPECES DE FAUNE ET DE FLORE SAUVAGES* of April 21, 1989 (Trade in Wild Species Act) will be revised soon. Presently, Luxembourg legislation refers to provisions of the relevant EU Regulations, and violations of CITES provisions are mainly defined in terms of the EU Regulation 338/97.

Due to the legislation's date (1975- 1989), there is no explicit reference to the EU Regulation 338/97. However, Article 5 of the Trade in Wild Species Act of April 21, 1989 refers to all community regulations in providing that all community regulations are enforced by the respective authorities.

The revision of this Act is necessary so that it can be adapted to the new EU regulation 338/97. As currently described, the revised Act is expected to:

- reorganise the relevant administrative framework: Until now, in Luxembourg, the permanent scientific authority consisted of Members of the Ministère de l'Environnement (Ministry for the environment – which is also the CITES Management Authority for Luxembourg) and a diverse group of scientists. When the Act is revised, the scientific authority will be reorganized and will no longer include the veterinary service agency and the agency for technical services and agriculture. The latter agencies will probably be part of an advisory body to the scientific authority. This will be the formalisation of an existing informal arrangement – the new scientific authority (comité Scientifique) has already been appointed by ministerial order (www.etat.lu/memorial - Memorial B Year 2001 – No 22 of March 22 2001)
- enlarge the competence of customs authorities: So far, customs authorities have only competence to conduct control and enforcement measures at the borders or the areas adjacent to the borders. In the future they will be competent for control and enforcement in Luxembourg's interior as well. Furthermore, customs authorities will be deputies to the public prosecutor.
- The reference to CITES in Art. 11 will be replaced with a more general provision

The general authorisation in Art 10 (2) (“After the three month deadline, the administrative agency has to decide on “an appropriate measure” in accordance with the objectives of CITES”) could be used to further supplement the penal sanctions provided for in Art 12 by sanctioning any behaviour violating CITES.

⁵¹ MORE COMPLETE STATISTICS CONCERNING ENFORCEMENT ACTIVITIES IN LUXEMBOURG ARE INCLUDED IN THE REPORT “STATISTICAL INFORMATION AND FACTUAL SUMMARIES ON THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS IN LUXEMBOURG,” CONTAINED IN THIS VOLUME. –TRY]

As mentioned before, personal items are exempt from Art 11, all possession of specimens of any protected species that are personal items is therefore deemed to be legal. There is no further provision on what constitutes a “personal item” and how a specimen can be sufficiently proven to meet this standard.

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Following submission of this report, a new Flora and Fauna Act was approved by the Dutch Parliament and the Commission was duly notified mid 2001. This Act will replace the existing Acts, which are mentioned above. The Act is not yet in force. Several Regulations are being formulated. Most of the Flora and Fauna Act (including the CITES-aspects) will probably be in force by the beginning of 2002. Owing to this “in transition” status, it was decided to prepare only a limited report regarding law in the Netherlands, at this point.

Enforcement of International Wildlife Trade Controls in the Netherlands

Alexander Koning

CITES STATUS:

Date of Ratification or Accession to CITES: Ratification in 1984, accession on 18 July, 1984

Accession to Amendments:

- ◆ Amendment to Article XI of the Convention – (Bonn amendment): Acceptance registered 1984; entered into force on 13 April 1987
- ◆ Amendment to Article XXI of the Convention (Gaborone amendment): Acceptance registered on 12 February 1985

*CITES reservations currently in force: *Vulpes vulpes griffithi*; *Vulpes vulpes montana*; *Vulpes vulpes pusilla*; *Mustela altaica*; *Mustela erminea ferghanae*; *Mustela kathiah*; *Mustela sibirica**

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

Endangered Exotic Animal and Plant Species Act

The CITES- and EU-regulations are implemented in the Netherlands by the “Wet bedreigde uitheemse dier- en plantensoorten”, which can be translated as the “Endangered Exotic Animal and Plant Species Act”.

(This Act is about to be replaced by the Fauna and Flora Act. The date of entry into force is still uncertain, but it is expected to be at the end of 2001. Since this Act has not been worked out entirely yet, it is not possible to perform a study right now. However, the expected outcome will not be fundamentally different from the present situation.)

The relevant parts of the Endangered Exotic Animal and Plant Species Act are enclosed (in Dutch) and described here below (note: this is not the exact wording of the Act):

Article 1.b gives the description of products of animals:

all which originates from animals and all which is wholly or partly made of animals or derivatives, as well as all goods which, from accompanying documents, package, a mark or label or any other circumstance, appear to originate from or to be wholly or partly made of animals or derivatives thereof.

- Article 1c. gives the same kind of description for products of plants

- Article 3.1 says: It is forbidden to show or exhibit for commercial purposes, to sell, to possess with the intention to sell, to offer for sale, to transport with the intention to sell, to exchange or to offer for exchange, to deliver, and import in or export from the territory of the Netherlands, live and dead animals and plants, belonging to species appointed by Our Minister, or parts or products of those animals or plants.

Appointed under this article 3.1 are the EU appendix A species and species from EU-Habitat directive app. IV.

(Note: prohibition on possession is a stricter measure in the Netherlands, as compared to the EU regulations)

- Article 3.2: it's forbidden to possess or transport live animals or plants, belonging to species referred to in article 3.1
- Article 3.3: the prohibition in article 3.2 also applies to dead animals and plants, belonging to species appointed by Our Minister or parts or products of such animals and plants. Especially appointed under this article are e.g. *Panthera tigris* bones and products thereof and *Rhinocerotidae* horns and products (except for trophies of South-African *Ceratotherium simum simum*). This provision is designed to facilitate the work of controlling products of tigers and rhinos.
- Articles 3a.1, 3a.2 and 3a.3 have basically the same prohibition provisions as articles 3.1a and 3.2. but for a different category of species. Under article 3a are mainly the species of EU-appendices B, C and D appointed. Article 3a has some general exemptions (see 3a.5) that do not apply to species that fall under the provisions of article 3.
- Article 3a.5: This article contains a general exemption from the prohibitions, such as the prohibition on possession, in case the specimens were either brought in the Netherlands legally, bred in captivity in the Netherlands or purchased before the species was formally added to the relevant lists.
- Article 4.2: Exotic species which are not already listed under article 3 of the Endangered Exotic Animal and Plant Species Act can also be protected through this article. Under this article primates and big cats (which are listed in appendix B) must be regulated as species under art.3.1. Possession of these species is therefore forbidden.

These provisions do not differentiate between wild and captive-bred animals of these kind of species. In both cases the prohibitions apply unconditionally. Only some qualified zoos and rescue centres are exempt.

- Article 5 establishes the legal basis specific exemptions concerning the prohibitions of articles 3 and 3a of the Endangered Exotic Animal and Plant Species Act. Exemptions are possible according to the provisions of “Regeling vrijstelling bedreigde uitheemse dier- en plantensoorten”, which can be translated as “The regulation on the exemption of protected exotic animal and plant species”. In this regulation the exemptions of the EU-regulations 338/97 and 939/97 are being implemented. This article also creates the possibility of an exemption from the prohibition on possession.
- By article 5.5 a fee system has been laid down. According to an official regulation, a fee of € 45 is charged for permits, and around € 9 for certificates and other dispensations.
- Article 6 authorises the adoption of rules applicable to traders, concerning the administration of their activities covered by this law.

A trader needs to keep record of the specimens he has in stock, receives, sells or delivers. These provisions apply particularly to live animals and their offspring, of species that are listed in Annex A and originate from the wild (W or F1) .

- Article 7.2: Return or rescue of specimens. Specimens brought into the Netherlands illegally can be sent back to the country of origin or any other place outside The Netherlands. In the alternative, they may be received in a

recognised rescue centre within The Netherlands. In either case, the expense involved is to be borne by the perpetrator.

- According to article 9 the following places are designated as ports of entry (as prescribed by article 12 of Regulation 338/97).

For living animals:

- Schiphol-Gebouw Cargocentre, Handelskade 130;
- Schiphol-Gebouw WTC, Amsterdam Airport Schiphol;
- Maastricht-Aachen Airport passengers handling;
- Maastricht-Aachen Airport freight handling;

For living plants, parts or derivatives of animals or plants:

- All customs offices
- Article 9a appoints a scientific authority. This scientific authority has 5-9 members and advises the Minister about issues related to the Endangered Exotic Animal and Plant Species Act, the Health and Welfare of Animals Act and decisions of the European Community.

Generally, it is possible to prosecute the sale and/or possession of specimens of protected species and their products. The definitions of animal product and plant product in articles 1.b and 1.c, also facilitate prosecution where, for example, the violator is found in possession of package, whose documents or labels only claim that it contains the protected species. It happens sometimes however, that those labels, marks or specific names have been removed from the packages or from the ingredient list. So the trade and traders are aware of the consequences of such legislation.

Economic Offences Act

A violation of one of the prohibitions mentioned above, results in an offence that can be prosecuted under the Economic Offences Act (Wet op de economische delicten).

Article 1a, paragraph 1^o of the Economic Offences Act provides that a violation of the Endangered Exotic Animal and Plant Species Act will be considered as an economic offence.

The description below of the Economic Offences Act will not be affected by the introduction of the new Fauna and Flora Act.

Article 2: A premeditated violation of one of the prohibitions of the Endangered Exotic Animal and Plant Species Act (or Fauna and Flora Act) is regarded as a felony. Any other violation is considered as an infringement.

Article 3: Participation in an economic offence committed within The Netherlands is punishable by this Act, even when the participator committed the offence outside the state.

Article 4: In case of a felony, the complicity in and attempt to are also considered as an economic offence.

Article 6: He who commits an economic offence will face:

- in case of a felony, an imprisonment with a maximum of 6 years or a fine not exceeding € 50.000,-

- in case of an infringement, a detention with a maximum of 1 year or a fine not exceeding € 10.000,-

Article 7: Besides the punishment as mentioned in article 6, it is also possible to e.g.:

- close, completely or partially, the business of the convicted person from where the violation took place, for a maximum of one year;
- confiscate the objects that were acquired as a result of the economic offence;
- deprive the offender of certain rights and profits;

Article 18: In the interest of the investigation detectives are entitled to seize relevant goods.

Article 19: In the interest of the investigation detectives are entitled to demand the inspection of data and paperwork.

Article 20: In the interest of the investigation detectives are entitled to enter any place as far as this is reasonably needed.

Article 21: In the interest of the investigation detectives are entitled to examine goods and take samples of it. They are also authorised to open packaging materials.

Article 23: In the interest of the investigation detectives are entitled to examine vehicles and its cargo. They are also authorised to demand all the documents which are prescribed and compulsory.

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Enforcement of International Wildlife Trade Controls in Portugal

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CITES STATUS:

Date of Ratification or Accession to CITES: Portugal signed the Convention on 06/12/1974 and ratified it on 11/12/1980. It entered into force at the national level on 11/03/1981.

Accession to Amendment:

Bonn amendment (Article XI): none

Gabarone amendment (Article XXI): Acceptance registered: 05/03/1992 (Decree 17/88, from 28/07/88).

CITES reservations currently in force: According to information provided by the Secretariat and valid from 12 April 2001 (<http://www.CITES.org/CITES/eng/index.shtml>), reservations to the CITES are:

Appendix III

Fauna: Mammalia Carnivora

Canidae: *Vulpes vulpes griffithi*; *vulpes vulpes montana*; *Vulpes vulpes pusilla* (Includes synonym *Vulpes vulpes leucopus*);

Mustelidae: *Mustela erminea ferghanae*.

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

National Legislation:

- **Decreto Lei 50/80, de 23/07** que aprova para ratificação a Convenção CITES (*Law Decree 50/80, from 23/07/80, which approves the CITES Convention for ratification*)

Summary: This legal instrument approves the Convention for ratification together with its translation into Portuguese.

- **Decreto Lei 114/90, de 05/04** que promove a aplicação da Convenção CITES (*Law Decree 114/90, from 05/04/90, which provides for the application of the CITES Convention to the national territory*).

Summary: This instrument was adopted after the Portuguese accession to the EU in order to harmonise the previous existing legislation in this sector (**Law Decree 219/84, from 04/06/84**) with the more restrictive EC legislation, and to address the insufficiency of the existing national legislation on international wildlife trade of endangered species. It contains nine Chapters with the following scope: definition (adding the following definitions to those contained in the Convention: *object of personal or household use, bred in captivity and artificially propagated*); circulation of specimens within the EC; trade with third countries; holding; exemptions; documentation; competent authorities and administrative offences.

- **Portaria n° 236/91, de 22/03**, regulamenta o comércio internacional de espécies de fauna e de flora ameaçadas de extinção (*Ministerial Order 236/91, from 22/03/91, which regulates the international trade in endangered species of wild fauna and flora*).

Summary: The objective of this instrument is to regulate the display for commercial purposes, as well as the sale, keeping and transport for sale or purchase, of species from Annex I to the Convention and Annex C1 to the EC Regulation 3626/82. It also prohibits the display for commercial purposes, as well as the sale, keeping and transport for sale or purchase of tusks of *rhinocerotidae* and *elephantidae*. Further, the instrument establishes that the introduction

into national territory, for the above purposes, of any species from Annex I, II and III and Annexes B and C to the EC Regulation 3626/82 in violation of the rules on circulation of specimens within the Community and on trade with third parties is prohibited.

Portaria n° 359/92, de 19/11, estabelece normas mais restritas que a Convenção (*Ministerial Order 359/92 from 19/11, which establishes stricter domestic measures*).

Summary: The objective of this instrument is to prohibit the holding of certain specimens from Annex II for reasons of: public health and hygiene (e.g. *primates* can be a source of diseases); safety and comfort (e.g. *serpentes*); general inappropriate conditions of the animals, installations and treatment (e.g. *crocodylia*). It identifies some species that are subject to this regime, excluding those which are used for cynegetic purposes. The general prohibition also does not apply to the holding of live animals when any of the following conditions apply: the species are used mainly for scientific and educational purposes; the animals are for reproduction and breeding in captivity; the animals are for public display when authorised by the competent authority. Finally, in the protected areas, the holding of wild exotic animals for purposes of reproduction and breeding in captivity is not allowed except when expressed authorisation is granted by the national competent authority.

EC Legislation:

Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein.

Official Journal L 061, 03/03/1997 p. 0001 – 0069

http://www.europa.eu.int/eur-lex/pt/lif/dat/1997/pt_397R0338.html

Commission Regulation (EC) No 939/97 of 26 May 1997 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein.

Official Journal L 140, 30/05/1997 p. 0009 – 0050

http://www.europa.eu.int/eur-lex/pt/lif/dat/1997/pt_397R0939.html

Commission Regulation (EC) No 2724/2000 of 30 November 2000 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein.

Official Journal L 320, 18/12/2000 p. 0001

http://www.europa.eu.int/eur-lex/pt/lif/dat/2000/pt_300R2724.html

Commission Regulation (EC) No 191/2001 of 30 January 2001 suspending the introduction into the Community of specimens of certain species of wild fauna and flora.

Official Journal L 029, 31/01/2001 P. 0012 – 0026

http://www.europa.eu.int/eur-lex/pt/lif/dat/2001/pt_301R0191.html

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

The Portuguese law that implements CITES at the national level (Law Decree 114/90) does not provide specific information on violations, i.e., it does not contain a list of infringement activities to which a sanction would apply. On the contrary, the Portuguese law contains specific chapters on

- Circulation of specimens within the Community,
- Trade with third countries
- Holding

In a separate chapter on administrative offences, it states that infringements to some of the activities identified in those chapters are to be made subject to a sanction.

Illegal export and/or re-export of specimens of species

Portugal is mainly an importer state: the exportation market is very limited and there is no registry of reproduction activities (Currently no person in Portugal holds registered breeder status).

The national law does, however, contain a section on export and re-export (Section III) within Chapter III on trade with third countries. This Section defines a list of legal requirements that must be fulfilled in order for the administrative authority to issue an export or re-export permit according to the species type. No specific violation to this rule is identified in the national legislation, as any infringement will be determined by the import state (except when the national activities undertakes a control over the shipping of species, Art. 11/2).

Illegal import and/or introduction-from-the-sea of specimens of species

The section on import from third countries (Section II) is included within Chapter III on trade with third countries. It contains a general rule that prohibits the import of any specimens of flora and fauna species in violation of the legal exportation rules of the country of origin (Art. 6/1). Further, it requires the compulsory submission of a document of export or re-export issued by the competent authorities from the country of origin (Art. 6/2). Any violation of this rule will be subject to sanction, Art. 32/1 (*see following section of the report*).

The import permits, on specific forms, are issued by the administrative authority on the applicant's request. The law distinguishes between the requirements for issuance of a licence for specimens listed in Annex I and II to the Convention (favourable opinion from the scientific authority, evidence provided by the applicant that the specimens will not be used for commercial purposes and existence of adequate installations for live animals, Art. 7/2 and 7/4) from those listed in Annex III for which a certification of origin is required together with an export permit from the export country authority (Art. 7/5).

For specimens listed in Annex C2 of EC Regulation 3626/82, issuance of the import permit depends on the following requirements: That the specimen's capture or collection does not have a negative impact on the species' conservation; that the applicant provides evidence, through documentation produced by the competent authority from the country of origin, that the specimen's acquisition is in conformity with the applicable legislation, and that, in the case of live animals, adequate installations exist for their maintenance (Art. 7/3). Any violation of this rule will be subject to sanction (Art. 32/1 and Art. 5°) (*see following section of this report*).

Regarding introduction-from-the-sea of specimens of species, the national law contains only a single article (within the same section on import from third countries), which specifies the requirements for issuing an import permit according to the species type and by reference to the requirements for the import of species in general (Art. 8°). It only adds one new requirement – that the applicant provide evidence that live specimens will be shipped in such a way as to avoid the risk of injury, damage to health or cruel treatment. Any violation of this rule will be subject to sanction (Art. 32/1 and Art. 5°) (*see following section of the report*).

Illegal possession of relevant specimens, etc.

The Law Decree 114/90 contains an autonomous Chapter on Holding, which states that the holding of live specimens of species listed in Annex I to the Convention is prohibited (Art. 13°/1). It exempts from this prohibition the species used by institutions for scientific and educational purposes (Art. 13/2). It also prohibits the holding of specimens of species from any Annex to the Convention or to the EC Regulation 3626/82 without an import permit or certificate, in disrespect of the prior permit regime and without the documents required by law. Any violation of this rule will be made subject to sanction (Art. 31/2) (*see following section of the report*).

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

Note: In spite of EC Regulation 3626/82 being repealed by EC Regulation 338/97 (Art. 21°), the Portuguese legislation, as stated above, provides for the application of EC Regulation 3626/82, as it was adopted in 1990. Therefore, all the legal references contained in Law Decree 114/90 are to the annexes of Regulation 3626/82 although in practice the national authorities apply directly the most recent EC Regulation.

The Portuguese law does not classify the infringements to the CITES legislation as crimes, and therefore they are subject to administrative offences proceedings, which can result in the application of penalties and accessory sanctions but cannot lead to imprisonment or imposition of any probationary status.

1. Application of penalties (Art. 32°):

1.1 The infringement of any of the activities listed below is subject to a penalty, according to Art. 32/1 of Law Decree 114/90:

- Presentation, by the interested party, of an import license or certificate for the circulation of specimens of species listed in the Annexes to the Convention and to EC Regulation (Art. 2°);
- Transport of live animals of species listed in Annex I to the Convention (except those of Art. 7/4 of the Convention: animal species which are bred in captivity for commercial purposes and plant species which are artificially propagated for commercial purposes) and annex C1 to the EC Regulation, only with prior authorisation from the administrative authority (Art. 3°);
- Trade, with third parties, of specimens of Annex I, II, and III to the Convention and Annex B and C to the EC Regulation with respect to the prior permit regime and presentation of the required documents (Art. 5°);
- Import of any specimens of flora and fauna species in violation of the legal export rules from the country of origin (Art. 6°).

The amount of penalties will vary depending on the specimens between the following minimum and maximum values:

- Specimens listed in Annex I to the Convention and Annex C1 to EC Regulation: 80.000\$00 – 500.000\$00 PTE (399 – 2494 Euros).
- Specimens listed in Annex II to the Convention and Annex C2 to the EC Regulation: 60.000\$00 – 400.000\$00 PTE (299 – 1995 Euros).
- Specimens listed in Annex III to the Convention: 15.000\$00 – 300.000\$00 PTE (75 – 1496 Euros).

1.2 The administrative authority can also apply (lower) penalties for the following violations:

- Failure to keep an up-to-date registry of the export, re-export and import for commercial purposes of specimens and products of animals or plants (listed in a Ministerial Order by the competent Ministry yet to be published) (Art. 4°);
- Holding of live specimens of species listed in Annex I to the Convention or Annex C1 to the EC Regulation (Art. 13°);

- Holding of species listed in Ministerial Order 359/92 (*see section above on the description of the national legislation*) (Art. 13/2);
- Failure to communicate to the administrative authority, within 6 months of the date of entry into force of the CITES Convention, of possession of live animals of species listed in Annex 1 to the Convention and Annex C1 of the EC Regulation (Art. 13/4);
- Failure to communicate annually to the administrative authority the holding of live animals of species listed in Annex 1 to the Convention and Annex C1 of the EC Regulation, as well as communicating their death (Art. 13/9);
- Holding specimens of species listed in the annexes to the Convention and EC Regulation 3626/82 which were acquired without an import permit or certificate, were not subject to the prior permit regime and in relation to which none of the required documents were presented (Art. 14°);
- Display for commercial purposes, sale, holding, and transport for sale or purchase of species from Annex I to the Convention and Annex C1 to the EC Regulation according to Ministerial Order 236/91, as well as their parts or products (*see section above on the description of the national legislation*) (Art. 15°);
- Taxidermy for commercial purposes of specimens of species listed in Annex I to the Convention and Annex C1 of the EC Regulation and those to be listed in a Ministerial Order yet to be published (Art. 16°);
- Failure to mark, for identification purposes, certain specimens of species, parts or products to be listed in a Ministerial Order not yet published (Art. 17°);
- Failure to assure the well being, and the avoidance of risks of injury or cruel treatment, of wild fauna during transportation (Art. 18).

The amount of the penalties to be applied to the infringement of the above described activities will be fixed between 15 000 – 300 000 PTE (74 – 1496 Euros).

Both groups of penalties identified above are subject to a twelve-fold increase in case of fault, or six-fold increase in case of negligence, when the offender is a corporate entity

It is worth noting that the previous existing legislation (Law Decree 219/84, from 04/06), established higher penalties, ranging from 500 000 to 3 000 000 PTE (2494 to 14964 Euros). Furthermore, the Law Decree 219/84 also established that these amounts would be updated regularly by Ministerial Order. No Ministerial Orders were published in this regard and the existing Law Decree 114/90 does not provide for a regular updating of the existing amounts. According to the national authorities, these previous penalties were too high and therefore very difficult to apply in practise.

2. In addition to the financial penalties, the national law also has a provision to allow the administrative authority to apply any of the following accessory sanctions (Art. 33/1):

- Prohibition of issuance of licences or permits to the offenders;
- Confiscation of the specimens that constituted the basis for the infringement;
- Obligation to return to the origin state the species that constituted the basis for the infringement.

In practise this sanction is very difficult to execute; as the offenders rarely comply, the administrative authority would have to return the species itself. This operation can be very expensive and therefore the administrative authority may opt to keep the confiscated species in installations of the Institute for the Conservation of Nature (eg. birds of prey), or send them to the zoo in Lisbon or Maia or to the Biologic Park of Gaia.

If a person provides false information within the process of permit requisition, he/she will be subject to the application of the general criminal law.

LEGISLATION AUTHORISING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS:

The Institute for the Conservation of Nature (ICN) is the national administrative and scientific authority to the CITES Convention (Art. 27/1).

The administrative authority presently comprises 11 people (four administrative staff, three qualified technicians and four inspectors) and is responsible for, *inter alia*, issuing permits and certificates, producing identification labels, registering permits, certificates and exemptions. The following enforcement powers are provided (Art. 11°, 13°, 28°, 35°):

- To undertake inspection activities in order to determine the correct classification of specimens contained in the Annexes to the CITES Convention and to the EC Regulation 3626/82 as well to determine conformity of documents to the requirements of the national law;
- To monitor the specimens of species listed in the Annexes to the CITES Convention and the EC Regulation 3626/82;
- To inspect, together with the customs authorities, species within the jurisdiction of those authorities as well as species in transit. To this end the technical staff from the administrative authority is granted free access to airports, stations, landing-strips and any other place used for reception, transit or shipping of goods;
- To search public installations used for live animals;
- To confiscate animals kept in inappropriate installations or subject to inappropriate treatment;
- To control the shipping of any specimens included in any of the Annexes;
- To organise the administrative offence proceedings and apply penalties and sanctions.

The scientific authority comprises two people and acts independently of the administrative authority. It represents Portugal at the Conference of the Parties, oversees the trade in endangered species specified in the Annexes to the CITES Convention and the EC Regulation and gives advice to the administrative authority (Art. 30°). No enforcement powers are attributed.

As stated above, the national law classifies the infringements to the CITES as administrative offences and therefore the agents are only granted the right to undertake searches in private installations with a judicial warrant. According to the national authority contacted, these warrants have been requested several times but none have been so far granted. The national authorities contacted expressed their wish for some infringements of CITES provisions to be given criminal status.

OTHER RELEVANT LEGISLATION

Law Decree 244/95, 14/09/95: constitutes the general law on administrative offences proceeding.

The administrative authority investigates a particular situation and notifies the offender, through the legal department, if there is evidence of infringement activity. If the accusation is proven the President of the Institute for Conservation of Nature will decide, upon advice of the administrative authority, on the sanction to be applied. This decision should include an identification of the offender, a description of the facts and an indication of the penalty and accessory sanctions to be applied (Art. 58/1). The payment of the penalty should be made within 10 days, otherwise the decision will be executed by the competent court (Art. 89°)

ADDITIONAL COMMENTS:

From the assessment of the Portuguese legislation in this area it is possible to conclude that there is a legislative vagueness in the following matters:

- the national applicable law (Law Decree 114/90) refers to EC Regulation 3626/82 which was substituted by EC Regulation 338/97 of 9 December 1996; no new national legal instrument has been adopted regarding EC Regulation 338/97;
- the Law Decree 114/90 contains several references to Ministerial Orders that would establish lists of species for purposes of registration of trade operations (Art. 4°), taxidermy for commercial purposes, and identification marking (Art. 17). These have never been published.

A draft of a new legal instrument has been under discussion regarding the implementation and enforcement of Council Regulation (EC) No 338/97 (as requested by its Art. 20°). The national authorities intend to restart the drafting process of a new legal instrument upon publication of the new EC Regulation, due to be published in the coming months.

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Enforcement of International Wildlife Trade Controls in Spain

Ana Barreira

CITES STATUS:

Date of Ratification or Accession to CITES: 16 May 1986, entered into force on 28 August 1986 (BOE⁵² n. 181, 30 July 1986)

Accession to Amendment:

CITES reservations currently in force: These are from Appendix III:

Mamalia-Carnivora

Canidae:

Vulpes vulpes griffithi ⇒ from 24/05/89

Vulpes vulpes montana ⇒ from 24/05/89

Vulpes vulpes pusilla ⇒ from 24/05/89

Mustelidae:

Mustela erminea ferghanae ⇒ from 24/05/89

Mustela altaica ⇒ submitted to the Swiss Government on June 5, 2001

Mustela kahiah ⇒ submitted to the Swiss Government on June 5, 2001

Mustela sibirica ⇒ submitted to the Swiss Government on June 5, 2001.

CITES Appendices: Commission Regulation (EC) No 2724/2000 of 30 November 2000 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 320 of 18.12.00). These CITES COP 11 Amendments have also been approved by the Spanish Council of Ministers (Cabinet) but have not been published in the BOE yet.

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

Instrumento de Adhesión de 16 de mayo de 1986 al Convenio sobre Comercio Internacional de Especies Amenazadas de Fauna y Flora Silvestres (BOE n 181, 30 July 1986)

Name in English: Accession Instrument to CITES

Objectives: To accede to CITES, and provide the Management and Scientific authorities in Spain. These authorities have changed due to the modifications introduced successively in the Spanish Administration by each elected Government.

Coverage: It reproduces the text of the CITES Convention.

Anuncio de 27 de Marzo de 1998 de la Secretaría General Técnica del Ministerio de Asuntos Exteriores. Modificaciones de los Apéndices I, II, III del Convenio sobre comercio internacional de especies amenazadas de fauna y flora silvestres, hecho en Washington el 3 de marzo 1973,

⁵² BOE stands for Boletín Oficial del Estado, the Spanish Official Journal.

aprobadas en la décima reunión de la Conferencia de las Partes en Harare (Zimbabwe) del 9 al 20 de junio de 1997⁵³.

Name in English: Announcement of March 27, 1998 from the Technical Secretariat of the Foreign Affairs Ministry to modify Annexes I, II and III of CITES approved by COP-10 held in Harare (Zimbabwe) from 9 to 20 June 1997.

Objectives: To include the modified Annexes in the Spanish legal framework.

Coverage: It includes the modified Annexes

Real Decreto 1739/97 de 20 de noviembre, sobre medidas de aplicación del Convenio sobre Comercio Internacional de Especies Amenazadas de Fauna y Flora Silvestres (CITES) hecho en Washington el 3 de marzo de 1973 y del Reglamento (CE) 338/97, del Consejo, de 9 de Diciembre de 1996, relativo a la protección de especies de la fauna y flora silvestres mediante el control de su comercio (BOE n. 285, de 28.11.97)

Name in English: Royal Decree 1739/1997 of 20 November on Measures to Implement the CITES and EC Council Regulation 338/97.

Objectives: To comply with article IX of CITES and with article 13 of EC Council Regulation 338/97, that is to appoint the Spanish Management and Scientific Authorities.

Coverage: The Dirección General de Conservación de la Naturaleza (Nature Conservancy DG) of the Ministry of the Environment is the Scientific Authority.

The Dirección General de Comercio Exterior (Foreign Trade DG) of the Ministry of Economy was appointed as the Principal Management Authority. It executes its function through the Centros y Unidades de Asistencia Técnica e Inspección de Comercio Exterior (CATICE- Centers and Units for Technical Assistance and Inspection of Foreign Trade). Foreign Trade DG was taken over by the General Secretary of Foreign Trade in 1998. However, the Ministry of Economy structure changed in 2000 and currently the competent body is the State Secretary of Commerce and Tourism.

This Royal Decree also appointed an Additional Management Authority, the Departamento de Aduanas e Impuestos Especiales de la Agencia Estatal Tributaria of the Ministry of Treasury (the Customs and Special Taxes Department of the State Fiscal Agency)

Resolución de 5 de mayo de 1998 de la Dirección General de Comercio Exterior, por la que se designan los Centros y Unidades de Asistencia Técnica e Inspección de Comercio Exterior (SOIVRE) habilitados para la emisión de los permisos y certificados contemplados en el Reglamento (CE) 338/97, de 9 de diciembre de 1996, relativo a la protección de especies de fauna y flora silvestres mediante el control de su comercio, y se establece el modelo de “Documento de Inspección de especies protegidas” (BOE de 26 de mayo de 1998)

Name in English: DG Foreign Trade Resolution of May 5, 1998 to appoint the Centros y Unidades de Asistencia Técnica e Inspección de Comercio Exterior (CATICE- Centers and Units for Technical Assistance and Inspection of Foreign Trade) competent to issue the permits and certificates according to Regulation(CE) 338/97.

Objectives: To designate the Centres and Units for Technical Assistance and Inspection of Foreign Trade which have the competence to issue CITES permits and certificates.

Coverage: It appoints 12 CATICES. These CATICES also carry out the checks and inspections previous to the customs office procedure.

⁵³ I have included this Announcement because it is the last CITES amendment published in the BOE though we must recall that Council Regulation 2724/2000 is part of the Spanish legal framework.

Real Decreto 1371/2000, de 19 de julio, por el que se modifica y desarrolla la estructura orgánica básica del Ministerio de Economía.

Name in English: Royal Decree 1371/2000 of July 19 modifying and establishing the structure of the Ministry of Economy.

Objectives: To develop the structure and competences of the Ministry of Economy

Orden de 27 de Julio de 1998 por la que se desarrolla la estructura del Departamento de Aduanas e Impuestos Especiales de la Agencia Estatal de la Administración Tributaria (BOE de 30 de julio de 1998).

Name in English: Order of 27 July, 1998 establishing the structure of the Customs and Special Taxes Department of the State Fiscal Agency.

Objectives: To develop the structure of that Department which has competences on CITES controls.

Ley 31/1990, de 27 de diciembre, de Presupuestos Generales del Estado para 1991 (BOE de 28.12.90)

Name in English: 1991 State Budget Act.

Objectives: To pass Public Budget for fiscal year 1991.

Coverage: Its article 103 created the State Fiscal Agency from which the Customs and Special Taxes department depends. Among its functions listed to assist Judges, Courts and the Public Ministry when they investigate, judge and punish crimes. These crimes includes smuggling.

Ley Orgánica 10/1995, de 23 de noviembre, por la que se aprueba el Código penal (BOE n. 281 de 24 de noviembre)

Name in English: Organic Law 10/1995 of 23 November approving the Criminal Code.

Objectives: To define offences and misdemeanours and their penal sanctions.

Ley Orgánica 12/1995, de 12 de Diciembre, de represión del Contrabando (BOE n. 297, de 13.12.95).

Name in English: Organic Law or Act 12/1995 of 12 December to Deter Smuggling

Notes: Articles 11, 12 and 12 bis of this Act were amended by Ley 66/1997, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social (BOE 31 de diciembre de 1997)- Law 66/1997 of December 30, on Fiscal, Administrative and Social Order Measures.

Article 14 was amended by Ley 50/1998 of December, 30 on Fiscal, Administrative and Social Order Measures (BOE 31 December 1998)

Objectives: This laws aims at harmonising the free movement of goods with the need to deter smuggling The establishment of the Internal Market which brought the movement of goods freedom within the EU territory implied the abolishment of controls in the internal borders.

Coverage: It distinguishes between smuggling offences and smuggling administrative infringements depending on the value of the goods. For the purpose of this study, it is relevant because it includes as smuggling the operations carried out with specimens of wild fauna and flora, and is one of the laws by which Spain implements the CITES and the EU Regulation. It also describes violations and penalties.

Real Decreto 1649/1998, de 24 de julio, por el que se desarrolla el Título II de la Ley Orgánica 12/1995, de 12 de diciembre, de represión del contrabando, relativo a las infracciones administrativas de contrabando (BOE n. 214, de 07.09.98).

Name in English: Royal Decree 1649/1998, of 24 July to develop Title II of the Organic Law 12/1995 of 12 December, to deter smuggling, related to smuggling administrative infringements.

Objectives: To develop the regulation of the Organic Law 12/1995 establishing the scope of administrative infringements and its graduation criteria. It determine the correspondent sanctions. To establish the procedure to impose the sanctions.

Coverage: Qualifications of Infringements with specific provision for violation CITES and EC Regulation 338/97; Sanctions and Seizure

Ley Orgánica 6/1995 del Poder Judicial (BOE of 2.07.1985)

Name in English: Organic Law of the Judicial Branch

Objectives: To establish the constitution and functioning of the Judicial Branch.

Coverage: To determine, in compliance of Article 122 of the 1978 Spanish Constitution, the following issues: the constitution, functioning and governance of Judges and Courts, the Judges and Magistrates Statute, the Statute of the staff serving the Justice Administration and the Statute, the incompatibilities regime and functions of the Consejo General del Poder Judicial members and the aspects related to appointments, promotion, inspections and disciplinary regime.

Ley de Enjuiciamiento Criminal, promulgada por Real Decreto de 14 de septiembre de 1882

Name in English: Penal Procedure Act

Objectives: Regulate all aspects related to the penal procedures such as processes, evidence rules, competent courts or judges, the role of the public prosecutor. This law has suffered many amendments since its inception.

Ley Orgánica 5/1999 de 13 de enero, de modificación de la Ley de Enjuiciamiento Criminal en materia de perfeccionamiento de la acción investigadora relacionada con el tráfico ilegal de drogas y de otras actividades graves ilícitas.

Name in English: Organic Law amending the Penal Procedure Act

Objectives: To provide the appropriate mechanisms to fight against organised crime.

Ley Orgánica 2/1986, de 13 de Marzo, de Fuerzas y Cuerpos de Seguridad (BOE n. 63 de 14.03.86)

Name in English: Organic Law 2/1986 on Security Forces and Corps

Objective: To provide the legal regime of the Security Forces and Corps at the State, regional and local levels.

Coverage: It establishes the functions, rights and duties, access to, disciplinary regime and competences of the Security Forces and Corps.

Real Decreto 769/1987, de 19 de Junio, sobre Regulación de la Policía Judicial (BOE de 24.06.87)

Name in English: Royal Decree 769/1987 of June 19, on the Judicial Police

Objectives: to develop the legal framework on the Judicial Police following article 126 of the Spanish Constitution.

Coverage: Organisation, territorial distribution, legal regime and selection process of the Judicial Police.

Orden General número 4 de la Dirección General de la Guardia Civil de 16 de marzo de 200 por la que se reorganiza el Servicio de Protección de la Naturaleza (SEPRONA)

Name in English: General Order number 4 of the Civil Guards Corp DG reorganising the Nature Protection Service

Objective: Establishes the functions, structure and functioning rules of the Nature Protection Service.

Orden General número 56 de la Dirección de la Guardia Civil de 13 de septiembre de 1994 por la que se reorganiza el Servicio Fiscal de la Guardia Civil.

Name in English: General Order number 56 of the Civil Guards Corp DG reorganising the Fiscal Service.

Objective: Establishes the functions, structure and functioning rules of the Fiscal Service.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

Offence against flora and fauna protection

Article 332 of the Spanish Criminal Code provides that it is an offence to trade wild endangered flora or their parts.

Article 334 of the Spanish Criminal Code provides that it is an offence to trade wild endangered fauna species or their parts.

Smuggling Offence

Article 2,1 of the Organic Law 12/1995 to Deter Smuggling provides that a smuggling offence is committed when the goods or objects value is equal to or above 3 millions of Spanish Pesetas (18.030,36 Euros), by those who:

“(f) Import, export, trade, possess and carry out distribution activities with, wild fauna and/or flora specimens or their parts and products of the species included in the Washington Convention of March 3, 1973 and in Regulation (EC) 3626/82 (the Regulation must be understood as Regulation (EC) 338/97) in violation of the legally established requirements.

(g) Obtain, through a false allegation or any other illegal method, the customs dispatch of banned objects or of goods that would otherwise be legitimate trade goods or the authorisation⁵⁴.”

Article 2,2 of the Organic Law 12/1995 establishes that a smuggling offence is also committed when, as part of a plan or taking advantage of a similar occasion, a person carries out a series of acts or omissions which, if these were isolated, they would be considered as administrative infringement and the accumulated value of the goods or objects is equal to or above 3 million of Spanish Ptas. Article 2,3 provides, that although the goods, objects and instruments have a value below 3 million of Spanish Ptas. an act will be considered as smuggling offence if it is committed through an organisation. According to this paragraph, an act it will also be considered as smuggling offence if the fact of possessing the smuggled good itself constitutes an offence.

Administrative Infringement

Though Organic Law 12/1995 also includes Title II on Administrative Smuggling Infringement, Royal Decree 1649/1998 was passed to develop in detail all provisions applicable to that infringement. In accordance with article 2 of Royal Decree 1649/1998 a smuggling administrative infringement is committed, when the goods or objects value is below 3 millions of Spanish Pesetas (18.030, 36 Euros), by those who:

⁵⁴They also identify other actions that are considered to be Smuggling Offences.

“(f) Import, export, trade, possess and carry out distribution activities with, wild fauna and/or flora specimens or their parts and products of the species included in the Washington Convention of March 3, 1973 and in Regulation (EC) 3626/82 (the Regulation must be understood as Regulation (EC) 338/97) in violation of the legally established requirements.

To those effects, among the operations considered a violation of the legally established requirements are:

1. The use of specimens of species listed in Annex A of Regulation (EC) 338/97 for different purposes to those included in the authorisation at the time the authorisation is issued or later on.

2. The acquisition, the commercial use, the display with commercial purpose, the sale, the possession for selling, the offer to sell or the transportation for selling of specimens of species listed in Annex A of Regulation (EC) 338/97 except when the certificate was obtained for that specific purpose. This paragraph also considers to be in violation of the legally established requirements carrying out these mentioned actions with specimens of species listed in Annex B of Regulation 338/97 unless it can be proved its legitimate acquisition or importation.

(g) Obtain, through a false allegation or any other illegal method, the customs dispatch of banned objects or of illegal trade in good which are otherwise legal, or the authorisation for the acts referred to in the above paragraphs⁵⁵.”

Among other cases, it will be understood as obtained through a false allegation the dispatch of:

1st. Specimens of the species referred to in paragraph f) of this article when they are imported, exported or re-exported submitting a false, falsified, or manipulated (altered), with no authorisation of the responsible authority, permit, notification or certificate.

2nd. the goods included in number 1st. above when the mentioned permits, notifications, certificates and authorisations were issued providing a false statement, a deliberate false information on purpose to obtaining those documents or providing false or falsified permits, notifications, certificates or authorisations as accompanying documents for securing their granting.

Article 2,3 classifies these administrative infringements depending on the goods, objects and instruments value:

- a) Very serious (or very grave): if the value is above 2.250.000 Spanish Ptas. (13.522,77 Euros)
- b) Serious (or grave): if the value is equal to or above 750.000 Spanish Ptas. (4.507,59 Euros) and equal or below 2.250.000 Spanish Ptas. (13.522,77 Euros)
- c) Slight: if the value is below 750.000 Spanish Ptas. (4.507,59 Euros)

Comments on Overlaps

Under Spanish Law we find two possibilities for considering as offence an act against the CITES Convention. One is included in the Criminal Code: articles 332 and 334 provide for offences against protected flora and fauna. The second option is included in the Organic Law 12/1995 to Deter Smuggling. Until now, in Spain, there has been no sentence for committing this kind of offences. This means that the illegal trade of all the species, specimens or their parts listed in CITES has been punished by imposing an administrative sanction. It seems the judges and courts have difficulties to consider this kind of actions as offences. Only judges or courts can decide which offence applies when hearing a case. Therefore, we cannot provide a final answer on which offence prevails. By analogy, we could use the case of drug trafficking. This offence is included in the Spanish Criminal Code as an offence against public health and in the Organic Law 12 /1995 as a smuggling offence. The judges and courts have always understood that the Criminal Code prevails.

⁵⁵ They provide other conducts considered Smuggling Administrative Infringement.

The Preamble of the Criminal Code states that this text is in a prominent place in the legal order to that point to be considered as a “negative Constitution”. Therefore, we could understand that offences of article 332 and 334 would prevail. I have collected diverse opinions on this issue:

1.-The Chief of the CITES Unit in the Foreign Trade Secretary understands that since as CITES is a MEA (Multilateral Environmental Agreement) which uses trade mechanisms, the smuggling offence prevails.

2.- A public prosecutor of the Supreme Court considers the Criminal Code is in the first place as its Preamble establishes, that means, is in the vertex of the “penal legal pyramid”.

3.-A captain of the Protection of Nature Police (SEPRONA- Servicio de Protección de la Naturaleza) commented that once a judge or a court are informed of a possible offence by the Police, then it is the judge or the court who will decide which of both offences apply.

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

Penalties for offences against flora and fauna protection

Article 332 of the Spanish Criminal Code provides for a penalty of **imprisonment** from six months to two years **or** of a **fine** from eight to twenty four months (day fines) to those who trade wild endangered flora or their parts⁵⁶.

Article 334,1 of the Criminal Code provides for a penalty of **imprisonment** from six months to two years **or** of a **fine** from eight to twenty four months (day fines) to those who trade wild endangered fauna species or their parts. Article 334,2 establishes that the penalties mentioned in paragraph above will be applied in its superior half when the traded species or subspecies are listed as threatened with extinction (The Spanish version says “included in a threatened with extinction catalogue”).

Penalties for Smuggling Offences

Article 3 of Organic Law 12/1995 provides for a **punishment** of a minor imprisonment and a fine whose amount goes from twofold to fourfold the value of the goods or objects. This penalty will be applied in its medium or maximum grade⁵⁷. Judges or Courts will impose the penalty in its maximum grade when the offence was committed through or in benefit of persons, entities or organizations which due to its nature or activity could have a special ease to commit the offence.

Article 109 of the Criminal Code provides that the commission of a fact legally described as an offence or misdemeanour by the law obliges to repair the damage and injury in the terms established by the law. Therefore, **civil liability** derives from committing any offence or misdemeanour.

Article 4 of the Organic Law states that a civil liability derived from smuggling offences declared in favour of the State comprises the customs debt and the tax debt⁵⁸.

Article 5 of the Organic Law establishes that every penalty imposed for committing a smuggling offence will also involve the **confiscation** of the following goods, objects and instruments:

⁵⁶ Article 50,4 of the Criminal Code establishes the daily amount of day-fines which ranges from 200 to 50.000 Spanish Ptas. (from 1,20 to 300,50 Euros)

⁵⁷ The Organic Law to Deter Smuggling entered into force on December 14, 1995 whereas the Criminal Code entered into force six months after its publication in the Spanish Official Journal (BOE) that is on May 1996. Therefore, the Criminal Code Transitional Provisions applies to the Organic Law. In particular, Provision 11 is relevant, providing that: “ When special criminal laws or procedures applies, it will understood: ...c)a minor prison penalty as penalty of prison from six months to three years”.

⁵⁸ In accordance with the Second Final Provision this article and those of Chapter II are considered ordinary law. Article 81 of the Spanish Constitution establishes that Organic Laws cover human rights, Autonomous Statutes (Constitutions of the Spanish Regions), the electoral regime and those provided in the Constitution. These laws require absolute majority to be passed.

- a) the goods being the offence object;
- b) the materials, instruments or machines employed to produce, elaborate, manufacture, transform or trade the prohibited goods;
- c) the transport means used to commit the offence unless a third party not involved in the offence owns them or the Judge or Court considers that this accessory penalty is disproportionate taking into account the transport mean value subject to confiscation and the smuggled goods value;
- d) any profit obtained from the offence
- e) any good and object which serve as instrument to commit the offence regardless its nature.

Paragraph 2 of article 5 establishes that confiscation does not apply when the smuggled goods, objects and instruments are otherwise appropriate for legitimate commerce and a good faith third party has acquired them. Article 5,3 states that the goods, objects and instruments confiscated by sentence will be adjudicated to the State.

Article 6 of the Organic Law provides that the Judge or Court may dictate to seize the goods, objects or instruments referred to in article 5 depending on what is held in the decision that brings to an end the process. Taking into account the circumstances of the facts and of the presumed liable persons, the judicial authority may designate these persons as the depositories of the goods, objects and instruments submitting in such case a warrant. The judicial authority may also decide that the seized goods, objects and instruments be used temporary by the forces and services in charge of prosecuting smuggling while the process is pending.

Article 7 provides the possibility to sell the seized goods, objects and instruments before a final decision is taken if this were the most convenient alternative. A judge or court will decide so taking into account whether this would be a good alternative for the particular CITES species or not.

Article 8 of the Organic Law states that the use of those seized goods, objects and instruments which can not be sold will be assigned to the forces and services in charge of prosecuting smuggling in accordance with what the specific applicable legislation provides for.

Article 10 provides the rules to be considered when fixing the value of the smuggled goods, objects and instruments. To value the goods, objects and instruments of article 2 (f) and those of illicit commerce, the judge will ask for advice and information to the competent services.

Penalties for Smuggling Administrative Infringement

Article 5 of Royal Decree 1649/1998 states that these administrative infringement will be sanctioned with a **fine** proportional to the value of the smuggled goods, objects and instruments. The proportions applicable to each type of infringement are among the following limits:

- a) Very serious: 250% and 300%, both included
- b) Serious: 150% and 250%
- c) Slight: 100% and 150%, both included.

Article 6 of the Royal Decree sets criteria for deciding the precise amount of sanctions to be imposed, in accordance with the facts of each concrete case. The listed criteria are:

- a) Is this a repeat offender?
- b) Did the offender resist, make difficult or obstruct, the investigation by the competent bodies or by the bodies competent to initiate the sanctioning process
- c) Did the offender use fraudulent means or an interposed person for committing the infringement. For these purposes, fraudulent means are mainly considered the following: ... the use of false or falsified documents, and the use of means that indicate there was a plan to smuggle

- d) Did the offender commit the infringement through or in benefit of persons, entities or organisations whose nature or activity facilitated the commitment of the infringement
- e) Did the offender, in committing the infringement, use the mechanisms provided for in the customs legislation to simplify the procedure for the customs dispatch.
- f) What is the nature of the smuggled goods, objects and instruments.

To apply the graduation criteria, the point of departure will be the sanction's lower limit (Article 6,3). The criteria can be applied simultaneously.

Article 8 explains in detail who is considered a repeat offender, and the applicable sanctions to apply. Repetition exists when the person who has committed the infringement was previously sanctioned for committing another smuggling administrative infringement within the previous five years (Article 8,1). In such case, the percentage of the sanctions will increase in the following pattern (Article 8,2):

- a) fines for very serious and slight infringement: from 15 to 20 points
- b) fines for serious infringement: from 30 to 40 points.

When the individual has been sanctioned for a smuggling administrative infringement more than once within the period and under the conditions established in article 8,1, the sanctions will be increased, as follows (Article 8,3):

- a) fines for very serious and slight infringement: from 40 to 50 points
- b) fines for serious infringement: from 80 to 100 points

Article 9 covers the resistance, negative or obstruction to the investigation process as referred to in Article 6,1-b). These conditions are met where the individuals do not attend the calls of the competent authorities or when the individuals act in such a way to delay, difficult or impede the competent bodies investigation. In this case, the sanctions will increase as referred to in article 8,2.

Article 10 explains what is understood by using fraudulent means or an interposed person. Use of false or falsified documents is a clear instance, which make it difficult to carrying out the Administrative controls on the smuggled goods, objects and instruments or to detect the commission of the smuggling infringement. A plan to smuggle is apparent when means to secure the success of the illicit act were used such as: vehicles with a hidden compartment in the trunk, falsified seal, systems to detect where controls of the competent bodies to deter smuggle are located, systems of home radio stations, systems to co-ordinate multimodal transportation and means that makes clear the existence of a plan to commit the infringement. It is understood that an interposed person (individual, corporation or entity) has been used to commit the infringement when the individual covered his/her identity stating that the goods, instrument, means of transport used to commit the infringement or that smuggled goods or objects are the property of a third party, having or not his/her consent. In all these cases, the sanctions will increase as referred to in article 8,2.

Article 11 addresses "special ease" to commit the infringement. This happens when, among others, the infringement is done through or in the benefit of, among others, officials of the customs service, entities and organizations, their owners and staff of: international transport firms, customs agencies, associations which guarantee customs transit; or owners or personnel of customs or taxes deposits and of temporary deposit stores. When the circumstances established in article 12 apply, the mentioned cases won't be taken into account. In such cases, the sanctions will increase as referred to in article 8,2.

Article 12 provides the cases when the mechanisms provided for in the customs legislation to simplify the procedure for the customs dispatch has been used. These cases take place when it is used the the simplified procedure of article 253 Regulation (EC) 2454/93, the computing procedures of its article 222, the simplified procedure of its article 389 and the authorisation of a temporary deposit. The sanctions will increase as referred to in article 8,2 in all these cases.

Article 14 provides that every sanction imposed for committing a smuggling administrative infringement will also involve the **confiscation** of the following goods, objects and instruments:

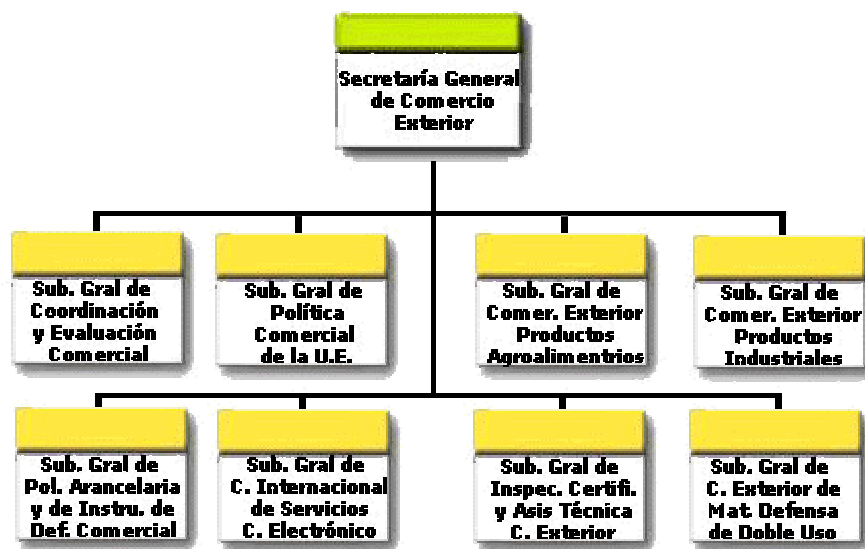
- f) the goods being the infringement object;
- g) the materials, instruments or machines employed to produce, elaborate, manufacture, transform or trade the prohibited goods;
- h) the transport means used to commit the infringement unless a third party not involved in the infringement owns them or the Judge or Court considers that this accessory penalty is disproportionate taking into account the transport mean value subject to confiscation and the smuggled goods value;
- i) any profit obtained from the infringement
- j) any good and object which serve as instrument to commit the infringement regardless its nature.

Paragraph 2 of article 5 establishes that confiscation won't be applicable when the smuggled goods, objects and instruments are of a species or type that can be legally traded in commerce, and a good faith third party has acquired them. Article 5,3 states that the goods, objects and instruments confiscated finally by sentence will be adjudicated to the State.

LEGISLATION AUTHORIZING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS

Permits, Certificates and Documents issuance and control

Article 2 of Royal Decree 1739/1997 provides for the Principal Administrative Authority which is the Directorate General for Foreign Trade of the Ministry of Economy. The DG for Foreign Trade is responsible for implementing Regulation (EC) 338/97 and communications with the European Commission. Royal Decree 1371/2000 modified the Ministry of Economy structure and DG for Foreign Trade is currently the State Secretary of Commerce and Tourism. Article 11 of Royal Decree 1371/2000 listed the functions or competences of the State Secretary for Commerce and Tourism. Among these functions, paragraph 1,k) lists the certification of operations related to CITES. This article also establishes that this function will be executed by the Sub-Directorate General on Inspections, Certifications and Technical Assistance for Foreign Trade (Article 11, 2-g)).

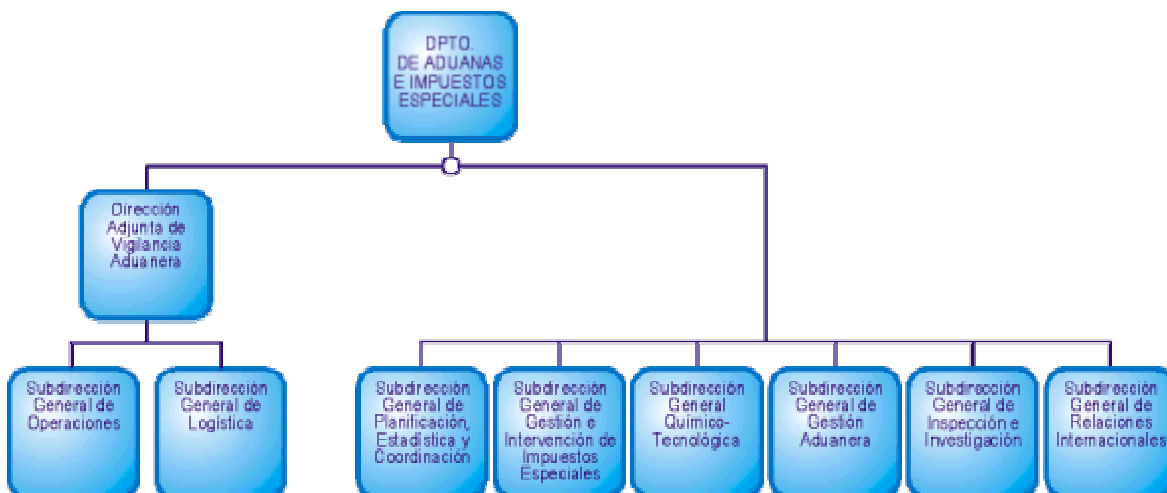


Article 2 of Royal Decree 1739/1997 also establishes that the former DG will execute their functions through the Centros y Unidades de Asistencia Técnica e Inspección de Comercio Exterior (CATICE- Centers and Units for Technical Assistance and Inspection of Foreign Trade). The DG Foreign Trade Resolution of May 5, 1998 appointed the Centros y Unidades de Asistencia Técnica e Inspección de Comercio Exterior (CATICE- Centers and Units for

Technical Assistance and Inspection of Foreign Trade) competent to **issue the permits and certificates** of Regulation(EC) 338/97. The CATICEs is also in charge of **controls and inspections previous to the customs dispatch** as established in Article 2 of Royal Decree 1739/1997. This Resolution listed twelve competent CATICEs whose address are attached to this study and they are located in the cities signalled in the map.



Article 3 of Royal Decree 1739/1997 establishes the Additional Administrative Authority, the Departamento de Aduanas e Impuestos Especiales de la Agencia Estatal Tributaria which is a body ascribed to Ministry of Treasure (the Customs and Special Taxes Department of the State Fiscal Agency). Article 5 of the Royal Decree provides the functions of the Customs and Special Taxes Department on related to CITES. This Department must require previously to the importation or exportation dispatch of specimens included in Annexes A, B, C and D of Regulation (EC) 338/97 the submission of the permits or certificates issued by any of the competent CATICEs. The Customs and Special Taxes Department executes this function through its General Subdirectorate of Customs Management (Subdirección General de Gestión Aduanera). The following chart shows how this Department is structured. We will see below that other of its departments also acts on CITES controls: The Dirección Adjunta de Vigilancia Aduanera or Customs Vigilance Service.



Enforcement of Offences

The First Additional Provision to the Organic Law 12/1995 on Smuggling Deterrence establishes that the authorities, public servants, and forces among whom competences are to fight against and discover smuggling acts will continue to do so. They will keep its rights and powers to investigate, prosecute and punish such actions. It also reads that the **Customs Vigilance Service**⁵⁹ will act in co-ordination with the State forces and security corps when investigating, persecuting and repressing smuggling offences. Though the Customs Vigilance Service is part of the State Fiscal Agency, that is an Administration Department, it may also act as Judicial Police when detecting the commission of a crime in accordance with Consultation number 2/1999 issued by the Attorney General's Office (included in the Annex). Other security forces and corps may also act as Judicial Police such as the Nature Protection Service⁶⁰ (SEPRONA) or the Fiscal Service⁶¹ of the Civil Guards Corp. For a better understanding, it follows an explanation on the status and functions of the Judicial Police.

The 1978 Spanish Constitution provided that to carry out its function the Judicial Police is dependent on Judges, Courts and Public Ministry (Article 126). These functions are to investigate a crime, discover and custody the wrongdoer.

The Penal Procedure Act establishes that the Judicial Police objectives are to investigate public crimes, practice all necessary inquiries to prove them and discover the wrongdoers and collect all objects, instruments or evidences of the crime, that could otherwise disappear, and render them to the Judicial Authority (article 282). Therefore, this provision supports and gives power to the Judicial Police to carry out searches and seizures.

Article 443 of the Judicial Branch Organic Law 6/1985 also refers to the functions of the Judicial Police in the same terms as the Constitution and the Penal Procedure Act. It also establishes which bodies will carry out those functions. The appointed bodies are the Security Forces and Corps. The Organic Law 2/1986 on Security Forces and Corps provides a lists of the actions to defend citizens rights and freedoms, among them we find: "investigate crimes to discover and retain the presumed wrongdoer, to protect the instruments, objects and evidences of the crime rendering them to the competent court or judge and prepare the necessary reports" (Article 11,g). Therefore, this article provides us the legal support for carrying out searches and seizures.

Royal Decree 769/1987 on the Judicial Police, article 4, provides that once the members of this Police have noticed that a presumed criminal act has been committed, they will carry out, from their own initiative, the first inquiries to prevent, occupy or take into custody the objects of the crime or those related to its commission. They will inform the judicial authority or the Public Ministry which will continue the process (article 5). In short, this article indicates that the Judicial Police (Customs Vigilance Service or the Security Forces and Corps) initiates the prosecution but it is the judicial authority or Public Ministry which continues the process.

Enforcement of Administrative Infringement

Chapter II of Royal Decree 1649/1998 provides detailed provisions on the enforcement procedure when a smuggling administrative infringement is detected.

⁵⁹ This Service operates in the Customs points. They have sea, air and terrestrial units to secure the compliance of the fiscal laws and to deter smuggling.

⁶⁰ This Service only operates inside the Spanish territory, not in border points. Its role is also relevant when goods were not intercepted in border or custom points. Among its work, they carry out inspections in pet shops. In 1995 they carry out a big operation named Gabato, they inspected many taxidermists workshops and pet shops to detect the possession of protected species. [MORE STATISTICS AND FACTUAL INFORMATION ARE CONTAINED IN THE "STATISTICAL INFORMATION AND FACTUAL SUMMARIES ON THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS IN SPAIN" CONTAINED IN THIS VOLUME TRY]

⁶¹ Among the mission of the Fiscal Service we find to carry out all necessary actions to avoid and persecute smuggling actions and co-operate in the custody of the coast, borders, ports and airports. (Article 1 of the General Order number 56 reorganising the Fiscal Service) . [MORE STATISTICS AND FACTUAL INFORMATION ARE CONTAINED IN THE "STATISTICAL INFORMATION AND FACTUAL SUMMARIES ON THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS IN SPAIN" CONTAINED IN THIS VOLUME TRY]

Article 16 establishes the competent bodies for deciding and imposing the sanctions to the infringement mentioned in the previous section number 4. This article lists the public servants who:

1) can decide to impose a fine, to confiscate the goods objects and instruments or to order their selling, these are: Customs and Special Taxes Administrators, Port inspectors, Chief of Customs and Special Taxes Units, Director of the Customs and Special Taxes Department.

2) can decide to start and finish a sanctioning process, these are: the Smuggling Sections of the Customs and Special Taxes Administrations of the province where the infringement was detected, or the port inspectors; the Customs and Special Taxes Section of the provincial State Fiscal Agency in the places where no Customs Administration exist.

Once a sanctioning process is opened, if the administrative body believes that the facts may be qualified as a crime, it will have to notify and send the file and the seized goods to the competent jurisdiction (article 17). Meanwhile, the administrative process is suspended until a judicial decision on the case is dictated.

According to article 20, the process starts with a decision of the administrative unit investigating the possible infringement. The investigation of a possible infringement can be opened as a result of the own unit's initiative or of instructions of the superior unit, of other bodies reasoned petition or of a report (accusation). The decision to start the administrative infringement process may be based on the results of the activity or inquiries carry out by the customs administration bodies, the Civil Guard Corps in charge of detecting smuggling, other security forces and corps and, in special cases, by army corps.

Previous to the process beginning, the above mentioned administrative units and security forces and corps will seize the goods, objects and instruments that might be confiscated later on as a result of an administrative sanction (Article 22 - see also section number 4). The seized specimens, parts, or products will be rendered to the specialised bodies which can look after them in accordance with EC Regulation on CITES (Article 24, d). According to article 25, once the process starts, the competent body will value the smuggled goods, objects and instruments. It will also proceed if considered necessary, to establish temporary measures on those goods, objects and instruments. To value specimens of wild fauna and flora, and their parts and products of the CITES and Regulation 338/97 listed species, the competent body will ask for advice and reports from the specialised services of the Administration (Article 27, 2). The competent body has to take a final decision on the case six months after the process was initiated the latest (Article 35).

According to article 37, a case decision of an administrative infringement may include the confiscation of the smuggled goods, objects and instruments. In such case those goods, objects and instruments will be ceded to the State. When specimens of wild fauna and flora, and their parts and products of the CITES and Regulation 338/97 listed species are confiscated, the designated competent authority will take care of them. In addition, the confiscation of those special goods must be notified to the Customs and Special Taxes Department (Article 37,3). If the decision determines that confiscation is not appropriate, the seized goods, objects and instruments will be returned to the owner (Article 36).

OTHER RELEVANT LEGISLATION

Fighting organised crime

Organic Law 5/1999 amending the Penal Procedure Law included relevant provisions to fight against organisations that trade wild endangered flora and fauna species. The examining magistrate, the Public Ministry and the Judicial Police Chiefs may decide to authorise the distribution or a monitored delivery of fauna or flora species to facilitate the detection of a crime and of the involved persons (article 263 bis). This law also provides for the possibility to authorise Judicial Police members to act undercover when investigating crime organizations. It considers organised crime as the association of three or more individuals to commit offences on trading of wild endangered fauna and flora species (article 282 bis).

Prescription of Offences and Administrative Infringements

According to article 131 of the Criminal Code the kind of offences analysed in this report prescribe three years after its commission.

Article 15 of Organic Law 12/1995 to Deter Smuggling establishes that a smuggling administrative infringement prescribe five years after its commission.

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ANNEX

LIST OF CONTACTS

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2. Ministry of Foreign Affairs

Ms. María Luisa Huidobro

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3. Customs and Special Taxes Department

Ms. Teresa Hernández

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4. Customs Vigilance Service

Mr. Carlos de Vicente

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5. Supreme Court

Mr. Antonio Vercher Noguera, *Public Prosecutor*

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6. SEPRONA

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⁶² Some interviews were by phone and others by visiting.

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Enforcement of International Wildlife Trade Controls in Sweden

Gabriel Michanek

CITES STATUS:

Date of Ratification or Accession to CITES: 20/08/1974

Acceptance of Amendment:

Bonn Amendment (Article XI): 25/02/1980.

Gabarone Amendment (Article XXI): 11/03/1993

CITES reservations currently in force: Sweden has joined most of the other EU countries in reservations to the listing of several species of wolf, and several species of mustelidae (ferrets, weasels, etc.) which have been listed on Appendix III.

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

EC-regulations

Rådets förordning (EG) nr 339/97 om skyddet av arter av vilda djur och växter genom kontroll av handeln med dem.

Council Regulations (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (cited here: Council Regulations (EC) No 338/97).

Parliamentary Acts

Lag om straff för smuggling (SFS 2000:1225). Act on Penalties in Connection with Smuggling.

The act includes provisions on criminal liability for illegal imports to or exports from Sweden and certain related illegal activities, forfeiture, preliminary investigation, seizure and other powers for officers at the Customs Service and the Coast Guard.

Miljöbalken (SFS 1998:808). The Environmental Code.

The Environmental Code is a framework law covering basically all environmental issues (e.g. environmental protection, nature conservation, efficient use of natural resources and waste management). An important rule in connection with CITES is chapter 8, section 4: "In order to protect wild living species of animals or plants, the Government or the authority appointed by the Government may issue regulations concerning imports and exports, transportation, keeping, preparation and exhibition of, and trade in, animals and plants." Relevant in the CITES context are also the Code's provisions on supervision and control (chapter 26) and criminal sanctions (chapter 29).

Brottsbalken (SFS 1962 700). The Criminal Code.

The Criminal Code includes certain general provisions regarding e.g. determination of fines and other penalties. The Code also regulate a great number of crimes, however not crimes related to illegal CITES-related activities.

Rättegångsbalken (SFS 1942:740). The Legal Procedures Code.

The Legal Procedures Code includes many provisions related to decision making in the Civil Courts, at first. In relation to enforcement of CITES-requirements, provisions in chapters 20, 23, 24, 27 and 28 are of interest, concerning e.g. prosecution, preliminary investigation, seizure of a person, confiscation of objects, domiciliary search, superficial body search and body investigation.

Lag om näringsförbud (SFS 1986:436). Act on Prohibition of Commercial Activity

The Civil Court may prohibit a person from carrying out commercial activity under certain conditions.

Governmental Regulations

Artskyddsförordning (SFS 1998:179). Regulations on the Protection of Species.

Issued by delegation in the Environmental Code, chapter 8, section 4. The regulations include e.g. prohibitions and restrictions on export, re-export and import, transportation, marketing, selling, purchasing etc. A few provisions are directly related to CITES. Other provisions concern CITES-objects indirectly.

Förordningen om tillsyn enligt miljöbalken (SFS 1998:900). Regulations on Environmental Supervision and Control in relation to the Environmental Code.

Issued by delegation in the Environmental Code, chapter 26. Includes provisions on competencies of different authorities as regards environmental supervision and control.

Regulations by State Agencies

Statens jordbruksverks föreskrifter om handel och andra åtgärder med exemplar av vilt levande djur- och växtarter som behöver skydd (SJVFS 1999:89). Swedish Board of Agriculture's Regulations on Trade and Other Activities Related to Exemplar of Wild Living Species of Animals or Plants Needing Protection.

The regulations are issued by delegation in the Governmental Regulations on the Protection of Species and Regulations on Environmental Supervision and Enforcement. All of these provisions are related to the import and export of species, e.g.: specification of custom offices, identification of species in connection imports, exports and re-exports and management of confiscated living animals and plants.

Naturvårdsverkets föreskrifter om artskydd (NFS 1999:7). Swedish Environmental Protection Agency's Regulations on the Protection of Species.

The regulations are issued by delegation in the Governmental Regulations on the Protection of Species and Regulations on Environmental Supervision and Enforcement. Most provisions are directly related to imports, exports and re-exports, e.g. the treatment of species not declared to customs authorities at the time of import (because of import prohibitions), exemptions from the general prohibition against selling, and exemptions from the obligation to apply for permits (according to the governmental regulations).

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

(i) ILLEGAL EXPORT AND/OR RE-EXPORT OF SPECIMENS OF SPECIES

"Smuggling"; Act on Penalties in Connection with Smuggling, section 3

--- (paragraph one)

--- (paragraph two)

“Any person is also guilty of smuggling who intentionally

1. exports a product from the country in violation of a specifically prescribed export prohibition or export condition, or who after the export has recourse to the product in violation with the prohibition or the condition,

--- (item 2)

3. ... exports a product from the country utilising a permit which was issued because someone was giving incorrect information or was neglecting to give required information to a permit authority or acts in such a way at a permit authority and thereby causes a permit to be issued and the product to be ... exported from the country with support of the permit, or
4. has recourse to a product in violation of a condition prescribed for or in connection with ... export of that product.”

Comment

Section 3 applies to situations when a person by *intent* exports CITES objects in violation with the prohibitions and conditions stipulated in article 4 of the Council Regulations (EG) no 338/97. Section 3 does not apply if a person violates a condition on export included in an individual permit.

Provisions relating to export of a product apply when the product has been “brought over the border from Swedish territory” (section 2, paragraph one).

Smuggling may be considered as “minor” offence or “severe” offence (sections 4 and 5, see *infra*).

“Attempt”, “preparation” and “conspiracy” to smuggling or severe smuggling; Act on Penalties in Connection with Smuggling, section 14

“Liability for attempted smuggling ... attempt, preparation and conspiracy to severe smuggling ... is judged according to the Criminal Code, chapter 23.”

Comment

Attempt, preparation and conspiracy are regulated in the Criminal Code, chapter 23. The details related to these illegal acts are not described here. The acts are defined in sections 1-2:

“Attempt” is defined as “to commence the performance of a certain crime which is not being completed”. Liability for attempt presumes “a risk that the act leads to a completed crime or that such a risk was excluded solely because of temporary circumstances”.

Preparation includes, e.g. “to give or receive money or other as payment in advance for the crime”.

Conspiracy includes to “in consultation with other person decide upon the illegal act and also to try to provoke someone to commit the act or to take responsibility for or offer to commit the act”.

“Illegal export”; Act on Penalties in Connection with Smuggling, section 7

“Any person who by severe negligence commits an act referred to in section 3 ... is guilty of illegal export ... and liable to a fine or a term of imprisonment not exceeding two years.

A person is also guilty of illegal ... export who by severe negligence

1. in connection with export from the country of a product neglects to report the product to custom clearance, gives incorrect information at custom clearance or neglects to give prescribed information at custom clearance and thereby causes a risk of violation of such prohibition or condition referred to in section 3, paragraph three, item 1.
2. gives incorrect information or neglects to give required information in connection with an application for a permit referred to in section 3 ... and thereby causes a risk that the product will be ... exported with support of that permit.

--- (paragraph three)

If the illegal act is considered to be minor, the person is not liable.”

Comment

Section 7 applies to illegal export of CITES-objects and to giving incorrect, or incomplete information, or to failing to give any information, in connection with the export or at the previous permit procedure. A person is guilty if the illegal acts are committed by “*severe negligence*”. Although intent is not a prerequisite, it is, generally speaking, often a difficult task to prove “*severe negligence*” in Swedish courts. Minor illegal acts are excluded. According to the preparatory works, it is especially important to consider the “character” and “amount” of products exported (NJA II 2000, p. 464).

Violating conditions in an individual decision concerning export; Environmental Code, chapter 29, section 8, paragraph one, item 28

“Any person shall be liable to a fine or a term of imprisonment not exceeding two years who by intent or through negligence violates

28. a provision or condition laid down in an individual decision issued according to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as last amended by Council Regulation (EC) 938/97 of May 26 1997, as regards ... exports and re-exports from Sweden”.

Environmental Code, chapter 29, section 11, paragraph two

“A person is not liable according to this chapter ... if liability can be determined according to the Act (2000:1225) on Penalties for Smuggling.”

Comment

Section 11, paragraph two, prevents the application of the Environmental Code, chapter 29, section 8, paragraph one, item 28 in many situations concerning illegal export. The Code applies only if the Act on Penalties in Connection with Smuggling does not apply (*i.e.*, if any one of the preconditions for liability under that act cannot be met in the particular case.) The formulation of the Environmental Code provision is crucial: “Any person shall be liable ... who ... violates a provision ... *issued according to* (my italics) Council Regulations ...”. Thus, violation of a provision in the Council Regulation (EC) No 338/97 *in itself* is not a crime under the Environmental Code. But if a person violates a condition “laid down in an individual decision” – e.g. a permit to export according

to article 4 in the Council Regulations (EC) No 338/97 – the Environmental Code, chapter 29, paragraph one, section 8, item 28 applies, instead of the Act on Penalties in Connection with Smuggling.

In that case, although the Code sanction would apply, enforcement would be limited by the provision that “no penalty shall be imposed for an offence ... that is deemed minor” (Environmental Code .section 11, paragraph one.) According to the preparatory works (governmental proposition 1997/98:45, part 1, pp. 529-530 and part 2, p. 312), this means that only “trivial misdemeanours” are excluded from the criminal sphere.

Violating information requirements; Environmental Code, chapter 29, section 9, item 11

“Any person shall be liable to a fine or a term of imprisonment not exceeding six months, who intentionally or through negligence violates

11. an obligation imposed by the Council Regulations (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as last amended by Council Regulation (EC) 938/97 of May 26 1997, to provide information in applications or other documents concerning matters relevant to permits or supervision.”

Comment

The Act on Penalties in Connection with Smuggling applies (instead of this Code provision) if the preconditions in sections 3 or 7 are fulfilled (concerning giving incorrect, no or incomplete information in connection with permitting). This follows from Environmental Code, chapter 29, section 11 (see supra). The Code section is related already to the obligation to provide information, while the Act on smuggling, sections 3 and 7 in addition presumes a risk for illegal export of the product.

Although the Code sanction would apply, “no penalty shall be imposed for an offence ... that is deemed minor”, according to the Environmental Code section 11, paragraph one. According to the preparatory works (governmental proposition 1997/98:45, part 1, pp. 529-530 and part 2, p. 312), this means only “trivial misdemeanours” are excluded from the criminal sphere.

(ii) ILLEGAL IMPORT AND/OR INTRODUCTION-FROM-THE-SEA OF SPECIMENS OF SPECIES

“Smuggling”; Act on Penalties in Connection with Smuggling, section 3.

“Any person who, in connection with import to the country of a product subject to a specifically prescribed prohibition or condition in connection with imports, intentionally violates the prohibition or condition by not reporting the product for custom clearance, is guilty of smuggling and liable to a fine or a term of imprisonment not exceeding two years.

Paragraph one applies also if a person who, in connection with import of such a product, gives incorrect information at the customs clearance or neglects to give prescribed information at the custom clearance and thereby causes a risk for an import that is conducted in violation with the prohibition or the condition.

A person is also guilty of smuggling, who intentionally

--- (item 1)

2. while custom clearance is going on, has recourse to a product subject to a specifically prescribed prohibition or condition in connection with imports and thereby causes a risk for an import that is conducted in violation with the prohibition or the condition,

3. to the country imports ... a product with support of a permit which was issued because someone was giving incorrect information or was neglecting to give required information to a permit authority or acts in such a way at a permit authority and thereby causes a permit to be issued and the product to be imported to ... the country with support of the permit, or

4. has recourse to a product in violation with a condition prescribed for or in connection with import ... of the product.”

Comment

Section 3 applies to situations when a person by *intent* imports CITES objects in violation with the prohibitions and conditions in article 4 of the Council Regulations (EG) no 338/97. Section 3 does not apply in a situation when conditions in a permit, issued according to article 5 of the regulations, are violated, see instead *infra*).

Import of a product is at hand when the product has been “brought over the border to Swedish territory” (section 2, paragraph one).

Smuggling may be considered as “minor” offence or “severe” offence (sections 4 and 5, see *infra*).

Smuggling is not at hand if the person “voluntarily removes a risk referred to in section 3 paragraph two” (Act on Penalties in Connection with Smuggling, section 15).

“Attempt”, “preparation” and “conspiracy” to smuggling or severe smuggling; Act on Penalties in Connection with Smuggling, section 14

“Liability for attempted smuggling ... attempt, preparation and conspiracy to severe smuggling ... is judged according to the Criminal Code, chapter 23.”

Comment

Attempt, preparation and conspiracy are regulated in the Criminal Code, chapter 23. The details related to these illegal acts are not described here. The acts are defined in sections 1-2:

“Attempt” is defined as “to commence the performance of a certain crime which is not being completed”. Liability for attempt presumes “a risk that the act leads to a completed crime or that such a risk was excluded solely because of temporary circumstances.”

Preparation includes, e.g. “to give or receive money or other as payment in advance for the crime”.

Conspiracy includes to “in consultation with other person decide upon the illegal act and also to try to provoke someone to commit the act or to take responsibility for or offer to commit the act”.

“Illegal import”; Act on Penalties in Connection with Smuggling, section 7

“Any person who by severe negligence commits an act referred to in section 3 ... is guilty of illegal import ... and liable to a fine or a term of imprisonment not exceeding two years.

A person is also guilty of illegal import ... who by severe negligence

--- (item 1)

2. gives incorrect information or neglects to give required information in connection with an application for a permit referred to in section 3 ... and thereby causes a risk for the product to be imported ... with support of that permit.

--- (paragraph three)

If the illegal act is considered to be minor, the person is not liable.”

Comment

Section 7 applies to illegal import of CITES-objects and to giving incorrect, or incomplete information, or no information at all, in connection with the import or the previous permit procedure. Section 7 applies to illegal import of CITES-objects and to giving incorrect or incomplete information in connection with the export or the previous permit procedure. A person is guilty if the illegal acts are committed by “*severe negligence*”. Although intent is not a prerequisite, it is, generally speaking, often a difficult task to prove “severe negligence” in Swedish courts. “Minor” illegal acts are excluded from liability. It is important here to consider the “character” and “amount” of products imported (governmental proposition 1999/2000:124, part 5.6).

Violating conditions in an individual decision concerning import; Environmental Code, chapter 29, section 8, paragraph one, item 28

“Any person shall be liable to a fine or a term of imprisonment not exceeding two years who by intent or though negligence violates

28. a provision or condition laid down in an individual decision issued according to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as last amended by Council Regulation (EC) 938/97 of May 26 1997, as regards imports into Sweden ...”.

Environmental Code, chapter 29, section 11, paragraph two

“A person is not liable according to this chapter ... if liability can be determined according to the Act (2000:1225) on Penalties for Smuggling.”

Comment

Section 11, paragraph two, excludes the application of the Environmental Code, chapter 29, section 8, paragraph one, item 28 in many situations concerning illegal import. The Code applies only if any of the preconditions in the Act on Penalties in Connection with Smuggling do not apply in the particular case. The formulation of the Environmental Code provision is crucial: “Any person shall be liable ... who ... violates a provision ... *issued according to* (my italics) Council Regulations ...”. Thus, violation of a provision in the Council Regulation (EC) No 338/97 *in itself* is not a crime under the Environmental Code. But if a person violates a condition “laid down in an individual decision” – e.g. a permit to import according to article 4 in the Council Regulations (EC) No 338/97 – the Environmental Code, chapter 29, paragraph one, section 8, item 28 applies, instead of the Act on Penalties in Connection with Smuggling.

Although the prerequisites in chapter 29, section 8, paragraph one, item 28 are fulfilled, “no penalty shall be imposed for an offence ... that is deemed minor”, according to the Environmental Code, section 11, paragraph one.

According to the preparatory works (governmental proposition 1997/98:45, part 1, pp. 529-530 and part 2, p. 312), this means only “trivial misdemeanours” are excluded from the criminal sphere.

Violating information requirements; Environmental Code, chapter 29, section 9, item 11

“Any person shall be liable to a fine or a term of imprisonment not exceeding six months, who intentionally or through negligence violates

11. an obligation imposed by the Council Regulations (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as last amended by Council Regulation (EC) 938/97 of May 26 1997, to provide information in applications or other documents concerning matters relevant to permits or supervision.”

Comment

The Act on Penalties in Connection with Smuggling applies (instead of this Code provision) if the preconditions in sections 3 or 7 are fulfilled (concerning giving incorrect, or incomplete information or failing to give any information, in connection with permitting). This follows from Environmental Code, chapter 29, section 11 (see supra). The Code section is related already to the obligation to provide information, while the Act on smuggling, sections 3 and 7, in addition presumes a risk for illegal import of the product.

Although the prerequisites in chapter 29, section 9, item 11 are fulfilled, “no penalty shall be imposed for an offence ... that is deemed minor”, according to the Environmental Code, section 11, paragraph one. According to the preparatory works (governmental proposition 1997/98:45, part 1, pp. 529-530 and part 2, p. 312), this means only “trivial misdemeanours” are excluded from the criminal sphere.

(iii) ILLEGAL POSSESSION OF RELEVANT SPECIMENS, ETC.

“Illegal dealing with smuggled goods”; Act on Penalties in Connection with Smuggling, section 12

“Any person who intentionally packs, transports, keeps, hides, works with, acquires, transfers a product or enters into an agreement concerning lien to a product which has been subject to criminal act according to sections 2-11, is liable to illegal dealing with smuggled goods to a fine or a term of imprisonment not exceeding two years. The person is not liable if the illegal act is minor with respect to the dealing, the circumstances round the dealing, the nature and value of the property and other circumstances.

If the person does not realise but has fair reason to presume that the product has been subject to a crime, he is liable to a fine. If the act minor, the person is not liable.”

Comment

Section 12 applies to imported as well as exported smuggled goods. If the illegal act is “minor”, according to paragraph one, however, it will be excluded from liability. It is also possible that illegal dealing with smuggled goods can be regarded as a “severe” offence, see infra. For these purposes, to “work with” means to interfere in the “physical structure” or the “chemical nature” of the product (preparatory works, NJA II 2000, p. 482).

Paragraph two deals with situations involving the same the factual circumstances, but in which the subjective circumstances differ. Also in these situations, “minor” offences are excluded. Again, the “character” and “value” of the product are important factors to consider in this context (NJA II 2000 p. 484).

“Attempt”, preparation” and “conspiracy” to illegal dealing; Act on Penalties in Connection with Smuggling, section 14

Liability for ... attempt, preparation and conspiracy to ... severe illegal dealing with smuggled goods ... is judged according to the Criminal Code, chapter 23.”

Comment

Attempt, preparation and conspiracy are regulated in the Criminal Code, chapter 23. The details related to these illegal acts are not described here. The acts are defined in sections 1-2:

“Attempt” is defined as “to commence the performance of a certain crime which is not being completed”. Liability for attempt presumes “a risk that the act leads to a completed crime or that such a risk was excluded solely because of temporary circumstances.”

“Preparation” includes, e.g. “to give or receive money or other as payment in advance for the crime”.

“Conspiracy” includes to “in consultation with other person decide upon the illegal act and also to try to provoke someone to commit the act or to take responsibility for or offer to commit the act”.

Violating conditions in an individual decision concerning transports etc.; Environmental Code, Chapter 29, section 8, paragraph one, item 28

“Any person shall be liable to a fine or a term of imprisonment not exceeding two years who, by intent or though negligence, violates

28. a provision or condition laid down in an individual decision issued according to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as last amended by Council Regulation (EC) 938/97 of May 26 1997, as regards relating to imports into Sweden, exports and re-exports from Sweden, trade in artificially propagated plants, transportation and transit, or purchases, sales or other commercial transactions.”

Comment

This provision applies if, first, the act is not smuggling according to Act on Penalties in Connection with Smuggling (see supra) and, secondly, the violation concerns conditions on e.g. transportation or transit, included in a permit (“individual decision”) issued according to the Council Regulations (EC) No 338/97 and 938/97.

Furthermore, the governmental Regulations on Protection of Species, section 17, is presumably “a provision ... issued according to Council Regulation (EC) No 338/97”. Section 17 requires a permit for “trade, whether professional or otherwise for commercial purposes, in” certain specified species, e.g. living animals and plants included in annex A or B to the Council Regulations (EC) No 338/97. Section 17 does not apply to cultivated plants (paragraph two).

However, although the Code sanction would apply, “no penalty shall be imposed for an offence ...that is deemed minor”, according to the Environmental Code, section 11, paragraph one. According to the preparatory works (governmental proposition 1997/98:45, part 1, pp. 529-530 and part 2, p. 312), this means only “trivial misdemeanours” are excluded from the criminal sphere.

Violating requirements related to dealing with species etc.; Environmental Code, Chapter 29, section 8, paragraph one, item 11

“Any person shall be liable to a fine or a term of imprisonment not exceeding two years who by intent or through negligence violates

11. regulations issued pursuant to chapter 8, section 4 by dealing with animals, plants, eggs, spawn, roe, nests or products of animals or plants in a way that is contrary to such a rule or to a condition stipulated in a decision in an individual case.”

Comment

The Code provision is extensive in the sense that it applies to all kinds of dealing that are covered by regulations or decisions. The governmental Regulations on Protection of Species are issued pursuant to the Environmental Code chapter 8, section 4.

According to Section 7 in these Regulations, it is in principle prohibited to “keep or transport” 1) “living birds and eggs with embryo”, provided these are birds or eggs of “wild species living within the territory of the European Union” and 2) “living animals and plants of species, which in the annex to these regulations are marked with N or n” The prohibition applies to “all stages of the animals life and all stages of the plants biological cycle”. This survey has not examined how many of the different CITES-species are included in items 1 and 2.

The governmental regulations include several exemptions from the prohibition to keep and transport, e.g. as regards “transits according to the Council Regulations (EC) no 338/97”. In addition, the Swedish Board of Agriculture is authorised, subject to certain preconditions, to issue exemptions, generally (no such exist today, September 2001) or in individual cases. If an exemption is allowed the decision shall include certain conditions on, for example, the type of species and number of specimens allowed. Violation of such a condition is a criminal offence.

Furthermore, the governmental Regulations on Protection of Species, section 15, require a permit to “professionally or otherwise for commercial purposes prepare the whole or parts of” certain specified species, including “animals and plants included in annex A or B in the Council Regulations (EC) no 338/97” (item 4). However, certain exemptions from the permit requirement exist for certain state institutions, according to the governmental regulations (section 16) and the subordinated Swedish Environmental Protection Agency’s Regulations on the Protection of Species (section 9 and annex 3).

Yet another provision in the governmental regulations is of interest. Section 18 requires a permit to exhibit, whether professionally or otherwise for commercial purposes, certain specified species, including “living animals and plants included in annex A or B in the Council Regulations (EC) no 338/97”. Permits are issued by the County Board (section 19).

To conclude, violations of the prohibition in section 7, the permit requirements in sections 15 and 18 and conditions stipulated in the permits or in connections with exemptions, are all criminal offences according to Environmental Code, Chapter 29, section 8, paragraph one, item 11.

However, although the Code sanction would apply, “no penalty shall be imposed for an offence ...that is deemed minor”, according to the Environmental Code, section 11, paragraph one. According to the preparatory works (governmental proposition 1997/98:45, part 1, pp. 529-530 and part 2, p. 312), this means only “trivial misdemeanours” are excluded from the criminal sphere.

Finally, the Governmental Regulations on Protection of Species, section 9, prohibits (as a principal rule) “keeping for sale or offering for sale, selling, purchasing or exchanging living or dead” species of certain kinds, (specified in

the provision). However, this prohibition does *not* apply to “animals and plants subject to the prohibition against commercial activities in the Council Regulations (EC) no 338/97” (governmental regulations, section 10).

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

(i) FINES AND IMPRISONMENT

General remarks

As described *infra*, the penalties determined for the different criminal offences are fines or a term of imprisonment, within a certain interval determined in the law. The penalties determined in an individual case depends on the circumstances there.

Fines for the crimes described here are determined as “day fines”, except for “minor smuggling”, which is determined as monetary fines (*infra*). Day fines shall be determined in a certain number, between 30 and 150. The level of the day fine is settled with respect to the “persons income, fortune, maintenance obligations and other economic circumstances” related to the person (Criminal Code, chapter 25, section 2).

Act on Penalties in Connection with Smuggling

Section 3 “Smuggling”

“Any person ... guilty of smuggling and liable to a fine or a term of imprisonment not exceeding two years”.

Section 4 “Minor smuggling”

“If a crime referred to in section 3 is considered as minor, the person shall be liable to a monetary fine”.

Comment

When judging if the crime is “minor” or not, important factors according to the preparatory works are at first the “character” and “amount” of products (NJA II 2000, p. 459). “Monetary fine” means the fine is determined to a sum “not less than one hundred and not exceeding two thousand” SEK (Criminal Code, chapter 25, section 3) which should be regarded as relatively very lenient.

Section 5 Severe smuggling

“If a crime referred to in section 3 is considered as severe, the person is liable for severe smuggling and liable to a term of imprisonment, not less than six months and not exceeding six years.

When judging if the crime is severe, special attention shall be paid to if the act was part of a criminality performed systematically or in a wider scale, if the act with respect to the circumstances at the import, export or disposal were of especially dangerous character or if the act otherwise has caused a serious violation of a considerable public interest.”

Comment

Severe smuggling cannot lead to a fine, only to imprisonment according to section 5. All circumstances in the individual case are considered. In the preparatory works, “smuggling of endangered animals” is mentioned as an example of situations that can be regarded as “serious violation of a considerable public interest” (NJA II 2000, p. 460).

Section 7 “Illegal import/export”

“Any person ... guilty of illegal import or illegal export and liable to a fine or a term of imprisonment not exceeding two years”.

Section 12 “Illegal dealing with smuggled goods”

“Any person ... guilty of illegal dealing with smuggled goods and liable to a fine or a term of imprisonment not exceeding two years ...

If the person does not realise but has fair reason to presume that the product has been subject to a crime, he is liable to a fine. If the act minor, the person is not liable.”

Section 13 “Severe illegal dealing with smuggled Goods”

“If a crime referred to in section 13 is considered to be severe, the person shall be guilty of severe illegal dealing with smuggled goods to a term of imprisonment, not less than six months and not exceeding six years.

When judging if the crime is severe special attention shall be paid to if the act was part of a criminality performed systematically or in a larger scale ... or if the act otherwise was of especially dangerous character”.

Comment

In cases of severe illegal dealing, fines as penalty is not an option. All circumstances shall be considered when judging whether the crime is severe or not. According to the preparatory works, it is of vital importance to consider not only the dealing as such but also foregoing crimes. “If for example a transport or an acquisition includes a larger amount of endangered animals, the transport or acquisition can be severe dealing with smuggled goods, even though the animals were subject to different foregoing smuggling crimes, and that one by one was not judged as severe smuggling” (NJA II 2000, p. 487).

Section 14 “Attempt, preparation and conspiracy”

“Liability for attempted smuggling ... attempt, preparation and conspiracy to commit severe smuggling ... or severe illegal dealing with smuggled goods is judged according to the Criminal Code, chapter 23.”

Comment

According to the Criminal Code, chapter 23, section 1, paragraph two, “penalties for attempt may be determined at the most, according to what is stipulated for a completed crime.” A person cannot be liable to a fine if the “lowest penalty stipulated for the completed crime is a term of imprisonment for two years or more”. By contrast, this means a person can be liable to a fine in cases of attempt to severe smuggling.

According to the Criminal Code, chapter 23, section 2, paragraph three, penalties for preparation and conspiracy “shall be determined below the highest level and may be determined below the lowest level of possible penalty for a completed crime”.

Environmental Code

Chapter 29, section 8, paragraph one

“Any person ... shall be liable to a fine or a term of imprisonment not exceeding two years”

Comment

The penalties are the same as for smuggling.

As is described more in detail supra, item 28 of this provision applies when the illegal import or export of CITES-objects is due to violation of a condition in a *permit*, issued according to the Council Regulation (EC) No 338/97. Also item 11 of this provision relate to the dealing (transports etc.) with CITES-species in some situations (supra).

Chapter 29, section 9, paragraph one

“Any person ... shall be liable to a fine or a term of imprisonment not exceeding six months”

Comment

Item 11 of this provision applies to a person who violates an obligation prescribed in Council Regulations 938/97 to give information in a permit application or other document (supra). The maximum imprisonment term is lower than for giving incorrect, no or incomplete information in connection with smuggling according to Act on Penalties in connection with Smuggling. It is also lower than in Chapter 29, section 8.

(ii) OTHER PENALTIES

Suspended Sentence

The court may decide upon “suspended sentence” for a crime, provided the penalty in the individual case is not considered to be only fines. The court may combine suspended sentence with day fines, not exceeding 200, even if day fines is not a prescribed penalty in the criminal rule (e.g. as is the case with severe smuggling). Suspended sentence may also, if the convicted person agrees, be combined with a condition concerning “community service”. Suspended sentence is for two years. If the person misbehave during this period, the court may issue a warning, change conditions or decide upon other penalty (Criminal code, chapter 27). Suspended sentence is a very frequent penalty in practice if the person has not previously committed crimes.

Probation

Although an illegal act is such that imprisonment is a relevant penalty according to e.g. the provisions in the Act on Penalties concerning Smuggling or the Environmental code, the court may instead decide upon “probation”. The court may combine probation with day fines, even if day fines is not a prescribed penalty in the criminal rule (e.g. as regards severe smuggling). If the criminal rule only stipulates fines, as is the case with minor smuggling, probation is not an alternative (Criminal Code, chapter 28, sections 1-2).

Forfeiture

Act on Penalties in Connection with Smuggling, section 16

“If it is not obviously unreasonable, the following property shall be declared as forfeited:

1. a product that has been subject to a crime according to this act or the value of such a product,
2. the proceeds of a crime according to this act, or

3. what a person has received as compensation for costs in connection with a crime according to this act, or the value of the received, if the receiving is a crime according to this act.

A product referred to in paragraph one, or a specific right to the product may not be declared as forfeited, if the product or the right has been acquired by a person who did not know or had fair reason to assume that the property was connected with the crime... .”

Comment

Section 16 applies to forfeiture in connection with all the crimes under Act on Penalties in Connection with Smuggling. The product must have been subject to a crime, but forfeiture could be performed although the owner of the product was not involved in the crime, provided the preconditions in second paragraph are not fulfilled (acquisition made in good faith). Forfeiture may not be conducted if it is “obviously unreasonable”, where one has to consider, according to the preparatory works, “the value of the property in relation to the crime’s penalty value and the person’s economic situation” (NJA II 2000, p. 493).

Act on Penalties in Connection with Smuggling, section 17

“A property that has been used as means in connection with a crime according to this act may be declared as forfeited, if the forfeiture is needed in order to prevent crime according to this act or otherwise if special reasons are at hand. The value of the property may be forfeited instead of the property. The Criminal Code, Chapter 36, section 5 include provisions regarding whom may be subject to forfeiture and concerning special rights to forfeited property.

Instead of forfeiture of the property or its value, the court may decide upon a measure to be taken concerning the property, which prevents further misuse of it. The court may however in such cases declare part of the property’s value as forfeited.”

Comment

This provision applies to cars, boats, containers, bags and other products used as means in connection with smuggling etc. If a product has not been used as means in connection with a crime, this provision does not apply. However, the Criminal Code, chapter 36, section 3, could probably be used to forfeit products in these situations if the product is specifically designed for smuggling, e.g. a car with a constructed secret box (preparatory works, NJA 2000 II, p. 498).

Environmental Code, chapter 29, section 12

“Animals, plants and products extracted from animals or plants, chemical products, biotechnical organisms, or products that contain chemical products or genetically modified organisms, as well as products containing or consisting of genetically modified organisms, which are involved in an offence referred to in sections ... 8, 9 ... may be declared forfeited, unless this is obviously unreasonable. The same shall apply to the value of the property or the proceeds of such an offence.

Means of transport and other means used for the purposes of or involved in an offence referred to in sections ... 8, 9 ... may be declared forfeited if this is necessary in order to prevent crime or otherwise if special reasons are at hand. Instead of the means itself, its value, or part thereof, may be declared forfeited.”

Comment

This provision applies in connection with the crimes under the Environmental Code, referred to in this report. “Other means” (paragraph two) are e.g. “heating boxes for transports of living eggs or young birds or freezing

boxes for keeping dead animals” (governmental proposition 1997/98:45, p. 313). If a means has not been used in connection with a crime, this provision does not apply. However, again, the Criminal Code, chapter 36, section 3, could probably be used to forfeit products in these situations if the product is specifically designed for the crimes discussed here.

Prohibition of Commercial Activities

Act on Prohibition of Commercial Activity, section 1

“If demanded from public point of view, any person may be prohibited to carry on commercial activity if the person, in connection with the commercial activity, grossly has disregarded obligations connected to commercial activity and thereby been found guilty of criminal activity which is not minor.”

Act on Prohibition of Commercial Activities, section 3

“When judging if the prohibition is demanded from public point of view, the court shall especially consider if the disregard has been systematic or aimed at considerable profit, if it has caused or was calculated to cause considerable damage or if the person earlier has been found guilty of prohibition of commercial activity.”

Comment

Prohibition of commercial activity could e.g. be decided upon if a person has illegally imported, exported or otherwise dealt with CITES-object in connection with his commercial activity.

LEGISLATION AUTHORISING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS:

(I) SEARCHES AND SEIZURES

Domiciliary Search in Connection with Crimes under Act on Penalties in Connection with Smuggling

Act on Penalties in Connection with Smuggling, section 26, paragraph one

“An officer at the Customs Service or the Coast Guard has in connection with crimes according to this act ... the same authority as a police officer according to the Legal Procedures Code, chapter 28, section 5 to carry out a domiciliary search without a warrant according to the Legal Procedures Code, chapter 28, section 4.

If there is reason to believe that a crime according to this act ... has been committed, a domiciliary search may be carried out also in other situations than those described in Legal Procedures Code chapter 28, section 1 in warehouses or similar rooms, in order to search for property that reasonably is expected to be forfeited because of such a crime. Domiciliary search according to this paragraph may be carried out by an officer at the Customs service or the Coast Guard or by a police officer. The officer may according to the Legal Procedures Code, chapter 28, section 5 carry out this domiciliary search without warrant according to the Legal Procedures Code, chapter 28, section 4.”

Legal Procedures Code, chapter 28, section 5

“A police officer may carry out domiciliary search without a warrant according to section 4, if the situation is urgent ...”

Comment

Domiciliary searches can be used to find CITES-objects or transport means or other objects in connection with smuggling, illegal imports or exports or other criminal activities according to the Act on Penalties in Connection with Smuggling. Officers at the Customs Service and the Coast Guard are provided with the same powers as police officers have according to the Legal Procedures Code.

Domiciliary Search in Connection with Crimes under the Environmental Code

Legal Procedures Code, chapter 28, section 5

“If there is reason to believe that a crime has been committed which can lead to imprisonment, a domiciliary search may be carried out in a house, room or other closed storage space in order to search for object, which is subject for seizure, or otherwise to find out a circumstance that can be of significance in the criminal investigation.”

Comment

If the crime is regulated in the Environmental Code, domiciliary searches must be carried out by police officers after a decision according to the Legal Procedures Code, chapter 28. All these provisions are not described here.

Superficial Body Search and Body Investigation in Connection with Crimes under the Act on Penalties in Connection with Smuggling

Act on Penalties in Connection with Smuggling, section 27, paragraph one and two

“An officer at the Customs Service or the Coast Guard has in connection with crimes according to this act ... the same authority as a police officer according to the Legal Procedures Code, chapter 28, section 13, to decide upon superficial body search and body investigation without a warrant according to the Legal Procedures Code, chapter 28, sections 4 and 13.

If there is reason to believe that a person, that in immediate connection with entry into or exit from the country, is remaining in the areas around the Swedish borders or coasts, or close to or within an airport or another area that has direct connection with abroad, bringing a property that can be seized due to a crime under this act ..., superficial body search, body investigation, ... may be carried out on him or her. If the person is less than fifteen, superficial body search may be carried out only if special reasons are at hand. An officer at the Customs Service or the Coast Guard may decide upon a measure according to this paragraph. The officer may decide upon the measure without warrant according to the Legal Procedures Code, chapter 28, sections 4 and 13.“

Comment

Superficially body search or body investigation can be used to find CITES-objects or other objects in connection with smuggling, illegal imports or exports or other criminal activities according to the Act on Penalties in Connection with Smuggling (supra). Also as regards these measures, officers at the Customs Service and the Coast Guard are provided with police powers.

“Body investigation” is defined as “an investigation of the human body, internally or externally ...”

“Superficial Body search” is defined as “an investigation of clothes and other carried by a person and bags, packages and other objects that a person brings” (Legal Procedures Code, chapter 28, section 11, paragraph three).

Act on Penalties in Connection with Smuggling, section 28

“The Customs Service may decide upon superficial body search of each travelling person that with a certain means of transportation or within a certain specified, shorter period of time arrives to or departs from a certain place at the border or the coast or other place that has connections with abroad (special control).

Special control may be decided upon only if

1. there is reason assume that one or more travelling persons who, using the means of transportation, or during the period of time arrives to or departs from the place, has committed a crime according to section 5 ... or attempt to such crime”,
2. sufficient information is lacking in order to direct a suspicion on a certain person or a smaller group of persons, or
3. the measures are necessary in order to carry out an intervention against the crime.

The Director of a Customs region may decide upon special control. The decision shall be reviewed by the Director of the National Customs Board or by the person he appoints. If the situation is obviously urgent, the decision may, without such prior review, be executed immediately.”

Comment

The special control is an important instrument to prevent and discover illegal activities related to CITES objects, e.g. in a situation when the Customs Service has received information that nests of endangered species have been plundered and that the species or objects could be on the way out of (or in to) the country.

Superficial Body Search and Body Investigation in Connection with Crimes under the Environmental Code

Legal Procedures Code, chapter 28, section 11

“If there is reason to believe that a crime has been committed, for which imprisonment is a possible penalty, a superficial body search may be carried out on a person reasonably suspected for the crime, in order to search for objects that is subject for seizure, or otherwise to find out a circumstance that can be of significance in the criminal investigation.”

Legal Procedures Code, chapter 28, section 12

“Any person that can be reasonably suspected for a crime, for which imprisonment is a possible penalty, may be subject to body investigation for the purposes prescribed in section 11.”

Comment

If the crime is regulated in the Environmental Code, the general provisions on superficial body search and body investigation (definitions, see supra) in the Legal Procedures Code apply. All these provisions are not described here.

Secret telephone supervision

Legal Procedures Code, chapter 27, section 19

“Secret telephone supervision means to collect information in secret concerning telephone messages sent or ordered to or from a certain telephone address or to prevent such messages to come through.

Secret telephone supervision may be used in connection with preliminary investigation concerning

1. a crime for which is prescribed a term of imprisonment not less than six months,
---“ (items 2 and 3)

Legal Procedures Code, chapter 27, section 20

“Secret ... telephone supervision may be conducted only if a person is reasonably suspected for the crime and the measure is of vital importance for the investigation. The measure may only concern a telephone number in the possession of the suspect or which the suspect otherwise can be expected to use.”

Comment

Secret telephone supervision can only be used, occasionally, in connection with investigation of the crime of severe smuggling. Wire-tapping is not allowed for any of the crimes mentioned in this survey.

Seizure of a person

Act on Penalties in Connection with Smuggling, section 21

“An officer at the Customs Service or the Coast Guard has the same authority as a police officer according to the Legal Procedures Code, chapter 24, section 7, to seize any person suspected for a crime according to this act ... What is prescribed in the Legal Procedures Code concerning rights and obligations in relation to the seized person applies to the officer in the Customs Service and Coast Guard to the same extent as for a police officer and also for the Customs Service to the same extent as for a Police Office.”

Legal Procedures Code, chapter 24, section 7

“If there are reasons to arrest a person a police officer may, in urgent situations, detain him, even without an order to arrest”.

Comment

If a person has committed a crime according to the Environmental Code, the person may in urgent circumstances be detained by a police officer. As regards crimes under the Act on Penalties in Connection with Smuggling, this power is provided also for the officer at the Customs Service and the Coast Guard.

Confiscation of objects

Act on Penalties in Connection with Smuggling, section 22, paragraphs one and two

“An officer at the Customs Service or the Coast Guard has in connection with crimes according to this act ... the same authority as a police officer according to Legal Procedures Code, chapter 27, section 4 to confiscate property.

An officer at the Customs Service or the Coast Guard or a police officer may in other situations than those prescribed in the Legal Procedures Code, chapter 27, section 4, confiscate property, if the property reasonably can be expected forfeited as a consequence of crime according to this act”

Legal Procedures Code, chapter 27, section 4, paragraphs one and two

“Any person who lawfully seizes or arrests a suspect, or executes an arrest, domiciliary search, superficial body search or body investigation, may confiscate found objects.

Objects, which otherwise are found, may be confiscated after decision by the examining leader or the prosecutor. Also a police officer may take this measure in urgent situations ...”

Comment

Police officers may confiscate objects in connection with crimes under the Environmental Code. Also officers at the Customs Service and the Coast Guard have power to confiscate objects, if the crime is regulated under the Act on Penalties in Connection with Smuggling.

(II) COMPOUNDING PENALTIES

“Penalty remission” Criminal Code, chapter 30, section 6

“If, with regard to any such circumstance described in section 5, it is obviously unreasonable to impose a penalty, the court may decide upon penalty remission.”

Comment

Circumstances prescribed in section 5 would include, for example, that the addressed person “to his ability has tried to prevent or repair or limit harmful consequences of the crime” or “has reported himself voluntarily” (all possible circumstances are not described here). Penalty remission can be decided upon only occasionally. Although a circumstance in section 5 is at hand, it has to be “obviously unreasonable” to impose penalty. Thus, this decision is possible at first in connection with crimes that are not serious from public point of view.

(III) ADMINISTRATIVE ENFORCEMENT ACTIVITIES

Revocation of Permit

Governmental Regulations on the Protection of Species, section 24

“If a person in possession of a permit referred to in section 19 violates a condition of significant importance for the protection of ... species, the County Board may revoke the permit if not obviously unreasonable.”

Comment

The permits referred to in these provisions have been mentioned supra under Penalties (iii), Environmental Code, Chapter 29, section 8, paragraph one, items 11 and 28.

Orders, inspections, obligation to report etc. according to the Environmental Code

The County Boards are appointed to carry out inspections and supervision as regards requirements in the Council Regulations (EC) No 338/97 (Regulations on supervision and enforcement according to the Environmental Code, annex, G). A number of administrative powers are provided in the Environmental Code, chapter 26. These may be used not only when a criminal offence is suspected, but also when activities otherwise may be illegal according to requirements in the Code, in regulations issued pursuant to the Code and in certain EC-regulations. The most relevant provisions with regard to CITES are described infra.

Restrictions and prohibitions; Environmental Code, chapter 26. section 9, paragraph one

“A Supervising authority may issue an order with any restrictions and prohibitions that are necessary in individual cases to ensure compliance with the provisions of this code and rules, judgements and other decisions issued in pursuance thereof.”

Administrative (prospective) fines; Environmental Code, chapter 26. section 9, paragraph one

“A decision concerning restriction or prohibition may be combined with a administrative fine”.

Comment

The level of an administrative fine is determined in each case with respect to the (physical or legal) person’s economic circumstances. The fines can therefore be relatively very high (often much higher than what normally are determined as criminal fines, in environmental cases). The purpose is not to punish but to enforce the person to comply with a legal requirement in the future (the fine is prospective). If the person to whom the order is addressed does not comply with the restriction or prohibition, he is in principle liable to pay the administrative fine. If the person later is found guilty of a crime concerning the same activity, the paid administrative fine “consumes” a penalty to pay criminal fines, which he consequently is released from.

Demand for information; Environmental Code, chapter 26, section 21

“The supervising authority may order a person who pursues an activity or takes a measure that is governed by the provisions in this Code or rules issued in pursuance thereof to submit any information and documents to the authority that are necessary for the purposes of supervision. The same shall apply to a person who is otherwise required to mitigate any adverse effects of such activities.”

Obligation to report suspected criminal offences; Environmental Code, chapter 26, section 2

“The supervising authority shall report violations of the provisions in the Code or in rules issued pursuant to the Code to the police or public prosecution authorities, when there is suspicion that a crime has been committed.”

Comment

This obligation applies as regards enforcement of all criminal sanctions in the Code. The obligation was introduced already 1981 (in Environmental Protection Act) because of the widespread unwillingness among supervising authorities to report suspected environmental crimes. It is underlined in the preparatory works that supervising authorities shall not judge whether or not the violation will in the end lead to a conviction or if the violation should be regarded as minor (incurring no penalty, see supra). They shall report the factual circumstances as soon as violation of a criminal provision is at hand (governmental proposition 1997/98:45, part 2, p. 267). The rest is a matter for the police and the prosecutor.

(IV) PROSECUTION OF OFFENDERS

Preliminary investigation of crimes under the Act on Penalties for Smuggling

Preliminary investigation; Act on Penalties in Connection with Smuggling, section 19

“The Customs Service may decide to initiate preliminary investigation according to the Legal Procedures Code, chapter 23 concerning crimes according to this act The Customs Service has in these cases the same rights and

obligations as an investigation leader according to the Legal Procedures Code. The Customs Service shall appoint special commissioners in the Service to carry out the tasks.

If the case is not of a simple nature, the prosecutor shall take charge of the investigation as soon as a person can be reasonably suspected for the crime. The prosecutor shall also otherwise take the charge if necessary because special reasons are at hand.

When preliminary investigations are in charge of a prosecution, the prosecutor may use assistance from the Customs Service. The Prosecutor may also order an official at the Service to carry out a certain task related to the preliminary investigation, if this is appropriate with regard to the nature of the task.

Before a preliminary investigation is initiated, an official at the Customs Service or the Coast Guard may in accordance with the Legal Procedures Code, chapter 23, section 3, paragraph three, hold an inquest and take other investigation measures that are significant for the investigation of crimes according to this act The measures taken shall as soon as possible be reported to the person who is entitled to be in charge of the preliminary investigation of the crime.

What is prescribed according to the Legal Procedures Code, chapter 23, section 8 concerning authority for a police officer to order a person to come to an inquest and to bring a person to an inquest applies also to an official at the Customs Service or the Coast Guard in connection with investigation of crimes according to this act ...”

Comment

In short, Section 19 means the Customs Service is sometimes in charge of preliminary investigations or, otherwise, often works together with the prosecutor and police in the investigation.

Preliminary Investigation of Crimes under the Environmental Code

The public prosecutor is in charge of the investigation. Some prosecutors have specialised in environmental criminality. The general rules apply; Legal Procedures Code, chapter 23. These provisions provide different powers, e.g. to bring a person to inquest.

The competence to prosecute

Act on Penalties in Connection with Smuggling, section 32

“In cases concerning crimes according to this act ... the prosecution may be conducted by specially appointed commissioners at the Customs Service, if it is obvious that the penalty value of the crime is fines and that the crime will not lead to other penalty

What is prescribed in paragraph one does not limit the public prosecutor’s right to prosecute .”

Legal Procedures Code, chapter 20, section 2

“The public prosecutor may prosecute if the crime is subject to public prosecution, if not prescribed otherwise.”

Comment

The right for the Customs Service to prosecute for crimes under the Act on Penalties in Connection with Smuggling is limited to less severe crimes. The power to prosecute is otherwise exclusive for the public prosecutor.

As regards crimes under the Environmental Code, the right to prosecute is vested in public prosecutor.

General preconditions for prosecution

Legal Procedures Code, chapter 20, section 6

“The prosecutor shall, if not prescribed otherwise, prosecute if the crime is subject to public prosecution.”

“Nolle prosequi”; Legal Procedures Code, chapter 20, section 7

“A prosecutor may refuse to prosecute (nolle prosequi), provided no significant public or private interest are set aside, and:

1. it cannot be expected that the crime would lead to other penalty than fines
2. it can be expected that the penalty will be suspended sentence and there are special reasons for nolle prosequi,
3. the suspect has committed another crime and, apart for the penalty for this other crime, a penalty is not required for the crime in question, or
4. if psychiatric care or measures according to the act on support and service for handicapped persons will be taken.”

Comment

The principal rule in section 6 determines the obligation for a prosecutor to prosecute. It is generally understood that the obligation applies when there are “sufficient reasons” for a convict. Section 7 includes exemptions from the obligation in section 6. It is possible, occasionally, that a prosecutor may decide not to prosecute for a crime related to illegal management of CITES-objects.

OTHER RELEVANT LEGISLATION

The legislation described supra includes as far as I can see the relevant provisions in connection with enforcement of CITES requirements.

ADDITIONAL COMMENTS

As described supra the criminal sanctions related to CITES are included in the Act on Penalties in Connection with Smuggling and the Environmental Code, chapter 28. There are no obvious gaps or problematic overlaps between the two legal units. It is generally prescribed that the Act on Penalties in Connection with Smuggling takes over in case of an overlap. Nevertheless, the interaction between the two legal areas is not always that easy to understand for supervising institutions, police and others involved in the enforcement. Moreover, the penalties, procedures, competencies and powers are not the same when comparing the two legal areas. Especially important are the special powers provided for officers at the Customs Service and the Coast Guard.

Another complication concerns the relation between different provisions within in the Environmental Code, chapter 28, and certain related legislation. It is clear that crimes related to CITES can be judged under several of these rules and that these in some situations are close and even overlap to some extent. The purpose behind some of these provisions was to protect species according to the Wild Birds and the Habitat directives or because of national needs, but as CITES-objects are also hit by these provisions, some overlaps occur. However, although confusing here and there, these

overlaps should not cause problems from legal point of view. As far as I can see, there are no obvious gaps within the environmental legal system examined.

There are no planned changes of the legislation referred to here, as regards provisions related to CITES- enforcement.

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Enforcement of International Wildlife Trade Controls in the United Kingdom

Clare Shine

CITES STATUS:

Date of Ratification or Accession to CITES: 02/08/1976 (date of ratification), 31/10/1976 (date of entry into force)

Acceptance of Amendment:

Bonn Amendment (Article XI) 28/11/1980 (date of registration), 13/04/1987 (date of entry into force)

Gabarone Amendment (Article XXI): 13/12/1985 (registration)

CITES reservations currently in force: Appendix III, Fauna: *Vulpes vulpes griffithi*, *Vulpes vulpes montana*, *Vulpes vulpes pusilla* (includes synonym *Vulpes vulpes leucopus*), *Mustela altaica*, *Mustela erminea ferghanae*, *Mustela kathiah*, *Mustela sibirica*

The CITES Management Authority in the United Kingdom (UK) is the Global Wildlife Division of the Department for the Environment, Food and Rural Affairs (DEFRA), formerly the Department of the Environment, Transport and the Regions). There are two independent Scientific Authorities in the UK: the Joint Nature Conservation Committee for animals and the Royal Botanical Gardens, Kew for plants.

LIST OF LEGISLATION RELEVANT TO INTERNATIONAL WILDLIFE TRADE CONTROLS AND THEIR ENFORCEMENT:

The instruments reviewed for this consultancy are examined in the following order:

- primary legislation on imports and exports (Customs legislation);
- secondary regulations for CITES implementation (known as statutory instruments (S.I.));
- other species-specific regulations related to import controls;
- primary legislation on nature conservation and wildlife protection;
- regulations for protection of European protected species.

Customs and Excise Management Act 1979 ("the Customs Act"), as amended by the Finance Act 1988

The Customs legislation establishes a general framework of import and export controls applicable to CITES-listed species, sets out penalties for import and export offences and equips Customs officers with powers of enforcement and seizure.

The Control of Trade in Endangered Species (Enforcement) Regulations (S.I. 1997 No.1372) ("the Enforcement Regulations", also known as "COTES")

The Enforcement Regulations are the principal mechanism for enforcing 'domestic' CITES-related offences within the UK (e.g. those related to domestic sale and offer for sale of restricted specimens). They establish penalties for violation of certain provisions of EC Regulations No. 338/97 and No.939/97.

The Regulations were issued by the Secretary of State for the Environment pursuant to the European Communities Act 1972 and came into force on 1 June 1997. They revoke the Control of Trade in Endangered Species (Enforcement) Regulations 1985 (S.I. 1985/1155).

The Enforcement Regulations are applicable to all parts of the UK. As regards the UK's three dependent territories:

- the Channel Islands and the Isle of Man are outside the EC and are not subject either to the terms of the EC Regulations or to the Enforcement Regulations;
- Gibraltar is part of the EC and is therefore subject to the EC Regulations. However, the Enforcement Regulations do not apply to Gibraltar, which has enacted its own Endangered Species Ordinances for this purpose.⁶³

The Import of Seal Skins Regulations 1996 (S.I. No. 2686 of 1996)

These Regulations concern the importation into EC Member States of skins of certain seal pups and products derived therefrom, and implement Council Directive 83/129/EEC, as amended by Council Directives 85/444/EEC and 89/370/EEC.

Wildlife and Countryside Act 1981 (WCA) as amended by the Countryside and Rights of Way Act 2000 (CROW)

The WCA is relevant to the extent that it controls domestic trade in native CITES-listed species. It creates a range of offences that can be committed involving wildlife and confers powers of search and seizure on the police.

The Act applies throughout Great Britain, but following the devolution of certain powers to the Scottish Executive and Welsh Assembly, controls on native wildlife species are now the responsibility of those bodies.

The WCA has been strengthened in several respects by CROW, particularly with regard to powers of entry and enforcement of wildlife legislation. Relevant amendments, set out in Schedule 12 to CROW, take effect pursuant to s.81, CROW.

The Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 2716 of 1994)

These Regulations make provision for implementing Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. Part III lays down protection measures for specified wild animals and plants and establishes offences related to trade in species protected under these Regulations.

VIOLATIONS RELATED TO WILDLIFE TRADE AND RELATED ACTIVITIES

(i) ILLEGAL EXPORT AND/OR RE-EXPORT OF SPECIMENS OF SPECIES

Customs and Excise Management Act 1979 ("the Customs Act"), as amended by the Finance Act 1988

It is an offence of strict liability (no proof of fault or intention needed) to export any goods contrary to any prohibition or restriction in force or to bring such goods to any place in the United Kingdom for the purposes of export (section 68(1), Customs Act). It is also an offence to be "knowingly concerned" in the export or attempted export of goods with intent to evade any prohibition or restriction in force (section 68(2), Customs Act).

Penalties for the fraudulent evasion of prohibitions or restrictions on exports are laid down in section 68 (see below).

⁶³ Not otherwise included or mentioned in this Report

The Control of Trade in Endangered Species (Enforcement) Regulations (SI. 1997 No.1372)

The Enforcement Regulations incorporate the definitions and requirements of EC Regulation No.338/97 ("the Principal Regulation"), which implements CITES within the Community, and No.939/97 ("the Subsidiary Regulation"). They are applicable to all species listed under the EC Regulations.

The following offences are established with regard to breaches of the EC Regulations:

- *making of false statements:* It is an offence, for the purposes of obtaining the issue of a permit/certificate for oneself or another, knowingly or recklessly to:
 - make a statement or representation which is false in a material particular;
 - furnish a document or information which is false in a material particular; or
 - use or furnish a false, falsified or invalid permit or certificate or one altered without authorisation for any purpose in connection with the Principal Regulation or the Subsidiary Regulation (Regulation 3);
- *misuse of permits and certificates:* It is an offence knowingly to falsify or alter any permit or certificate (Regulation 4).
- *non-compliance with permit conditions:* It is an offence knowingly to contravene any condition or requirement of a permit or certificate issued in accordance with the Principal/Subsidiary Regulations (Regulation 6).

These provisions also apply to companies (Regulation 12). If an offence committed by a body corporate is proved to have been committed with the consent of or through neglect on the part of a director, manager, secretary etc. of that body, or any person purporting to act in any such capacity, that person also commits an offence and is liable to prosecution (Reg.12(1)). Similar provisions apply to offences committed by a Scottish partnership or unincorporated association (Reg.12(3)).

(ii) ILLEGAL IMPORT AND/OR INTRODUCTION FROM THE SEA OF SPECIMENS OF SPECIES

Customs and Excise Management Act 1979 ("the Customs Act"), as amended by the Finance Act 1988

With regard to goods imported contrary to a prohibition or a restriction, it is an offence knowingly to:

- acquire such goods;
- be in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing or dealing in such goods, with intent to evade the prohibition or restriction; or
- be concerned in any fraudulent evasion or attempt at evasion of the prohibition or restriction (section 170, Customs Act).

This means that prosecutors must prove knowledge/intention to evade a prohibition in order to secure a conviction (c.f. unlawful export, which is an offence of strict liability).

It is also an offence to unship or unload any goods, the import of which is prohibited or restricted, with intent to evade such a prohibition or restriction (section 50, Customs Act).

Penalties for the fraudulent evasion of prohibitions or restrictions on imports are laid down in section 170 for imports.

The Control of Trade in Endangered Species (Enforcement) Regulations (SI. 1997 No.1372)

The offences established under the Enforcement Regulations (Regulations 3, 4, 6 and 12) also cover permit/certification violations related to unlawful imports and introductions from the sea. The following are thus prohibited:

- *making of false statements:* It is an offence, for the purposes of obtaining the issue of a permit/certificate for oneself or another, knowingly or recklessly to:
 - make a statement or representation which is false in a material particular;
 - furnish a document or information which is false in a material particular; or
 - use or furnish a false, falsified or invalid permit or certificate or one altered without authorisation for any purpose in connection with the Principal Regulation or the Subsidiary Regulation (Regulation 3).
- *misuse of permits and certificates:* It is an offence knowingly to falsify or alter any permit or certificate (Regulation 4).
- *non-compliance with permit conditions*

It is an offence knowingly to contravene any condition or requirement of a permit or certificate issued in accordance with the Principal/Subsidiary Regulations (Regulation 6).

As noted above, a body corporate that carries out any of the above actions also commits a criminal offence (Regulation 12).

The Import of Seal Skins Regulations 1996 (S.I. No. 2686 of 1996)

It is an offence to import skins of whitecoat pups of the Harp seal, *Pagophilus groenlandicus*, and of pups of the Hooded seal, *Cystophora cristata* (Regulation 2).

(iii) ILLEGAL POSSESSION OF RELEVANT SPECIMENS, ETC.

Customs and Excise Management Act 1979 ("the Customs Act"), as amended by the Finance Act 1988

It is an offence knowingly to acquire possession of goods, the import or export of which is prohibited or restricted, or knowingly to be concerned with carrying, keeping or dealing with such goods, with intent to evade such prohibition or restriction (section 170(1), Customs Act).

To secure a conviction, Customs officers must therefore be able to produce evidence of knowledge that specimens had been imported unlawfully.

The Control of Trade in Endangered Species (Enforcement) Regulations (SI. 1997 No.1372)

Any reference to "unlawful" means an action carried out in violation of applicable provisions of the EC Regulations.

Offences related to movement of live specimens

Where an import permit or certificate issued in accordance with the Principal Regulation in respect of a live specimen of a species listed in Annex A to the Principal Regulation specifies an address at which the specimen must be kept, it is an offence for any person, without reasonable excuse, and contrary to Article 9 of the Principal Regulation:

- to cause or permit that specimen to be transferred from that address; or
 - to keep that specimen at premises other than the specified address or location
- without written authorisation from the Secretary of State (Regulation 7).

Offences related to purchase and sale

It is an offence for anyone to purchase, offer to purchase, acquire for commercial purposes, display to the public for commercial purposes, use for commercial gain, sell, keep for sale, offer for sale, or transport for sale:

- any specimen of a species listed in Annex A to the Principal Regulation (Regulation 8(1)), unless:
 - this is done under, and in accordance with the terms of, any certificate or general derogation granted pursuant to Article 8 of Regulation No.338/97 (Reg.8(3)); or
 - if the defendant proves to the satisfaction of the court that at the time the alleged offence was committed he had no reason to believe that the specimen was a specimen of a species listed in Annex A, (Reg.8(4)).
- any specimen of a species listed in Annex B which has been unlawfully imported or acquired (Regulation 8(2)), unless the defendant can prove to the satisfaction of the court that:
 - at the time the alleged offence was committed, he had no reason to believe that the specimen was a specimen of a species listed in Annex B (Reg.8(4)); or
 - at the time when the specimen first came into his possession he made such enquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported or acquired unlawfully (Reg.8(5)(a)); and
 - at the time the alleged offence was committed, he had no reason to believe that the specimen was imported or acquired unlawfully (Reg.8(5)(b)).

A person shall be taken to have made such enquiries if he produces to the court a statement furnished by the person from whom he obtained possession of the specimen ("the supplier"), which was signed by the supplier or by a person authorised by him, and which states that –

- the supplier made enquiries at the time the specimen came into his possession in order to ascertain whether it was a specimen which had been imported or acquired unlawfully (Reg.8(6)(a)); and
- the supplier had no reason to believe at the time he relinquished possession of the specimen to the accused that the article was at that time a specimen which had been imported or acquired unlawfully (Reg.8(6)(b)).

It is an offence to furnish, for the purposes of Regulation 8(6), a statement which the defendant knows to be false in a material particular, or recklessly furnish for those purposes a certificate which is false in a material particular (Regulation 8(7)).

The effect of these provisions is that the possession of unlawfully imported specimens for non-commercial purposes is not punishable, except by confiscation, unless there is evidence of knowledge that these specimens had been imported unlawfully

Regulations 3, 4, 6 and 12 are also applicable *mutatis mutandis* to ‘domestic’ CITES-related offences.

Offences related to enforcement agents

The Enforcement Regulations confer significant inspection and other powers on “authorised persons” (Regulations 9(4)-(5), see section on Enforcement below).

It is an offence:

- intentionally to obstruct an authorised person acting in accordance with the powers conferred by this regulation (Reg.9(6));
- with intent to deceive, to pretend to be an authorised person (Reg.9(7)).

Wildlife and Countryside Act of 1981 (WCA) as amended by the Countryside and Rights of Way Act 2000 (CROW)

The Act establishes certain offences relating to native CITES-listed species. Possession of and trade in listed species is regulated separately for birds, animals (defined as any animals, including invertebrates, other than birds) and plants. Similar controls are applicable in Northern Ireland.

All species subject to possession and domestic trade controls are designated by Statutory Instrument. The most recent is the Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) Order 1992 (SI No. 2350 of 1992), which entered into force on 29 October 1992.

Offences involving protected native birds

It is an offence:

- to possess or control any live or dead wild bird, or any part, derivative or the egg thereof, unless such bird or egg was lawfully sold to the person in possession or a licence has been issued under section 16 of the Act (s.1, WCA);
- to sell, to offer, possess, transport or advertise for sale or to purchase any live wild bird or egg (except of species listed in Schedule 3(I) that have been correctly rung and bred in captivity), or any dead wild bird, part or egg thereof (other than those listed in Schedule 3(II) or (III)) (s.6, WCA);
- to possess a bird listed in Schedule 4 (Birds that must be registered and ringed if kept in captivity) unless such bird has been registered or ringed in accordance with regulations (s.7(1), WCA);
- to possess a wild bird within five years of a conviction for certain offences involving wild birds, or within three years of a conviction for any offence under the Act related to the ill-treatment of birds (s.7(3), WCA).

Offences involving protected native animals

It is an offence, without a licence issued under s.16 of the WCA, to:

- possess or control any live or dead wild animal listed in Schedule 5, or any part or derivative thereof, unless it was lawfully sold to the person in possession (section 9(2));
- to sell, to offer, possess, transport or advertise for sale or purchase any such animal or part thereof (s.9(5)). The animal in question will be presumed to be a wild animal for the purpose of any proceedings, unless the contrary can be shown.

Offences involving protected native plants

It is an offence, without a licence issued under s.16 of the WCA, to possess or transport for sale any live or dead wild plant listed in Schedule 8, or the parts and derivatives thereof (s.13(2)). The plant in question will be presumed to be wild for the purpose of any proceedings, unless the contrary can be shown.

Offences related to obstruction of enforcement agents

Under new s.19ZA, WCA (inserted by Schedule 12.8, CROW), it is an offence to:

- intentionally obstruct a wildlife inspector acting in the exercise of powers conferred by s.19ZA(3) or (5), or to fail without reasonable excuse to give any assistance reasonably required under s.19ZA(6) (new s.19ZA(7), WCA);
- with intent to deceive, falsely pretend to be a wildlife inspector (new s.19ZA(8), WCA).

Similar offences are established under new s.19ZB, WCA, with regard to obstruction or refusal to assist in the taking of samples from specimens (see further under Enforcement below).

The Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 2716 of 1994)

The Regulations establish protection measures for 'European protected species' (i.e. animal and plant species designated under schedules to the Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora).

It is an offence to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild animal of a European protected species, or any part or derivative of such an animal (Regulation 39(2)), at any stage of the life of the animals concerned (Reg.39(3)). No offence is committed where a person can show that:

- the animal had not been taken or killed, or had been lawfully taken or killed (i.e. without any contravention of these Regulations or Part I, WCA 1981) (Reg.39(4)(a)); or that
- the animal or other thing in question had been lawfully sold (whether to him or any other person) (Reg.39(4)(b)).

It is an offence to keep, transport, sell or exchange, or offer for sale or exchange, any live or dead wild plant of a European protected species, or any part of, or anything derived from, such a plant (Reg.43(2)), at any stage of the biological cycle of the plants concerned (Reg.43(3)). No offence is committed where a person can show that the plant or other thing in question had been lawfully sold (whether to him or any other person) (Reg.43(5)).

In proceedings for the above offences, the animal or plant in question is presumed to be wild unless the contrary is proved (Regs.39(5) and 43(6) respectively).

The above regulations do not apply to activities carried out under licence *inter alia* for scientific or educational purposes, conserving wild animals or wild plants or introducing them to particular areas, or protecting any zoological or botanical collection (Reg.44(1-2)). The appropriate authority may not grant a licence unless satisfied that there is no satisfactory alternative, and that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range (Reg.44(3)).

PENALTIES FOR ILLEGAL WILDLIFE TRADE AND RELATED ACTIVITIES

Customs and Excise Management Act 1979 ("the Customs Act"), as amended by the Finance Act 1988

Fines and imprisonment

The following penalties for the unlawful import or export of prohibited or restricted goods, and fraudulent evasion of such controls, are established under ss. 50, 68 and 170, Customs Act:

- upon summary conviction (magistrates' court, less serious offences), the offender may be fined the "prescribed sum" or three times the value of the goods, whichever is the greater, and/or sentenced to imprisonment for up to six months;
- upon conviction on indictment (before a jury at the Crown Court, more serious offences), the penalties are increased to an unlimited fine and/or to imprisonment for a term not exceeding seven years.

The "prescribed sum" is defined as £5,000 for offences committed in England, Scotland and Wales. Offences committed in Northern Ireland are punishable with lower financial penalties.

The making of incorrect statements or the presentation of incorrect declarations and other documents to Customs is punishable with a fine of up to £5,000 or a prison term of up to 2 years (s.167, Customs Act).

The possession of goods in the knowledge that their import or export is prohibited or restricted is punishable:

- upon summary conviction with a fine equivalent to the "prescribed sum" or three times the value of the goods, whichever is the greater, and/or imprisonment for up to six months;
- upon conviction on indictment, the penalties are increased to an unlimited fine and/or to imprisonment for a term not exceeding seven years (s.68 and 170, Customs Act).

Confiscation

All goods exported or brought to any place in the UK for the purposes of export contrary to any prohibition or restriction in force are liable to forfeiture (s.68(1), Customs Act). The same applies to any goods imported in breach of such prohibitions or restrictions (s.49(1), Customs Act). These sanctions are strictly applicable, regardless of the intention of the person involved.

Where specimens from a third country are in transit through the UK to another country, and the export documentation required under Regulation 338/97 cannot be presented, the specimen is liable to forfeiture and the person responsible is liable to the same penalties as for illegal imports.

The Control of Trade in Endangered Species (Enforcement) Regulations (SI. 1997 No.1372)

Fines and imprisonment

All the offences under the 'Enforcement Regulations' listed above are subject to the following penalties:

- on summary conviction, a fine not exceeding £5000 and/or a term of imprisonment not exceeding three months;
- on conviction on indictment, with an unlimited fine and/or imprisonment for a term not exceeding two years (cf seven years under the Customs Act).

The only exception is intentional obstruction of an authorised person (see Reg.9(6) above), which is punishable on summary conviction only to a fine not exceeding level 3 on the standard scale.

The Countryside and Rights of Way Act 2000 provides a basis for increasing penalties for certain offences. Section 81 (Enforcement of Wildlife Legislation) provides that regulations issued to implement Council Regulation 338/97/EC and Commission Regulation 939/97/EC may create offences punishable on summary conviction with imprisonment for a term not exceeding six months.

Confiscation

When any person is convicted of an offence under the Enforcement Regulations, the court must order the forfeiture of any specimen or other thing in respect of which the offence was committed. The court also has discretionary powers to order the forfeiture of any vehicle, equipment or other thing which was used to commit the offence (Regulation 11(1)). "Vehicle" is defined to include an aircraft, hovercraft and boat (Reg.11(2)).

The Import of Seal Skins Regulations 1996 (S.I. No. 2686 of 1996)

Fines and imprisonment

Regulation 4 establishes the following penalties for prohibited imports of seal skins:

- on summary conviction, to a fine not exceeding the statutory maximum and/or imprisonment for up to three months (new s.50(5B)(a), Customs and Excise Management Act 1979, inserted by the Seal Skin Regulations); and
- upon conviction on indictment, an unlimited fine and/or to imprisonment for up to two years (new s.50(5B)(b), Customs and Excise Management Act 1979, inserted by the Seal Skin Regulations).

Confiscation

Where a seal skin is being or has been imported, a Customs officer or agent may require any person possessing or having control of that item to furnish proof that its importation is or was not unlawful. If satisfactory proof is not furnished, the item is liable to forfeiture under the Customs and Excise Management Act 1979.

Wildlife and Countryside Act of 1981 as amended by the Countryside and Rights of Way Act 2000

Fines and imprisonment

Offences involving possession of or trade in native species under the Wildlife and Countryside Act 1981 are punishable with a fine of up to £5,000 and/or a prison sentence of up to six months (s.21, WCA, as amended by Schedule 12(10), CROW). Where offences involve more than one specimen, separate maximum fines may be imposed in respect of each individual specimen (s.21(5)).

In addition, persons convicted of certain offences under the 1981 Act are banned from keeping birds within five years from the date of conviction, or within three years of any conviction for an offence under the Act relating to the protection or ill-treatment of birds or other animals.

Confiscation

The court must order the forfeiture of any bird, nest, egg, animal or plant in respect of which an offence has been committed (s. 21(6)).

The Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 2716 of 1994)

Offences related to European protected species are punishable on summary conviction to a fine not exceeding level 5 on the standard scale for wild animals (Regulation 39(6)) and a fine not exceeding level 4 on the standard scale for wild plants (Regulation 43(6)).

As noted above, the Countryside and Rights of Way Act 2000 provides a basis for increasing penalties for certain offences. Section 81 (Enforcement of Wildlife Legislation) provides that regulations issued to implement Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as amended, may create offences punishable on summary conviction with imprisonment for a term not exceeding six months.

LEGISLATION AUTHORISING, MANDATING, AND/OR EMPOWERING OFFICIALS OR AGENCIES TO UNDERTAKE THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS:

Overview of enforcement arrangements

Three services share responsibility for enforcing different aspects of the CITES framework:

- HM Customs & Excise, which has primary responsibility for enforcing import and export controls at borders;
- the Police, which has lead responsibility inland for enforcing controls on sales and domestic trafficking. Most Police forces now have at least one Wildlife Liaison Officer;
- the Global Wildlife Division of the Department for the Environment, Food and Rural Affairs (DEFRA), which is the UK CITES Management Authority. This coordinates investigation and prosecution of wildlife crime, although it is not a statutory enforcement agency and does not itself initiate prosecutions.

The latter Division defines an overall inspection strategy, which is reviewed annually, and monitors and controls inspections carried out by a team of Wildlife Inspectors. The powers of these authorised agents have been formalised and strengthened by the Enforcement Regulations and the Countryside and Rights of Way Act, which amends the

Wildlife and Countryside Act (see below). More generally, Wildlife Inspectors assist the Police and HM Customs and Excise by providing species identification expertise, information from official records, witness statements and expert evidence.

The Partnership For Action Against Wildlife Crime (PAW), established in 1995, is a national multi-agency body that brings together these three bodies as well as representatives of Government Departments and voluntary bodies with an interest in wildlife law enforcement. It comprises an annual Open Seminar of all Partners; a Steering Group which meets about three times a year and is jointly chaired by the police and DEFRA; standing and temporary Working Groups taking forward the day-to-day work of PAW; and a DEFRA Secretariat.

PAW provides a strategic overview of enforcement activity related to CITES-listed and native species and aims to develop appropriate responses to enforcement problems and facilitate communication and co-operation. A key objective is to support the UK networks of Police Wildlife Liaison Officers and Customs Wildlife and Endangered Species Officers and to build awareness of police powers to use legislation normally enforced by Customs staff.

Customs and Excise Management Act 1979 ("the Customs Act"), as amended by the Finance Act 1988

The Customs Act confers all necessary powers of search and seizure to enforce import and export controls. These include powers to seize 'innocent' goods found with goods liable to forfeiture and also vehicles and other means of transport used to carry them (s.141).

The Enforcement Regulations confer specific powers on Customs officers with regard to CITES-related enforcement (see below).

The Control of Trade in Endangered Species (Enforcement) Regulations (SI. 1997 No.1372)

Compulsory seizure, linked to proof of lawful import or export

A Customs officer or agent may require any person in possession or control of a specimen that is being imported or exported, or that has been imported or brought to any place for the purpose of being exported, to furnish proof that its importation or exportation is or was not unlawful under the EC Regulations. Until such proof is furnished, the specimen shall be liable to detention under the Customs and Excise Management Act 1979. If such proof is not furnished to the satisfaction of the Customs and Excise Commissioners, the specimen shall be liable to forfeiture under that Act (Regulation 5).

Powers of compulsory seizure and forfeiture thus apply to all restricted specimens for which the person in possession or control cannot prove lawful import or intended export. Such powers also apply to transit via the United Kingdom where the requisite CITES documentation cannot be produced.

Police powers of search and entry

"Premises" means any place, and, in particular, includes any vehicle, vessel, aircraft, hovercraft, tent or movable structure (Reg.2(1)).

Police constables may apply to a justice of the peace/sheriff for a warrant to enter upon and search premises, which may be granted where there are reasonable grounds for believing that:

- there is any unlawfully imported or acquired specimen on premises specified in the application (Reg.9(1)(a)); or
- an offence under these Regulations has been or is being committed and that evidence of the offence may be found on any premises (Reg.9(1)(b));
- and that one of the following conditions applies:

- admission to the premises has been refused (Reg.9(2)(a));
- refusal is apprehended (Reg.9(2)(b));
- the case is one of urgency (Reg.9(2)(c)); or
- an application for admission to the premises would defeat the object of the entry (Reg.9(2)(d)).

The warrant may authorise other persons to accompany the police executing the search.

Police powers of seizure

A police constable who is lawfully on any premises (see Reg.9(1) above) may seize any thing where he has reasonable grounds for believing that such seizure is:

- necessary for the protection of the constable or any person accompanying him (Reg.10(a)); or
- otherwise essential to effect seizure of the specimen referred to in Reg.9(1) (Reg.10(b)); or
- necessary for the conservation of evidence (Reg.10(c)); or
- in the interests of the welfare of the specimen(Reg.10(d)).

Inspection and verification powers of authorised persons

The Regulations provide for “authorised persons” to carry out important functions of site inspection and verification. As noted above, Wildlife Inspectors may be designated for this purpose.

An authorised person may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter and inspect any premises where he has reasonable cause to believe a specimen is being kept, for the purpose of:

- ascertaining whether the premises are being used for any of the following activities: purchase, offering to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain, sale, keeping for sale, offering for sale or transporting for sale contrary to Article 8 of the Principal Regulation (Reg.9(4)(a)); or
- verifying information supplied by a person for the purpose of obtaining a permit or certificate (Reg.9(4)(b)); or
- ascertaining whether any live specimen is being kept on premises at the address specified in the import permit issued for that specimen as that at which the specimen is to be kept (Reg.9(4)(c)); or
- ascertaining whether any condition of a permit or certificate has been or is being observed (Reg.9(4)(d)).

Taking of samples for DNA analysis

A police constable who is lawfully on any premises (see Reg.9(1) above) may, in order to determine the identity or ancestry of any specimen, require the taking from any specimen of a sample of blood or tissue provided that

- the sample is taken by a registered veterinary surgeon (Reg.9(3)(a)); and
- the taking of such a sample will not cause lasting harm to the specimen (Reg.9(3)(b)).

The same powers are available to an authorised person who is lawfully on any premises (see Reg.9(4) above).

Wildlife and Countryside Act of 1981 as amended by the Countryside and Rights of Way Act 2000

The amendments to the WCA have extended and strengthened enforcement powers in respect of domestic possession/trafficking offences involving native protected species. Key provisions are outlined below.

The amended Act defines a "wildlife inspector" as a person authorised in writing by the Secretary of State under this subsection (new s.19ZA(1), WCA, inserted by Schedule 12.8, CROW).

Entry and inspection powers

A wildlife inspector may, at any reasonable time and (if required to do so) upon producing evidence that he is authorised:

- enter and inspect any premises to ascertain whether a domestic trade offence under ss.6, 9(5) or 13(2) WCA is being, or has been, committed on those premises (new s.19ZA(3)(a), WCA);
- enter and inspect any premises where he has reasonable cause to believe that any birds included in Schedule 4 are kept, to ascertain whether an offence under section 7 is being, or has been, committed on those premises (new s.19ZA(3)(b), WCA);
- enter and inspect any premises for the purpose of verifying any statement/representation made by an occupier, or any document/information furnished by him, i) for the purposes of obtaining (whether for himself or another) a relevant registration or licence, or (ii) in connection with a relevant registration or licence held by him (new s.19ZA(3)(d), WCA);
- to ascertain whether an offence under section 6, 7, 9(5), 13(2) is being, or has been, committed, require any person who has the specimen in his possession or control to make it available for examination by the inspector (new s.19ZA(5), WCA). That person must give any wildlife inspector acting in the exercise of powers conferred by this section such assistance as the inspector may reasonably require for the purpose of examining the bird or other animal (new s.19ZA(6), WCA):

Powers to enter dwellings for these purposes are subject to certain restrictions under new s.19ZA(4), WCA.

References to "relevant registration or licence" should not be confused with CITES permits/ certificates. They mean either (a) a registration in accordance with regulations under s.7(1) (keeping of listed birds in captivity) or (b) a licence under s.16 authorising actions that which would otherwise be an offence under ss.6, 7, 9(5) or 13(2) (new s.19ZA(9), WCA).

Powers to take samples for DNA analysis

Powers to require samples from specimens to determine identity or ancestry are conferred on the police (new ss.19ZB(1)-(2), WCA) and on wildlife inspectors (new ss.19ZB(3)-(4), WCA). Similar conditions for safety of specimens, performance by veterinary surgeon and reasonable assistance from person in possession or control apply as under the Enforcement Regulations (new ss.19ZB(5)-(7), WCA).

Police or wildlife inspectors entering premises in accordance with powers under this section may bring a veterinary surgeon if there are reasonable grounds for believing that s/he will be required to take samples (new ss.19ZB(8), WCA).

Powers of arrest

Prior to the Countryside and Rights of Way Act, powers of arrest under the WCA 1981 were very limited. The CROW introduces an important amendment to the Police and Criminal Evidence Act 1984 (PACE) to enlarge the categories of arrestable offences.

The following possession/domestic trade offences are now designated as arrestable:

- offences under section 1(1) or (2) or 6, WCA 1981 (taking, possessing, selling etc. of wild birds) in respect of a bird included in Schedule 1 to that Act or any part of, or anything derived from, such a bird (new s.24(2)(s), PACE, inserted by Schedule 12.13, CROW);
- offences under section 9 or 13(1)(a) or (2) (taking, possessing, selling etc. of wild animals or plants) (new s.24(2)(t)(ii), PACE (inserted by Schedule 12.13, CROW).

ADDITIONAL COMMENTS:

Legislative changes

At present, the UK only designates ports of entry for live CITES listed animals, under the Control of Trade in Endangered Species (Designation of Ports of Entry) Regulations 1985. There are currently no restrictions on the ports of exit for live CITES listed animals or the place of entry or exit for live CITES listed plants or dead CITES specimens and/or their products (cf the Principal Regulation, which requires Member States to designate customs offices for imports and exports of all CITES specimens).

Since 1985, in order to implement EC Animal Health requirements, entry points for live animals have been further restricted to designated Border Inspection Posts (see Schedule 2, Animals and Animal Products (Import and Export) Regulations 1998). These restrictions are handled by the Ministry of Agriculture, Fisheries and Food (MAFF) and the Department of Agriculture and Rural Development for Northern Ireland (DARDNI).

Certain live CITES specimens are subject to specific entry point restrictions under the Rabies (Importation of Dogs, Cats and other Mammals) Order 1974 (or where applicable, the Rabies (Importation of Dogs, Cats and other Mammals) Order (Northern Ireland) 1977. Such specimens may only come in through ports/airports listed by these Orders.

Additional restrictions on imports of products for human consumption and other animal protein products (e.g. raw meat, hides and hunting trophies) are also laid down by the Products of Animal Origin (Import and Export) Regulations 1996 and the Products of Animal Origin (Import and Export) Regulations (Northern Ireland) 1993.

A consultation paper on regulatory changes needed to meet the requirements of EC Wildlife Trade Regulations is currently being circulated. Once adopted, the new instrument will establish for the first time:

- a list of exit points for live animals (which will probably be the same as the list of entry points in the above-mentioned Animals and Animal Products (Import and Export) Regulations);
- entry and exit points (ports, airports and postal depots) for all other CITES specimens, including controlled plants, their parts and derivatives, and animal parts and derivatives.

These restrictions will of course only apply to imports and exports from third countries and not to intra Community movements.

Case law

There have been several CITES-related prosecutions in recent years, notably after raids on oriental pharmacies which led to seizure of hundreds of products claiming to contain parts of tiger and other endangered species. Several convictions have been secured and heavy fines imposed. The CITES enforcement agencies have produced a special bi-lingual leaflet to inform pharmacies and other suppliers of traditional Chinese medicines about the controls.⁶⁴

⁶⁴ Information on certain prosecutions is included in the TRAFFIC Bulletin. An online database and search engine on UK case-law is located at <http://www.bailii.org/ew/cases/EWHC/> (High Court of England and Wales Decisions). However, this does not cover summary convictions imposed by magistrates' courts. [ADDITIONAL INFORMATION AND CASE STUDIES RELATING TO OTHER PROSECUTIONS AND ENFORCEMENT ACTIVITIES IN THE UK IS FOUND IN "STATISTICAL INFORMATION AND FACTUAL SUMMARIES ON THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS IN THE UK" WITHIN THIS VOLUME -- TRY]

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ANNEX B

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in the EU

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in the EU

This section contains 13 reports with information and summaries relating to each country's

- Seizures;
- Confiscations;
- Court cases;
- Enforcement procedures; and
- Main Challenges

in the area of wildlife trade.

The information was compiled by TRAFFIC Europe, utilising a variety of sources, including various Biennial Reports (1999 – 2000) on legislative, regulatory and administrative measures taken by the Member States of the European Union to enforce the provisions of the Convention on Trade in Endangered Species of Wild Flora and Fauna (CITES), various short reports by and personal communications with personnel/authorities involved in national wildlife legislation.

The reports are generally divided into four sections –

- ◆ Statistical and factual information on confiscations, seizures and other enforcement actions;
- ◆ Summary of enforcement procedures;
- ◆ Summary of selected recent administrative or judicial enforcement cases (in one case, these are given as full “case studies”); and
- ◆ Main challenges.

This information summarises cases, procedures and challenges, many of which were discussed at the workshop.

The information which was provided is very diverse. It can be thought of as the first step in an ongoing process to develop a body of information that will be helpful as the EU grows and changes, and continues to seek to better achieve its objectives under CITES and EU Resolution 338/97. Readers with specific questions related to CITES enforcement issues in particular countries should address their inquiries to the authors of the relevant documents, or to the other persons and institutions mentioned as contributors to these reports.

As far as it is known by the editor of this part of the Annex, the tables do not show a complete list of court cases over the timespan covered by the report. The selection was made by the person/authority who provided the information, based primarily on the availability of the information, the importance of the case, or its value in illustrating an important point or legal issue.

Some of the national reports include administrative enforcement actions and direct penalty assessments. In the future it will be valuable to compile additional statistical data, so that a clearer picture can be obtained of the manner in which administrative and judicial/formal enforcement procedures work in concert within the various EU Member States.

Additional Information about confiscations:

Several countries provided additional statistical data, which was too voluminous to be included here. Therefore an overview of “Reported Seizures of CITES-listed Specimens involving EU Member States”, based on the CITES Annual Reports (comparative tabulations compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001), is provided at the end of this annex.

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in Austria

Compiled by TRAFFIC Europe. Source references are provided in the text.

Statistical Information (on three recent Court Cases)

1. Tortoise Case

The Customs in Vienna seized 426 Hermann's Tortoise (*Testudo hermanni*), 10 Marginated Tortoise (*Testudo marginata*) and 15 scorpions (14 October 1996). Further investigations - including house searches - revealed additional tortoises: 757 living adult *T. hermanni* and 867 captive-bred *T. hermanni* have been seized (7 November 1996). The commercial value of all seized animals is 115 000 Euro. Following a request of the Public Prosecutor phone tapping was ordered by Court on 5 February 1997. Furthermore legal assistance from Italy was requested. The Penalty for the offender – by Landgericht Vienna, changed by Oberlandesgericht Vienna – was: 8 months suspended sentence and a fine of 17 441.49 Euro (CITES Management Authority of Austria, *in litt.* to TRAFFIC Europe, September 2001).

2. Elephant Case

An elephant (*Elephas maximus*) from a circus – commercial value 44 000 Euro - did not have sufficient documents/permits so seizure of the elephant was to be carried out. The director of the circus fled with the elephant to Germany. After further investigations the elephant was discovered hidden in Germany and co-operation with the German authorities started and legal assistance was requested. The Austrian Court (Landgericht Linz, 15 November 2001) penalized the offender to 150 dayfines (total: 1744.15 Euro). In Germany the case is not concluded yet, confiscation will be expected soon (December 2001) (CITES Management Authority of Austria, *in litt.* to TRAFFIC Europe, September 2001).

3. Birds of Prey Case

Investigations at a “birds of prey centre” - a private facility not registered at the CITES Secretariat which breeds large amounts of birds of prey and is not for commercial purpose only - led to the seizure of 8 Golden Eagles (*Aquila chrysaetos*), 6 Greater Spotted Eagles (*Aquila clanga*) and 1 Augur Buzzard (*Buteo augur*). The commercial value was estimated at 95 000 Euro. With DNA-fingerprinting it was shown that the individuals were not captive-bred. The possession of the birds was found to be illegal because of the reasonable suspicion that these birds were imported to Austria from a third party for commercial purposes. This is illegal because the birds are listed in Appendix A of the Regulation (EC) 338/97. Therefore the holders were required to have CITES documents for these animals, which were missing in this case. The offender was charged with possessing the birds and purchasing them for commercial purposes. The case has not yet been decided (CITES Management Authority of Austria, *in litt.* to TRAFFIC Europe, September 2001).

Additional recent Court Cases

The following table contains some basic statistical data relating to court cases in Austria between 1993 and 2000. It does not list all cases between those dates, which addressed or considered wildlife trade issues. The information provided relates to court cases alone as the statistics or information on administrative enforcement actions would be too voluminous to be presented in this volume. For further information please contact the CITES Management Authority of Austria:

Federal Ministry of Agriculture, Forestry,
Environment and Water Management
Bundesministerium für Land- und Forstwirtschaft,
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Table 1

Court Cases in Austria

Date and Court, Court Case Number; Confiscation Authority	Date and Court, Court Case Number; Number of the Enforcement Authority/ Ministry of Finance	Species involved	Protection Status	Country of Export	Country of Destination	Offence and law under which this case was prosecuted and conducted	Penalty	Date of seizure and date of first report of offence
BH Neusiedl	333/008764/97	AVES	A/B/C	NL	TR	no detailed records		
no records about the court or the confiscation authority	800/90216/6/98-Neuzh.	Testudo hermanni	II/A	AT	DE	no detailed records		
Landesgericht Korneuburg	VB-0330/112-III/3a/97	Cactacae	I/A II/B	CZ	CZ	no detailed records		98-01-29
BH Linz Land	no records	Testudinata	II/B	US	AT	no detailed records	€ 1,199.10	
BH Horn	VWGH-99/04/0115-7	Aquila chrysaetos	I/A	AT	AT	no detailed records	Each: € 1453,46 or. 56 hours imprisonment	98-01-09
Landesgericht Eisenstadt/ BH Neusiedl	93.126/2/97-Str.II/To	AVES	A/B/C	XX	TR	no detailed records		
Landesgericht Eisenstadt	93.088/20/97-Str.II/To	Testudo hermanni	II/A	YU	YU	no detailed records		
BH Schwaz	VE-Nr.518/96-Pe	Ursus americanus	II/B	CA	AT	no detailed records		
ZA Flughafen Schwechat - LG Korneuburg	100/92.036/6/99-Str.II/To	Testudo hermanni	II/A	AL	AT	no detailed records	€ 392,43 or 45 days imprisonment including costs for translation of € 179,50	99-08-22
BH Horn	VE-Nr. 185/04/97 Neuh.	Aquila chrysaetos	A/II	KZ	AT	no detailed records	Each € 1453,46 or 56 days imprisonment, costs of proceedings (First Instance): € 290,69; testimonial: € 719,46; € 331,75 for. execution	
BH Neusiedl/See	300-12926/1-2000	Acipenser oxyrhynchus	II/B	HU	AT	no detailed records	Forfeited	
BH Neusiedl/See	300-12926/1-2000	Acipenser oxyrhynchus	II/B	HU	AT	no detailed records	Forfeited	
BH Korneuburg	3-9928-99	Trachemys scripta	II/B	XX	AT	no detailed records	€ 799.40	99-08-12

Source: CITES Management Authority of Austria, *in litt.* to TRAFFIC Europe, September 2001

The Prosecutors office in Eisenstadt has prosecuted a few cases, in which illegal import of specimens from Hungary was attempted (mostly tortoises, pheasants and a brown bear). In all of them no commercial purpose has been evidenced. Therefore one case was dismissed after providing necessary documents, and in the other cases fines were imposed and two cases were concluded at court (T. Schneider and K. Rabong, Prosecutors Office in Eisenstadt, *in litt.* to TRAFFIC Europe, October 2001).

Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in Belgium

Compiled by TRAFFIC Europe. Source references are provided in the text.

Statistical Information on Cases and Seizures

As noted in the report entitled “Enforcement of International Wildlife Trade Controls in Belgium,” by Erwin Francis, the following administrations have competencies in CITES-Enforcement (F. Geysels, Belgian Federal Police, *in litt.* to TRAFFIC Europe, October 2001):

- Police officers (Federal and Local Police)
- Customs-officers
- Veterinary services
- Services Plant Quality and Protection
- Several other services including regionals

This section of this paper addresses only the cases of offences against CITES-Legislation dealt with by the Federal Police.

Such cases, when dealt with by Federal and Local Police are based on examination or apprehension in shops or by private persons. The seizure of species is based on a decision by the Management Authority. If a seizure is carried out, an official report is given to the Prosecutor who decides about the prosecution of the crime, and whether it goes to court or not (F. Geysels, Belgian Federal Police, *in litt.* to TRAFFIC Europe, October 2001).

Court Cases

The Federal Police (Environmental Crime Service) are aware of two court cases, in which there was a conviction. The service has no knowledge concerning the procedure and judgement in these cases following the police’s involvement. Other cases, in which customs were involved, are not known by the Federal Police (F. Geysels, Belgian Federal Police, *in litt.* to TRAFFIC Europe, October 2001).

Table 1

Court Cases in Belgium known by the Federal Police

Date Court case No	Species involved	Protection status	Value	Countries Source...	Offence	Law	Penalty	Seizure Date/ Date first report offence
31/05/2000 Correctional Court CHARLEROI N° 61.98.190/98 - 1470	2 Bengal tigers (Panthera Tigris Bengalensis)	CITES I & (EC) - A	Unknown	Birth in Belgium	No declaration of birth Detention without permission Transportation without authorization	Art. 4§1&30, 20/12/83 (cf. CITES 3/3/73) Art. 6,7§1 & 30 KB 20/12/83 Art. 9 & 30 KB 20/12/83	two persons involved, each condemned to 15 days imprisonment 2000 BF contribution 1000 BF Confiscation of the Bengal tigers + Law-costs: 982BF + seizure & transportation costs (not determined)	<u>First report offence:</u> between 1/1/97 & 30/12/97 (not exactly determined) <u>Seizure date:</u> 30/12/97

Date Court Court case No	Species involved	Protection status	Value	Countries Source...	Offence	Law	Penalty	Seizure Date/ Date first report offence
12/11/1999 Correctional Court NAMUR N° 2024 – 794	(11 parrots) 2 Scarlet Macao (Ara macao) 4 Cuban Amazon (Amazona leucocephala) 4 Vasa Parrot (Coracopsis vasa) 1 Salmon-crested cockatoo (Cacatua moluccensis)	CITES I & (EC) - A	1625 -> 2375 1500 300->450 1250 -> 2375	Belgium France	Detention with purpose of trade of Cites I Importation, Exportation & Re-exportation >>Cites I,II,III No inventory	Art 4 & 5, law 28/07/81 (cf. CITES 3/3/73) Art 2§1 KB 20/12/83	one person condemned 15 days imprisonment 800 000 BF or 3 months imprisonment 2000 BF contribution Confiscation of the animals + Law-costs: 3454 BF + 421 800 BF seizure costs	<u>First report</u> offence: 1/08/1996 <u>Seizure date:</u> 28/08/1996

Source: F. Geysels, Belgian Federal Police, *in litt.* to TRAFFIC Europe, October 2001

Seizures and Confiscations

Table 2

Information on Seizures in Belgium in 1999 and 2000

	No of seizures (total)	No of confiscation (total)
1999	88 (73 fauna and 15 flora)	Unknown
2000	79 (69 fauna and 10 flora)	Unknown

Source: P. Hermans, CITES Management Authority of Belgium, *in litt.* to TRAFFIC Europe, November 2001

Table 3

Information on seized main Taxa in Belgium in 1999 and 2000

	Mammals	Reptiles	Pisces	Birds	Others (amphibian, molluscs, insects)	Plants
Number of specimens (total)	382 (including 5 abandoned and 1120 packets TCM, 10 ml rbcells)	810 (including 50 returned and 3 abandoned)	2,352 kg caviar	963 (including 927 returned and 6 abandoned)	391 (including 23 corals returned and 14 kg + 47 boxes corals)	156
Number of Appendix A specimens	368 (including 1 regularised)	80	--	13 (including 12 on going investigation)	--	10

Source: P. Hermans, CITES Management Authority of Belgium, *in litt.* to TRAFFIC Europe, November 2001

Complete information on seizures available at CITES Management Authority of Belgium:

MINISTRY OF SMALL ENTERPRISES, TRADERS and AGRICULTURE

Administration Animal Health & Quality of Animal Products

* Veterinary Services - Division CITES MA

WTC III - 5th floor

30, Boulevard Simon Bolivar

B - 1000 Brussels

Tel: +32-2-208 3620

Fax: +32-2-208 3612

E-mail: CITES@cmlag.fgov.be

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in Denmark

Heidi Hilbert, CITES Management Authority of Denmark

Statistical Information on Cases and Confiscations

Confiscation in Denmark:

Confiscated specimens since 1980:	38 000
Live animals	- birds: 1 050
	- amphibians/reptiles: 2 250
	- others (invertebrates): 425
Plants:	1 025
Parts and derivatives:	33 250

Most common confiscation: Giant Clams, Corals, Queen Conch, Asian Cobra (in alcohol, stuffed etc.), Reptile skin products, Caviar, Ivory

Table 1

Cases in Denmark

	Number of cases	Number of specimens	Maximum fine
1993	42 cases	227 specimens	Max fine: 920 USD (DKR 8 000)
1994	54 cases	5750 specimens	Max fine: 5750 USD (DKR 50 000)
1995	82 cases	1937 specimens	Max fine: 5575 USD (DKR 48 500)
1996	40 cases	163 specimens	Max fine: 1725 USD (DKR 15 000)
1997	21 cases	812 specimens	Max fine: 1150 USD (DKR 10 000)
1998	43 cases	744 specimens	Max fine: none
1999	65 cases	759 specimens	Max fine: 575 USD (DKR 5 000)
2000	94 cases	4100 specimens	Max fine: 1840 USD (DKR 16 000) Cases still pending

Source: CITES Management Authority of Denmark

80 % of the cases are non-commercial imports - e.g. tourist souvenirs, personal pets etc. - either as personal luggage or as parcels.

Our estimation for 2001 and 2002 is that there will be about 120 cases per year involving criminal offences. Only 5-10% of these cases are expected to end in court the rest will be settled out of court. Cases can only be settled out of court if the offender pleads guilty otherwise the case has to go to court. 1 out of 10 cases in court is regarding domestic trade.

Most cases end with confiscation of the seized specimens. Cautions are given for most non-commercial first offences. Commercial offenders will usually be fined. The size of the fine depends on the kind of offence, the value of the specimen etc. Annex A offences will usually be fined 2 x the value of the specimen. The general administrative rule concerning Annex B offences has been a fine equivalent to the value of the specimen or the (expected) profit.

Court Cases

Table 2:

The 6 most recent Court Cases in Denmark concerning commercial Transactions

Date	01.10.1999	06.10.2000	07.10.2001	30.03.2001	10.05.2001	28.02.2002
Court	Københavns	Københavns	Retten i	Retten i Horsens	Københavns Byret	Københavns Byret
Court Case Number	Byret 25. Afd. No. 11338/1999	Byret 9. Afd. No. 11020/2000	Randers 4. afd. No. 4.01515	2. Afd. No. SS P5.25223/00	17. Afd. No. 11071/01	27. afd. No. 27.30315/2001
Species involved	Greek tortoise (Testudo graeca)	Caviar	Ivory (Elephantida) 3 carvings	Goffin's Cockatoo	Wolf skins (Canis lupus) Black bear (Ursus americanus)	Giant Clam (Tridacnidae spp.) Turtle (Cheloniidae spp.)
Protection Status	Annex A	Annex B	Annex A	Annex A	(wolf) Annex A and (black bear) annex B	Annex B (Giant Clam) Annex A (Turtle)
Commercial Value	2,450 Danish kroner	Aprox. 100,000 Danish kroner	Aprox. 1,200 Danish kroner		Wolfskins aprox. 2,000 danish kroner	Aprox. 162.000 Danish Giant clams min. 130.000 d.kr. Turtle shells min. 32.000 d.kr.
Countries involved	Inside Denmark/ EU	Import from Estonia. Origin Russia	Import from Thailand	Inside Denmark/ EU	Import from Canada	Import from Philippines
Offence	A petshops trade in annex A specimens	Import of 12 kilo caviar without CITES export permit or CITES import permit	Import without CITES export permit or CITES import permit Commercial purpose	A petshops trade in annex A specimens	Import for commercial purposes without CITES import permit. Export permit was given.	Import for commercial purposes without CITES export and import permits 3.574 giant clams and 16 turtle shells
Law	Council Regulation (EC) 338/97 Art. 8	Council Regulation (EC) 338/97 Art. 4. 2	Council Regulation (EC) 338/97 Art. 4. 1	Council Regulation (EC) 338/97 Art. 8	Council Regulation (EC) 338/97 Art. 4.1 and art. 4. 2	Council Regulation (EC) 338/97 Art. 4.1 and Art. 4. 2
Penalty	Fine 5,000 Danish kroner and Confiscation	Not guilty The caviar was confiscated	Fine 2,000 Danish kroner The specimens were confiscated	Fine 750 Danish kroner	Caution Wolfskins were confiscated	Fine 60.000 Danish kroner (20.000 for the owner and 40.000 for the private company) The specimens were confiscated
Details	The court found that a professional petshop owner should know the legislation	The prosecution pleaded for a fine of 30.000 Danish kroner and confiscation. The court found that it was not proven that the offender knew he would receive 12 kilos. He said he expected some samples		The court found that the man who did the trade was not professional therefore the fine was reduced	The prosecution claimed that the offence should be fined with at least 2,000Danish kroner and all the skins confiscated The Court found that the wolfskins should be confiscated since it was not possible to get an import permit for wolfskins due to the Annex A listening. Concerning the bearskins the court found that it was such a minor offence that there was no reason for confiscation.	The prosecution claimed that the offence should be fined with at least 100.000 Danish kroner. The Court found that the evidence was not adequate concerning the values of the specimens, hence the fine was reduced to 60.000 Danish kroner.
Date of offence	1998	3 rd November 1999	15 th February 2001	February 2000	15 th January 2001	14 th July 2000

Basic Summary of Enforcement Procedures

The specimens are usually held back by Customs which then informs the CITES Management Authority. Most cases occur at Copenhagen airport. When the CITES Management Authority has checked that the specimens are covered by the CITES regulation, the case is handed over to the Police by the Management Authorities. The case is then either settled by the Police or, if the person involved does not agree to the proposed sanction (caution/fine and confiscation), the case goes to court. Only a few cases come to court where usually fines will be imposed.

Main Challenges: Case Law on illegal commercial Transactions

- It happens quite often in wildlife trade cases in Denmark that there are problems meeting the burden of proof.
- A review of recent caselaw indicates that illegal commercial transactions with Annex A-specimens are usually met with fines of 2 x the value of the specimens involved. At present there is no evident Danish case law on commercial exports of species listed in Annex B. The Danish CITES Management Authority hopes that Annex B-cases will establish equivalent to the value of the specimen or the (expected) profit plus confiscation. However Prosecutors have expressed their doubt that the Court will impose a fine equivalent to the (expected) profit or the value of the specimen in Annex B cases.

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in the Finland

Viejo Miettinen, Finnish Environment Institute & Matti Nissinen, State Prosecutor

Statistical Information on Court Cases and Confiscations

Since 1995 all reported cases have gone to court and were found to be nature conservation offences under the Penal Code. In one case no penalty was given, but all other cases resulted in fines. One defendant was given a one year conditional sentence. This was a case of organized crime concerning the smuggling of 110 bird eggs. This case also resulted in the highest figure set for monetary compensation - 25 000 Euro. In all cases the specimens were confiscated.

Since 1995 there have been the following confiscations:

1995	1
1996	0
1997	3
1998	4
1999	7
2000	2

Table 1

Information on Confiscation in 1999 and 2000 in Finland

	No of seizures (total)	No of confiscation (total)	No of confiscation without fine	No of confiscation with fine (or other penalties)
1999	7	6	2	4?
2000	2	1	1	unknown

Table 2

Information on confiscated main Taxa in 1999 and 2000 in Finland

	Mammals	Reptiles	Pisces	Birds	Others (amphibian, molluscs, insects)	Plants
Number of specimens (total)	23	7			1	
Number of Appendix A specimens	23	4			0	

Table 3

Court Cases in Finland

Date and Court, Court Case Number	Species involved	Protection Status	Commercial value	Countries	Offence	Law	Penalty	Date of seizure/ date of first report of offence	Details
30. Nov. 1995 Lappeenranta Finland Civil Court, R 95/984	Aquila heliaca, Buteo rufinus, Falco tinnunculus	Reg. 3626/82, Annex C1/C2	Less than 3500 Euro	Import from Russia	Illegal import of bird eggs of protected species (no permits)	Reg. 3626/82, Penal Code 48/5	1 year imprison- ment, con- ditional	8. Nov. 1995	Altogether 110 pcs of bird eggs, condemned to pay living value of 25000 E, eggs were confiscated
22. Sept. 1997 Helsinki Finland Customs, R/11147/97	4 living Psittacus erithacus	Reg. 338/97 Annex B	550 Euro at place, more at market	From Ivory Coast via Finland to Russia, ship/flight	Illegal import and export of specimens of protected species (no permits)	Reg. 338/97, Penal Code 48/5	Fine 50 Euro	22. Sept. 1997	Birds were confiscated
26. Nov. 1997 Kotka Finland Civil Court, R 97/974	295 living Trachemys scripta elegans	Reg. 338/97 Annex B	2515 Euro	Import from Russia	Illegal import of specimens of regulated species (no permits)	Reg. 338/97, Penal Code 48/5	Fine 157 Euro	9. Oct. 1997	All specimens were confiscated, 4 specimens had died
10. July 1998 Lappeenranta Finland Customs, R/11566/98	3 living Testudo horsfieldii	Reg. 338/97 Annex B	50 Euro at place, 300 Euro at market	Import from Russia	Illegal import of specimens of protected species (no permits)	Reg. 338/97, Penal Code 48/5	Fine 238 Euro	22. May 1998	Imported as tourist souvenirs, specimens were confiscated
14. July 1998 Joensuu Finland Civil Court, R 98/721	Hide of Brown bear	Reg. 338/97 Annex A	None	Import from Russia	Illegal import of specimen of protected species (no permits)	Reg. 338/97, Penal Code 48/5	None	18. March 1998	Hide was hidden inside reserve tyre of a car, hide and tyre were confiscated
9. Aug. 2001 Tampere Finland Civil Court, R 01/2090	Meat of whale, Balaenopte- ra spp.	Reg. 338/97 Annex A	None	Import from Denmark in late 1997	Illegal import of whale meat (no import allowed)	Reg. 338/97, Penal Code 48/5	None	No seizure, reported 26. Feb. 2001	
18. Nov. 1999 Kajaani Finland Civil Court, R 99/412	2 hides and skull of Brown bear	Reg. 338/97 Annex A	2000 Euro	Import from Russia	Illegal import of specimens of protected species (no permits)	Reg. 338/97, Penal Code 48/5	Fine 50 Euro	2. Aug. 1999	Specimens were confiscated

The table shows a small number of court cases, which have been reported since 1995. (For more information see Annual Report.) The exchange of information needs to be improved as Customs have on occasion not informed the Management Authority about the progress of some cases and whether they have been given to the Public Prosecutor. Furthermore the Management Authority sometimes have not been informed about the final court decisions and whether seizures have been carried out.

Basic Summary of Enforcement Procedures

Enforcement at designated custom offices proceeds as follows:

- All suspected specimens are seized.
- Living specimens are transported to holding facilities.
- The specimens are examined by the Finnish Environmental Institute (FEI) and Finnish Museum of Natural History (FMNH), which identify the species and give their opinion to Customs, concerning the probable legality of the proposed import or export.
- If the specimen is a regulated species, the matter is investigated by Customs. Investigations can be terminated if no person can be found responsible for committing an offence.
- In a few cases, Customs has made a “summary decision” and imposed administrative fines in connection with the seizure. Such summary actions can be challenged, if the alleged violator chooses to take the matter to the Court. In such cases, Customs will send a complete investigation report to the Prosecutor, who makes a decision on whether the case should go to court.
- In all cases, prosecutors are obliged to react without a delay. In regard to environmental crime cases this usually means a time period of a few weeks up to a few months. Statutorily, where the specimens were seized by the Police, the Prosecutor is required to react within four months.
- In the Finnish court system, a person cannot be sentenced in absentia if the maximum penalty which can be applied is more than 3 months imprisonment. In these cases, the accused must be present during the trial. If his presence cannot be compelled, the case remains open.

An environmental crime unit - a key-prosecutor system i.e. the team of five Public Prosecutors - has been established within the public prosecution section. These prosecutors have been trained to prosecute the most difficult and/or serious cases and to co-operate with the Police, Customs and other authorities. If necessary this unit applies for further prosecutors.

Main Challenges

Challenges related to the enforcement of wildlife trade controls are:

- Problems in the prosecution of non-residents (including transits)
The offender has to be present at Court if a penalty of more than three months is applied. If the offender is not present he/she cannot be sentenced and the case remains open. Only very few cases remain open, because there are not so many cases altogether and - as explained above - "summary decisions" can be used in obvious cases.
- Court rulings differ – there is a range of penalties under the same legislation
The differing of court ruling is specially linked with measuring of sentences: day-fines or imprisonment; how many day-fines. This variety can be seen as a result of the difficulties to compare the cases with each other. These cases are few, not similar and so "the typical case" cannot be described. This explains the difficulties to imagine "the standard sentence".
- Challenges also arise relating to co-operation with other authorities, and exchange of information and evidence. (With the assistance of the key-prosecutors mentioned above the office of the Prosecutor General is starting a project to improve co-operation. It is hoped that by involving all relevant authorities levels of co-operation will improve and the exchange of necessary information will be easier in the future.)

Further information about the Finnish legal system, prosecutors, police and customs can be found at:

www.oikeus.fi/vksv/2442.htm

www.om.fi/711.htm

www.poliisi.fi/english/index.html

www.tulli.fi/esite/english/index.html

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in Germany

Extracted from 1999 – 2000 Biennial Report of the Federal Republic of Germany according to Art. 15.4 (c) of Regulation (EC) No. 338/97 (Anon., 2001 a).

In case the source differs the references are provided in the text.

Statistical Information on Cases and Seizures

Infringements and legal actions including seizures, cautions, fines and penalties

Measures at Federal level

In 1998, the Federal Agency for Nature Conservation <BfN> recorded 2,965 procedures, rising to 3,244 procedures in 1999, initiated by Federal authorities due to infringements of the Federal Nature Conservation Act. It also lists procedures which were only investigated internally by the Federal authorities and which were not based on seizures by customs authorities at external borders (1998: 69 procedures; 1999: 56 procedures). Parallel to the seizure and confiscation procedures, investigations are carried out when criminal or administrative offences are suspected, and concluded by the responsible offices. Administrative offences fall under the statute of limitations of three years, whilst criminal offences fall under the statute of limitations of five years. Fines of up to DM 100,000 and imprisonment of up to five years constitute the statutory framework (§§ 30, 30a of the Federal Nature Conservation Act <BNatSchG>).

Table 1

Follow-up of confiscations and administrative procedures of 1998/1999 (status as per 10 April 2001)

Status of procedures on 10 April 2001	From 1998	From 1999
Outstanding procedures	36	97
Discontinued by the Federal Agency for Nature Conservation <BfN>	2.431	2.623
Cautions, in some cases with cautionary fines	69	86
Administrative orders imposing a fine	319	266
<i>Of which currently being enforced by the Federal Agency for Nature Conservation <BfN></i>	30	28
<i>Of which being appealed</i>	9	11
On-going investigations into suspected criminal offences	16	33
Discontinued by the public prosecutors	14	34
<i>In exchange for payment of a fine (§ 153a of the StPO)</i>	24	41
Orders imposing punishments and sentences	17	25
Total procedures	2.965	3.244

Information on procedures during the year 2000 is not yet available.

Table 2

Information on confiscation in Germany in 1999 and 2000

	No of seizures (total)	No of confiscation (total)	No of confiscation without fine	No of confiscation with fine (or other penalties)
1999	3.189	2.539	2.076	406
2000	2.680	1.381	772	412

Source: Federal Agency for Nature Conservation, CITES Management Authority of Germany, *in litt.* to TRAFFIC Europe, November 2001

Court Cases

Table 3

Court Cases in Germany

Date and Court, Court Case Number	Species involved	Protection Status	Market value	Countries	Offence	Law	Penalty	Date of seizure and date of first report of offence	Details
1998 AG Frankfurt am Main, AZ: 944DS-65 Js31713.3/98 v. 5.10.98	4 live Probosciger aterritimus	CITES Appendix I, Regulation EC No. 338/97 App. A	around 50 000 EURO	Thailand	Illegal import and transport against IATA (Animal Welfare regulation	§ 30a, § 30 para. 2a No. 3 Federal Nature Conservation Act, National Animal Welfare Regulation	7 months imprisonment on probation	8/1/98	The animals were packed in plastic tubes, the tubes were hidden in a sport bag
2000 AG Frankfurt/Oder AZ: 48Cs225Js41 18/00 v. 12.04.00	139,5 kg Caviar	CITES App. II; Regulation EC No. 338/97 App. B	around 300 000 EURO	Poland, Germany	Illegal import of caviar	§ 30a para. 1 in combination with § 30 para. 2a No. 1 Federal Nature Conservation Act, German Tax Regulations	15 400 German Marks	11/25/99	smuggling of 279 boxes each filled with 500 gr Caviar
2000 Summary sentence by the public prosecutor of Frankfurt am Main	1 skin of panthera pardus, 1 skin of Felis pardalis, 20 belts made of crocodile skins, 7 stuffed Caiman crocodylus, 10 other parts made of crocodile skins	CITES App. I and II; Regulation EC No. 338/97 App. A and B	not known	Bolivia, Germany	Illegal import of the specimen	§ 30a para 1, 2 and 4 in combination with § 30 para 2a No. 1 Federal Nature Conservation Act	10 000 German Marks		

Proceedings of the International Expert Workshop on the Enforcement of Wildlife Trade Controls in the EU

Date and Court, Court Case Number	Species involved	Protection Status	Market value	Countries	Offence	Law	Penalty	Date of seizure and date of first report of offence	Details
12/2000; Landgericht Frankfurt/Main 65 Js 8104.6/99	32 Orang utans, Javan gibbons, 32 Chimpanzee, 12 Gorillas, 19 Asian elephants, 4 African elephants, 4 Indian rhinos, 2 Black rhinos, 1 Giant Panda, 3 Siberian tigers, 4 Bengal tigers, 4 Komodo Monitor lizards, 2 Manchurian cranes, 7 Arabian oryx, 6 Ural owls 4 Scarlet macaw (Mammalia, Reptilia, Aves)	CITES Appendix I, II; Regulation (EC) 338/97 Appendix A, B; almost all species are protected in the country of origin	over 300 000 EURO	from more than 25 countries worldwide, including Belgium, Czech Republic, France, Germany, Spain, Switzerland, Armenia, India, Nepal, Indonesia, China, countries of Indochina, Tanzania, Republic of South Africa, USA, Peru, Chile; into: Germany, UK, Italy, Switzerland, France, Belgium, Poland, Czech Republic, Bulgaria, Turkey, Uzbekistan, China, Japan, USA, Mexico, Brazil	Attempted and completed marketing of endangered and protected life animals in 15 cases	Principal defendant: §§ 30a (1-3), 30 (2a) No 3, 30 (1) No 3 old version, 20 f (2) No 2 old version, 39 (2) BnatschG, Art. 8 (1,5) Regulation (EC) 338/97, Art. 6 (1,2) Regulation (EC) 3626/82; other defendants: §§ 153, 153a StPO (Strafprozessordnung)	3 years of imprisonment and disqualification from the profession for principal defendant ; 3000 Euro fine each for two other defendants	no seizure; date of first report of offence 3/2/1999	Original court case consisted of 41 cases, due to similarity/equality of offences the court case was reduced to 15 cases; initially the state prosecutors accused the defendants of comprising a criminal organisation under §129 of the German Penal Code (Strafgesetzbuch StGB)
2000 AG Frankfurt am Main AZ: 942Cs65Js42 75.1/00 v, 06.09.00	3 live Cacatua goffini	CITES App. I; Regulation EC No. 338/97 App. A	not known	Indonesia, Germany	Illegal import of the specimen	§ 30a para 2 and 4 in combination with § 30 para 2a No. 1 Federal Nature Conservation Act, National Animal Welfare Regulation	5500 German Marks	10/1/99	The birds were hidden in the luggage of the smuggler. One bird died because of transport conditions. This bird has been thrown in a wastepaper basket.
2001 AG Frankfurt am Main AZ: 8920Js20367 7/01 v. 06.04.01	4 Amazona agilis, 5 Amazona collaria	CITES App. II; Regulation EC No. 338/97 App. B		Jamaika	Illegal import and transport against IATA (Animal Welfare regulation	§ 30a, § 30 para. 2a No. 3 Federal Nature Conservation Act, National Animal Welfare Regulation	9 months imprisonment on probation	15/12/00 and 26/01/01	The animals were hidden in the private suitcase, packed in a plastic box and placed beneath the clothes

Date and Court, Court Case Number	Species involved	Protection Status	Market value	Countries	Offence	Law	Penalty	Date of seizure and date of first report of offence	Details
2001 AG Frankfurt am Main AZ: 944Ls8920Js 232323/00 – 3016	more than 1000 kg Caviar	CITES App. II; Regulation EC No. 338/97 App. B	around 1000 000 EURO	Poland, Germany	Illegal import and trade in caviar in 5 cases	§ 30a para. 1 in combination with § 30 para. 2a No. 1 and 3 Federal Nature Conservation Act, German Tax Regulations	18 months imprisonment on probation	Sept. 1999 to April 2000	The person has imported and offered / sold more than 1000 kg of Caviar from Poland to Germany.

Source: Federal Agency for Nature Conservation, CITES Management Authority of Germany, *in litt.* to TRAFFIC Europe, August 2001 and A. Kreutz, Public Prosecutor's office in Frankfurt am Main, *pers. comm.* to TRAFFIC Europe, August 2001

Factual Information on selected Cases

- *Apes:*

Discoveries of illegally imported apes and their illegal private ownership are common place. A number of leads and repeated searches led to the discovery of a Slow Loris <*Nycticebus coucang*>, which had been smuggled into Germany from Indonesia. The public prosecutors fined the owner DM 28,000.

- *Live birds:*

On 15 December 2000, officials caught a Slovakian citizen attempting to smuggle a total of 6 young parrots into Germany from Jamaica. The young birds were packaged in plastic containers and concealed in a suitcase. The birds were too young to be identified at the time. A short time later, at the end of January 2001, the same individual made a further attempt to smuggle three young Black-billed parrots <*Amazona agilis*>, again from Jamaica, into the Federal Republic of Germany. In view of the repeat offence and the fact that the birds had been transported in contravention of animal conservation legislation, the court ruled that the individual concerned should be remanded in custody.

Christmas Eve 2000 brought with it an extra-special surprise for the customs officials at Berlin-Tegel airport. When examining unaccompanied luggage, they discovered a total of 8 live Saker falcons <*Falco cherrug*> concealed in a suitcase. The animals had been sewn into linen bags. The suitcase was divided into separate compartments, and the birds sewn into each of these compartments. The falcons had originally been destined to fly from Mongolia via Moscow to the United Arab Emirates. As the result of a baggage handling error in Moscow, however, the suitcase containing the birds was inadvertently sent to Berlin, where the customs officials discovered it. Because of the poor shipping conditions, two of the birds died during transportation or shortly after arrival. The remaining 6 birds were rescued and have since recovered from the stress of their journey. However, two of them suffered injuries or damage to their feathers which will prevent them from flying for a long time.

- *European bird species:*

Organised smuggling of European species of birds from Eastern Europe, particularly Poland, has increased dramatically. Vehicles are specially converted for the illegal transport, so that up to 1,000 birds or more can be concealed in purpose-built cavities. The birds are received from Russian couriers or purchased at bargain prices from Polish markets, so that they can be resold at a profit in the EC market, particularly in Belgium. In one instance, a Belgian courier was sentenced to 12 months' probation. The vehicle used to commit the crime was impounded as well as the birds themselves.

- ***Investigative proceedings against egg collectors***

The greed of collectors who illegally take birds' eggs from the wild for supposedly "scientific" purposes and swap them in highly secretive circles, seems to know no bounds. Following a tip-off that painted hens' eggs had been found in two fish eagle nests, a criminal investigation was launched with the assistance of the Environmental Agency of Brandenburg, leading to the seizure of over 100,000 birds' eggs. Investigations were also launched in Spain, Denmark and other European countries. In addition to European species of bird, stringently protected raptor species were also discovered, including a clutch of eggs from one of the last remaining tree-breeding Peregrine falcons <*Falco peregrinus*>.

- ***Smuggling of reptiles and amphibians***

This area continues to play a major role in the illegal international trade in protected animal species. Poison-dart frogs (*Dendrobatidae*) are particularly popular. The smuggling methods used range from the simple to the more complex. The frogs are packed into containers (plastic containers, cardboard ice-cream tubs etc.) in large quantities and concealed in suitcases. The quantities involved are growing ever larger. In recent years, various attempts have been made to smuggle between 300 and 700 animals in this way. The perpetrators evidently expected some of the animals to die during transportation or shortly thereafter, in view of the way that so many were packed into such a small space; at a purchase price of approximately \$ 1 in South America, the anticipated profits must have been sufficiently large to cover such losses.

An individual caught smuggling some 150 spiny tailed lizards from South Africa was fined DM 1,500 by the courts, whilst an attempt to smuggle smaller quantities of tortoises resulted in fines of DM 6,000.

- ***Smuggling of tarantulas***

In autumn 1999, customs authorities discovered an attempt to smuggle some 1,300 tarantulas (*Brachypelma spp.*) into Germany, which had been concealed in a cardboard box. These were all adult animals, a large proportion of them pregnant females, whose value was estimated by experts at around DM 260,000. Sadly, due to the appalling conditions, some 120 animals had already died by the time they were discovered. Further investigations revealed that the defendants were planning to register the mature animals, and in particular their expected young, with the nature conservation authorities as having been bred in captivity, so that the animals could subsequently be sold on the open market.

- ***Smuggling of cacti***

The smuggling of living plants, particularly cacti, remains very popular. A basic pattern has emerged. So-called plant lovers travel to countries where there are many species of their preferred plants. Mexico is a favourite destination, whilst the preferred travelling season is winter. The aim of the trip is to take plants from the wild for the traveller's own collection and for exchange with other collectors. Very rare species or particularly old plants are highly coveted. The precise location, species and date are recorded in detailed travel diaries.

These plants are then concealed in suitcases, e.g. between layers of clothes, and smuggled into Germany. The number of plants ranges from around 250 to more than 1,000 per trip. In this way, in the past, significant damage has been inflicted on natural locations; certain species are expected to become extinct because of the collectors' actions.

- ***Smuggling of orchids***

In the same way, so-called orchid lovers make collecting trips to orchid locations in Asia. Several individuals have been fined between DM 2,000 and DM 9,000 for multiple trips to Indonesia and Papua New Guinea, amongst other places.

- ***Smuggling of caviar***

Since 1 April 1998, when all species of sturgeon were placed under protection, infringements relating to the illegal trade in caviar have risen dramatically. In the year 2000, some 6,000 kg of caviar was seized. Many of the violations were committed by private individuals from Eastern Europe carrying 500 g or more for their own consumption, despite a maximum permitted limit of 250 g. There are also cases of organised smuggling using couriers, where import quantities in excess of 100 kg are not unusual. Sentences of 10 months' probation and fines of more than DM 15,000 have been imposed. Generally speaking, fines tend to be in the region of several thousand Deutschmarks. However, there is always a risk that foreign citizens, particularly those from Eastern Europe, will escape German jurisdiction. Only a few are taken into custody immediately, so the penalty is often limited to the security payment withheld by the customs officials. If declared an administrative offence, the Federal Agency for Nature Conservation <BfN> imposes a fine of DM 1,000 per kg for amounts in excess of 1 kg. Fines of up to DM 3,000 have been imposed.

- ***Parts and derivatives***

A Chinese citizen travelling from Bolivia to Hong Kong was found to be carrying one ocelot skin and one jaguar skin, 7 stuffed caymans and 30 crocodile leather products without a Bolivian export permit. He was sentenced to a fine of DM 10,000.

A knife manufacturer who used ivory and walrus penis for his exclusive products, covered them with snakeskin and crocodile skin, and sold them without a permit, was sentenced to 10 months' imprisonment on probation.

The following penalties have also been imposed depending on the quantities involved:

- Ivory carvings (from Asian and African elephants): Fines of up to DM 750
- Whalebones: Fines up to DM 750
- Turtle products: Fines up to DM 900
- Stuffed birds of prey: Fines up to DM 1,500
- Large cats, e.g. lynx skins: Fines: DM 500 upwards
- Reptile leather products
(crocodiles, monitor lizards, snakes): Fines of up to DM 1,000

Administrative Fines

In addition to sentencing by the public prosecutors and courts, the Federal Agency for Nature Conservation <BfN> also imposes fines for unlicensed imports and exports.

The cases of live animals primarily concern unauthorised imports of land tortoises or red-eared sliders <*Trachemys scripta elegans*> from Poland or the Czech Republic, whilst those of stuffed specimens concern birds of prey, owls and cobras, particularly from Poland and the Czech Republic, and leather products from pythons and monitor lizards, and occasionally crocodiles.

In the following examples, fines of DM 1,400 and more were imposed:

- Import of 200 kg of salep (orchid bulbs e.g. of *Tubera salep*), fine: DM 6,000;
- 50 pieces of skin from the Nile crocodile, illegally imported from South Africa, fine: DM 4,500;
- Smuggling of four marginated tortoises from the Czech Republic, fine: DM 2,400;
- Skins of the slender-snouted and Nile crocodiles, illegally imported from Nigeria, fine: DM 2,000;
- Smuggling of three Moorish tortoises from Tunisia, fine: DM 1,600;
- Marketing of a parrot smuggled from Turkey, fine: DM 1,500;
- Leather products from the monitor lizard, illegally imported from Togo, fine: DM 1,500;
- Smuggling of two Moorish tortoises from Turkey, fine: DM 1,400;
- Import of one ivory tusk from Guinea, fine: DM 1,400;

Confiscations and seizures by the Federal Authorities

The procedures by Federal Authorities listed under Table 4 essentially involve seizures at Germany's external borders, particularly at Frankfurt, Munich, Berlin-Tegel, Stuttgart, Leipzig, Düsseldorf and Hanover airports. In 1999, a total of 3.188 seizures were made by 105 participating customs offices at Germany's external borders. According to the latest information, a total of 2.653 seizures were made by 119 participating customs offices at Germany's external borders in 2008.

If protected animals or plants, or parts or derivatives thereof, are imported or exported without the necessary documents, these are seized by the customs authorities, generally taken away from the persons involved and passed to a third party. Confiscation follows within six months of the seizure, in other words, ownership of the specimen is transferred to the Federal Government, unless the seizure is revoked due to the necessary documents being issued retrospectively or for some other reason.

Disposal of confiscated specimens by the Federal Authorities

When protected plant and animal species are confiscated, ownership rights of the confiscated specimens are transferred from the previous owner to the Federal Government or the relevant *Land*. The responsible Federal or *Land* authorities decided on the disposal procedure, i.e. the permanent placement or relinquishment of the confiscated specimens. The Federal Agency for Nature Conservation <BfN> is responsible for the disposal of live animals and plants confiscated by the customs authorities; where parts and derivatives are concerned, strictly protected species are likewise the responsibility of the BfN, whilst in all other cases, the decision is made by the responsible customs authority.

Basic Summary of Enforcement Procedures

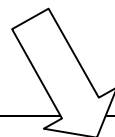
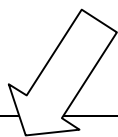
Table 4

Seizures and confiscations

<i>Regulation</i>	<i>Prerequisites</i>	<i>Measure</i>	<i>Competence</i>
§ 21f of the Federal Nature Conservation Act <BNatSchG>	<i>Specimens not accompanied by the required documents, irrespective of whether the importer/exporter is at fault</i>	<i>Seizure and confiscation</i>	Customs
§ 22 of the Federal Nature Conservation Act <BNatSchG>	<i>Lack of proof of legal possession</i>	<i>Seizure and confiscation</i>	<i>Local Management Authorities</i>
§ 30b of the Federal Nature Conservation Act <BNatSchG>	<i>Infringement, offence</i>	<i>Confiscation in addition to a sanction</i>	<i>Management Authority</i>

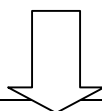
Measure: Seizure and confiscation is a two-stage process. Seizure is a provisional action with the opportunity to submit the required documents within one month, whereby an extension of up to six months may be granted; as a general rule, seizure means that specimens are taken away. In exceptional cases, specimens will be left in the custody of their holders provided that they do not dispose of them. Confiscation is a final action whereby ownership of the specimens is transferred to the state.

Seizure and confiscation
in “objective” procedures



Within the context of customs handling		Within the context of intra-state controls	
Statutory basis:	§ 21f, paragraph 2 of the Federal Nature Conservation Act <BNatSchG>.	Statutory basis:	§ 22, paragraph 4 of the Federal Nature Conservation Act <BNatSchG> in conjunction with § 21f of the BNatSchG
Seizure by	Customs office	Seizure by	Responsible regional authority
Confiscation by	Main customs office	Confiscation by	Responsible regional authority
Disposal by:	Federal Agency for Nature Conservation <BfN> Parts and derivatives: Customs or BfN	Disposal by:	Responsible regional authority

Seizure and confiscation
Within the context of an investigation



Statutory basis:	§ 94 of the Code of Criminal Procedure <StPO> as evidence § 11b of the Code of Criminal Procedure <StPO> as objects liable to confiscation
Seizure by	Customs investigation office or the police
Confiscation:	Legal foundations: § 30b of the Federal Nature Conservation Act <BNatSchG> in conjunction with the Code of Criminal Procedure <StPO> and the Administrative Offences Act <OWiG> a) The responsible courts in criminal proceedings b) The Regional Authorities in proceedings under the Administrative Offences Act <OWiG> c) The BfN in procedures under the Administrative Offences Act <OWiG>
Disposal by:	The regional authorities in cases a) and b) The Federal Agency for Nature Conservation <BfN> in case c)

Table 5

Information on seizures and confiscations by custom offices in 1999

Code	Description	Seizure		Cancelled		Confiscation	
		Proce- dure	Specimen	Procedure	Specimen	Procedure	Specimen
LIA	Live animal	222	No. 5.739 kg 75	40	No. 1.595 kg 75	145	2.491
LIP/SEE CUL/FLO LVS/STE	Live plant, plant parts	94	No. 32.824 kg 31,9	35	No. 32.136 kg 23	43	No. 633 kg 8,9
TUS	Tusk	9	28	1	4	5	17
IVP, IVC	Carving-ivory	55	No. 1.181 kg 4	8	No. 111 kg 4	36	703
LPL, LPS	Leather product (small/ large)	227	1.138	442	594	171	452
TRO/CLA FOO/SKU TAI/TEE/EAR	Trophy part	129	239	51	98	58	87
BOD	Stuffed specimen	138	69.585	16	69.169	116	355
CAP/SCA	Calipee/ scale	31	93	3	12	22	33
SOU	Soup (of turtle)	1	kg 0.3	0	0	1	kg 0.3
SKI/SKP/SID	Skin/ skin piece/ side	90	1.453	45	1.302	34	125
COR,COM	Coral, also manufactured	941	No. 7.026 kg 9	27	No. 209 kg 2,3	914	No. 6.817 kg 21,6
SHE	Shell	1116	No. 2.967 kg 1,2	26	44	1.090	No. 2.923 kg 1.2
MED, SPE	Medicine; blood, tissue	15	No. 561 kg 70	7	460	8	No. 101 kg 70
FEA	Feather	8	230	1	66	7	164
BON, BOC	Bone, carving-bone	8	16	2	5	3	3
HOC, HOR	Carving-horn, horn	5	308	2	3	2	303
EGG	Egg, including caviar	192	No. 212 kg 1.222,1	5	No. 210 kg 499,3	162	No. 2 kg 550,5
MEA	Meat	5	kg 102	1	kg 12	4	kg 90
GAR /CLO	Garment / cloth	12	64	2	3	8	53
HAI	Hair	11	26.920	4	26.863	7	57
DPL/ROO	Dried plant/ root	11	No. 4.132 kg 690,3	5	No. 4.050 kg 685,3	6	No. 82 kg 5
TIM	Cacti-rainstick	251	4.818	26	775	222	4.040
	Total	3.571	No. 159.534 kg 2.220,7	351	No. 137.338 kg 1.300,9	3.063	No. 19.441 kg 747,5

Confiscation - final action: state is owner of the specimen

Status: 10. April 2001

Notes on the confiscations in 1999:

Concerns the following taxa (not complete) and specimens (no. / kg):

Cancelled

LIA	Psittaciformes spp. (35), Aves spp. (628), Testudinidae spp. (121), Trachemys scripta elegans (144), Serpentes spp. (8), Chamaeleo spp. (12), Iguana spp. (7), Lacerta spp. (110), Varanus spp. (57), Ambystoma mexicanum (60), Rana spp. (20), Brachypelma spp. (1.324);
LIP,...	Aloe spp. (2), Tillandsia spp. (8), Cactaceae spp. (109), Cycas revoluta (cancelled: 25,000), Euphorbia spp. (1), Orchidaceae spp. (441);
STE	Orchidaceae spp. (107);
TUS	Loxodonta africana (2), Hippopotamus amphibius (2);
IVC	Loxodonta africana (677), Elephas maximus (26);
TRO/...	Canis lupus (SKU-2), Ursidae spp. (TEE-4), Felidae spp.(TRO-2, SKU-1, TEE-3), Caretta caretta (SKU-1), Crocodylia spp. (TRO-7, FOO-2, SKU-31, TAI-5), Primates spp. (SKU-9), Hippopotamus amphibius (TEE-3), Cetacea spp. (TEE-12);
LPL(S)	Crocodylia spp. (96: 27+69), Serpentes spp. (171: 99+72), Tupinambis spp. (LPS:18), Varanus spp. (82: 37+45);
BOD	Aves spp. (98- Falconiformes spp.-34, Strigiformes spp.-6), Reptilia spp. (57 -Serpentes spp. 36), Brachypelma spp. (49), Lepidoptera (134), Insecta spp. (68,000 cancelled);
CAP	Cheloniidae spp. (10), Testudinidae spp. (24); SCA: Cheloniidae spp. (55);
SID	Caiman crocodilus (cancelled: 931);
SKI(P)	Felidae spp. (13), Reptilia spp.:104 - Crocodylia spp. (58), Boidae spp. (31);
SHE	Achatinella spp. (4), Tridacnidae spp. (763 + 1,2 kg), Strombus gigas (1,966);
FEA	Rhea americana (107), Phoenicopteridae spp. (cancelled: 66), Psittaciformes spp. (14), Falconiformes spp. (37), Strigiformes spp. (6);
HOC	Bubalus arnee (300), Pseudoryx nghetinhensis (3);
EGG	Ambystoma mexicanum (cancelled: 200), Acipenseriformes spp. (590 kg);
MEA	Primates spp. (55 kg), Ursidae spp. (35 kg);
GAR/CLO	Mammalia spp. (15), Crocodylus porosus (29);
HAI	Hystrix cristata (38), Mustela sibirica (cancelled: 26,841), Elephas maximus (18);
DPL	Saussurea costus (1 kg), Cibotium spp. (1 kg), Dioscorea deltoidea (1 kg), Panax quinquefolius (1 kg), Orchidaceae spp. (1 kg);
ROO	Orcidaceae spp. (80), Panax quinquefolius (2), Podophyllum hexandrum (cancelled: 583.2 kg), Cycas revoluta (cancelled: 4,000), Gastroda spp. (cancelled: 100 kg).

Table 6: Information on seizures and confiscations by custom offices in 2000

Code	Description	Seizure		Cancelled		Confiscation	
		Proce- dure	Specimen	Proce- dure	Specimen	Proce- dure	Specimen
LIA	Live animal	208	No. 4.621 kg 50	28	2.235	138	1.691
LIP/LVS	Live plant, leaf	89	No. 20.802 kg 2.2	9	1.755	43	No. 471 kg 2.2
TUS	Tusk	9	15	5	9	3	5
IVC/IVK	Ivory: carving, keyboard	51	313	4	20	31	246
LPL, LPS	Leather product (small/ large)	247	927	52	321	140	382
TRO/CLA FOO/SKU/SKE TAI/TEE/EAR	Trophy and parts of trophy	97	524	34	178	35	83
BOD	Stuffed specimen	137	454	10	38	97	344
CAP/SCA	Calipee/ scale	24	30	1	1	17	20
SOU	Soup (of turtle)	1	kg 6	0	0	0	0
SKI/SKP	Skin, skin piece	102	3.040	34	1.224	36	68
COR,COM	Coral, also manufactured	725	No. 6.199 kg 183,9	21	No. 350 kg 86,8	650	No. 5.750 kg 95,7
SHE	Shell	746	No. 2.272 kg 3,9	27	347	663	No. 1.750 kg 1,48
MED/SPE	Medicine; blood, tissue,	10	No. 1.765 ml 1.026	2	843	7	No. 921 ml 1.026
GAL	Gall	1	ml 25	0	0	0	0
FEA	Feather	13	228	0	0	8	37
BON, BOC, BOP	Bone, carving-bone, piece-bone	7	No. 10 kg 0,5	0	0	4	No. 3 kg 0,5
HOR	Horn	2	2	0	0	2	2
EGG	Egg, including caviar	229	No. 3 kg 661,8	1	kg 8,5	157	No. 3 kg 590,0
EGL	Live egg	1	1	0	0	0	0
MEA	Meat	2	kg 11	0	0	1	kg 11
GAR /CLO	Garment, cloth	16	25	5	8	4	9
HAI	Hair	14	No. 440 kg 0,3	2	No. 3 kg 0,3	4	9
ROO/EXT	Root, extract	15	No. 464 kg 76,5	5	No. 12 kg 29,11	3	kg 30,73
SAL	Saw-logs	2	29	2	29	0	0
TIM	Cacti-rainstick	182	483	19	85	129	218
	Total	2930	No. 42.647 kg 996,1 ml 2.121	261	No. 7.450 kg 124,7	2.172	No. 2.012 kg 731,6 ml 1.026

Confiscation - final action: state is owner of the specimen

Status: 10 April 2000

Notes on the confiscations in 2000:

Concerns the following taxa (not complete) and specimens (no. / kg):

Cancelled

- LIA Falco cherrug (8), Psittaciformes spp. (62), Aves spp. (612), Cheloniidae spp. (6), Testudinidae spp. (90, seizure: 292; Kinixys spp.-168), Trachemys scripta elegans (61), other Testudinata spp. (11), Phelsuma spp. (seizure: 410), Iguana iguana (cancelled: 1,102), (Dendrobates (740), Ambystoma mexicanum (21), Pandinus imperator (100);
- LIP Aloe spp. (seizure: 295), Cactaceae spp. (351), Euphorbia spp. (21, seizure: 199), Orchidaceae spp. (101, seizure: 19,849); Panax quinquefolius (2.2 kg);
- TUS Elephantidae spp. (5);
- IVC Elephantidae spp. (246);
- TRO/... Canis lupus (TRO-2), Ursidae spp. (CLA-3, SKU-1, TRO-1), Felidae spp.(TRO-1, CLA-9, TEE-13), Tayassuidae spp.(TEE-9), Cheloniidae spp.(SKU-1), Crocodylia spp. (FOO-5, SKU-21, TEE-10), Primates spp. (SKU-1), Hippopotamus amphibius (SKU-1);
- LPL(S) Crocodylia spp. (76:10+66), Serpentes spp. (216:156+60), Tupinambis spp. (LPS: 4), Varanus spp. (45: 19+26);
- BOD Aves spp. (76- Falconiformes spp.-28, Strigiformes spp.-8), Reptilia spp. (60 -Serpentes spp. 36), Brachypelma spp. (4), Lepidoptera (130), Pandinus imperator (81); Hippocampus spp. (25);
- CAP Cheloniidae spp. (6), Testudinidae spp. (7);
- SKI(P) Ursus arctos (2), Carnivora spp. (10 -Felidae spp.-5), Crocodylia spp. (9), Boidae spp. (9), Varanus spp. (SKP: 5);
- SHE Hippocampus spp. (11), Tridacnidae spp. (190), Strombus gigas (309 + 1,48 kg);
- FEA Psittaciformes spp. (37), Buteo spp. (1); Pavo muticus (99);
- EGG Acipenseriformes spp. (590 kg);
- MEA Crocodylia spp. (11 kg);
- GAR/CLO Mammalia spp. (3), Boidae spp. (5);
- HAI Hystrix cristata (81 - seizure: 431), Loxodonta africana (4);
- ROO Saussurea costus (25 kg), Panax quinquefolius (5,7 kg);
- EXT seizure: Moschus moschiferus (225), Panthera pardus (225).

Main Challenges

- **Low Penalties when finally penalties are applied**

Most cases are still regarded as minor offences. Low or even no penalties will not have any preventive effect. Prosecutors and judges have to understand the impact of environmental crime (see cacti example within section ‘Special Cases of Infractions’). Therefore (more) training needs to be carried out and prosecutors and judges should research or at least have means to research background information. Useful background information could be e.g. level of endangerment, population size, commercial value, market situation in the country of origin etc (F. Böhmer and M. Müller-Boge, CITES Management Authority of Germany, *pers. comm.* to TRAFFIC Europe, August 2001).

- **Challenges with investigations which depend on international co-operation**

In this regard it is especially difficult to investigate if non-residents are involved Receiving information from other authorities takes much time. Here, informal inquiries are very useful though cannot be submitted at Court. International co-operation especially beyond the European Union needs to be improved (F. Böhmer and M. Müller-Boge, CITES Management Authority of Germany, *pers. comm.* to TRAFFIC Europe, August 2001 and R. Simon, German Customs Investigation Service, *pers. comm.* to TRAFFIC Europe, September 2001).

Note: the issue of violators non resident in Germany is an issue to be dealt with independently. It is a specific problem how to enforce sanctions against violators that are no German residents. In Germany one should mention § 132 criminal procedural act which provides for bails. Another option is nomination of a representative for the service of writs or accusations. If customs authorities do not use this option one can only resort to informing responsible authorities in the violators home member state. It depends on the respective states legislation whether the authorities can actually sanction unlicensed import. German nature conservation law authorizes authorities to sanction violations against Art. 4 Regulation EC No. 338/97 committed in other Member States by German residents. However, investigations abroad cannot be carried out in foreign states (M. Müller-Boge, CITES Management Authority of Germany, *in litt.* to TRAFFIC Europe, March 2002).

- **International co-operation among prosecutors**

International co-operation among judicial experts is missing as well. Therefore building up a European Network would be helpful for the prosecution (A. Kreutz and M. Stotz, Prosecutors Office in Frankfurt/Main, *pers. comm.* to TRAFFIC Europe, October 2001).

- **National Co-operation**

Another example is information flow: different authorities have access to different databases. Therefore police do not have access to databases of the fiscal authorities, however, this would be useful as illegal import is reported here as well (R. Simon, *pers. comm.* to TRAFFIC Europe, September 2001). (Note: This is a well-known challenge, which is often discussed in the Enforcement Working Group of the EU. As there exist different information channels – customs (WCO), police (Interpol) and management authorities (CITES Secretariat) – the problem is obvious and probably cannot be helped. As the enforcement official would have to report to three channels, the negative impact is that the administrative workload on reporting is often regarded as unnecessary. (M. Müller-Boge, CITES Management Authority of Germany, *in litt.* to TRAFFIC Europe, March 2002)

- **Need for training of prosecutors and judges**

As crime related to wildlife trade makes up only a very small percentage of crime in total, prosecutors and judges do not always have the requisite knowledge and experience needed to deal with such cases. By establishing an environmental crime unit within the office of public prosecution, more specialization would be supported which could lead to more adequate penalties (A. Kreutz and M. Stotz, Prosecutors Office in Frankfurt/Main, *pers. comm.* to TRAFFIC Europe, October 2001).

- **Different awareness and ethical sense of animal welfare and species conservation**

Probably due to more acceptance in society - offences against animal welfare seems to receive more severe penalties compared to infractions involving wildlife trade tend to be penalized at the lower range of penalties which can be imposed according to law (F. Böhmer and M. Müller-Boge, CITES Management Authority of Germany, *pers. comm.* to TRAFFIC Europe, August 2001).

- **Different legislation in the Member States can result in problems in the prosecution**

Harmonization of substantive (especially criminal law, *Actus Reus* and amount of penalties) and procedural law is desirable to adequately demonstrate the relevance of protection of species issues in implementing international and supranational legislation. It is desirable to view violations of species protection legislation not only as misdemeanors. Organised crime in this field should be prosecuted uniformly with the same intensity throughout the EU (A. Kreutz and M. Stotz, Prosecutors Office in Frankfurt/Main, *pers. comm.* to TRAFFIC Europe, October 2001).

Note: it should be referred to Art. 16 para 2 Regulation EC No. 338/97 which could oblige member states to create legislation providing for a framework ensuring equal and adequate sanctions across the member states. Member states with lower amounts of penalties might “invite” violators. On the other hand, too severe sanctions for minor violations might damage the acceptance of legislation concerning enforcement of CITES violations. Affected German citizens have already complained with the CITES authorities (M. Müller-Boge, CITES Management Authority of Germany, *in litt.* to TRAFFIC Europe, March 2002).

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in Greece

Stefanos Vogiatzis, CITES Management Authority of Greece

Statistical and Factual Information on Court Cases

The vast majority of CITES issues that Greece deals with comes from specimens being imported. Only a few export permits are issued every year exclusively for research, scientific or other non-commercial purposes, for indigenous wild species, due to strict national legislation for endemic fauna and flora. Violations are mainly for illegal imports or possession of CITES specimens.

A number of wildlife crime cases were investigated and according to the provisions, the violators were sent to the Court of Justice. Table 1 shows some of the main wildlife crime cases investigated by Forest Service District Offices. Administrative penalties were also given to those caught breaking the law. Court procedures require a long period of time in order to reach the final decision and consequently to know if the seized specimens shall become confiscated.

Because of this long time span between seizure and confiscation of the specimens, a great problem has arisen concerning proper holding facilities for live animals. Taking the above-mentioned into consideration it is concluded that the Country needs to have proper holding facilities appropriate for the primary wildlife species found in trade. Such holding facilities require a large budget. Such a facility is usually difficult to fund for many countries. On the other hand there is a great need for specific holding facilities. For instance Greece is in a great dilemma what to do with five seized tigers from an Italian Circus as well as with two seized crocodiles. It is possible that the proposal to create a European holding facility could be particularly helpful in solving this problem.

Table 1

Court Cases in Greece

Date and Court, Court Case Number	Species involved	Protection Status	Countries	Offence	Law	Penalty	Date of seizure and date of first report of offence	Details
30.08.1996 first report (Lawsuit) Court of Justice/Island of Kos	1 Lion and 1 hawk	App. I / Annex A	Unknown	Illegal possession of wild animals	Legislative Decree 86/69, article 258 Law 2055/92 Ratification of CITES Convention Common Ministerial Decision 261554/85	Not guilty 20.01.2000	13.08.1996	The Lion was transferred to U.K.(THE BIG CAT FOUNDATION) and the Hawk to reception place of Aigina
22.03.2000 first report (Lawsuit) Athens Court of Justice	2 Crocodiles	App. II / Annex B	Unknown	Illegal possession of wild animals	Regulation (EC) 338/97 Legislative Decree 86/69, article 258 Law 2637/98, Articles 57 par.5b Common Ministerial Decision 331794/99	Not Court decision yet	22.03.2000	
16.11.2000 first report (Lawsuit) Court of Justice/Island of Kephallonia	1 Lion, 1 Leopard, 2 Chitas and 1 carved ivory	App. I / Annex A	S. Africa	Illegal importation and possession of wild animal specimens	Regulation (EC) 338/97 Law 2637/98, Articles 57, 58	Not Court decision yet	16.11.2000	The specimens were imported from S. Africa 10 years ago. The species (Lion, Leopard and Chitas) are stuffed
20.12.2000 first report (Lawsuit) Katerini Court of Justice	1 Eretmochelus impuratus	App. I / Annex A	Unknown	Illegal possession and trade of wild animal	Regulation (EC) 338/97 Law 2637/98, Articles 57, 58	Not Court decision yet Administrative penalty 200.000 Greek Drachmas	28.08.2000	Shell of marine turtle
29.12.2000 first report (Lawsuit) Kastoria Court of Justice	84 skins of Felix lynx	App. II / Annex A	Russia	Illegal importation of wild animal specimens	Regulation (EC) 338/97 Legislative Decree 86/69, article 258 Law 2637/98, Articles 57 par.5b Common Ministerial Decision 331794/99	Not Court decision yet Administrative penalty 1.000.000 Greek Drachmas	25.09.2000	Return back to the export country (Russia)
9.01.2001 first report (Lawsuit) Katerini Court of Justice	1 Eretmochelus impuratus	App. I / Annex A	Unknown	Illegal possession and trade of wild animal	Regulation (EC) 338/97 Law 2637/98, Articles 57, 58	Not Court decision yet Procedures to impose administrative penalty	9.01.2001	Shell of marine turtle
18.04.2001 first report (Lawsuit) Lagada Court of Justice	1 Cercopithecus dianna	App. I / Annex A	Unknown	Illegal possession of wild animal	Regulation (EC) 338/97 Law 2637/98, Articles 57, 58	Not Court decision yet Procedures to impose administrative penalty	18.04.2001	

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in Italy

Corpo Forestale dello Stato/Italy

Seizures in 1999 and 2000

During 1999 16 566 controls and 372 seizures have been carried out, both in the national territory and in customs area, corresponding to 5604 specimens seized, of which 3% Mammals, 13% Reptiles and 84 % Birds, Invertebrates and Plants.

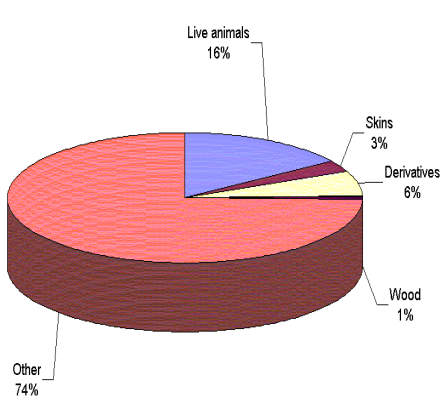
During 2000 30 485 controls and 499 seizures have been carried out, both in the national territory and in customs area, corresponding to 26 000 specimens seized, of which 2% Mammals, 86% Reptiles and 12 % Birds, Invertebrates and Plants.

These data are reported in the following tables on the basis of the main categories and taxa.

Table 1

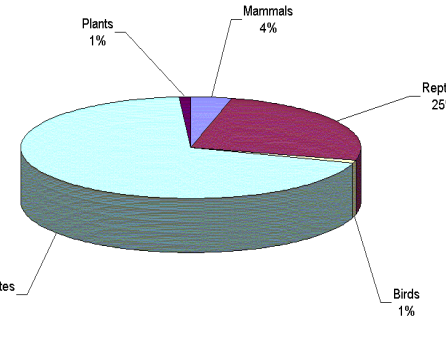
Specimens seized by National CITES Service of State's Forest Corps in 1999

<i>1999 Specimens seized by National CITES Service of State's Forest Corps Tot. 5604</i>	
<i>MAIN CATEGORIES</i>	<i>N.</i>
<i>Live animals</i>	<i>869</i>
<i>Skins</i>	<i>152</i>
<i>Derivatives</i>	<i>349</i>
<i>Live plants</i>	<i>10</i>
<i>Wood</i>	<i>35</i>
<i>Other (dead animals, invertebrates, eggs)</i>	<i>4189</i>



Category	Percentage
Other	74%
Live animals	16%
Derivatives	6%
Skins	3%
Wood	1%

<i>MAIN TAXA</i>	<i>N.</i>
<i>Mammals</i>	<i>215</i>
<i>Reptiles</i>	<i>1402</i>
<i>Birds</i>	<i>66</i>
<i>Invertebrates</i>	<i>3861</i>
<i>Plants</i>	<i>60</i>



Taxa	Percentage
Invertebrates	69%
Reptiles	25%
Mammals	4%
Plants	1%

Table 2

Specimens seized by CITES Certification Services of State's Forest Corps in 1999

1999 <i>Specimens seized by</i> CITES Certification Services of State's Forest Corps Tot. 983		
<i>MAIN TAXA</i>	<i>N.</i>	
<i>Mammals</i>	84	
<i>Reptiles</i>	778	
<i>Birds</i>	29	
<i>Invertebrates</i>	67	
<i>Plants</i>	25	

Table 3

Specimens seized at Customs by CITES Operative Units of State's Forest Corps in 1999

1999 <i>Specimens seized at Customs by</i> CITES Operative Units of State's Forest Corps Tot. 4621		
<i>MAIN CATEGORIES</i>	<i>N.</i>	
<i>Live animals</i>	869	
<i>Skins</i>	152	
<i>Derivatives</i>	317	
<i>Wood</i>	35	
<i>Other (dead animals, invertebrates, eggs)</i>	3248	

<i>MAIN TAXA</i>	<i>N.</i>	
<i>Mammals</i>	131	
<i>Reptiles</i>	624	
<i>Birds</i>	37	
<i>Invertebrates</i>	3794	
<i>Plants</i>	35	

Table 4

Specimens seized by National CITES Service of State's Forest Corps in 2000

2000 <i>Specimens seized by National CITES Service of State's Forest Corps</i> Tot. 26 000		
<i>MAIN CATEGORIES</i>	<i>N.</i>	
<i>Live animals</i>	20 784	
<i>Skins</i>	53	
<i>Derivatives</i>	2256	
<i>Plants</i>	2093	
<i>Other (dead animals, invertebrates, eggs)</i>	815	

<i>MAIN TAXA</i>	<i>N.</i>	
<i>Mammals</i>	572	
<i>Reptiles</i>	22 387	
<i>Birds</i>	167	
<i>Invertebrates</i>	834	
<i>Plants</i>	2041	

Table 5

Specimens seized by CITES Certification Services of State's Forest Corps in 2000

2000 <i>Specimens seized by CITES Certification Services of State's Forest Corps</i> Tot. 819		
<i>MAIN TAXA</i>	<i>N.</i>	
<i>Mammals</i>	55	
<i>Reptiles</i>	676	
<i>Birds</i>	39	
<i>Invertebrates</i>	49	
<i>Plants</i>	-	

Table 6

Specimens seized at Customs by CITES Operative Units of State's Forest Corps in 2000

<i>2000</i> <i>Specimens seized at Customs by</i> <i>CITES Operative Units of State's Forest Corps</i> <i>Tot. 25 182</i>												
<i>MAIN CATEGORIES</i>	<i>N.</i>											
<i>Live animals</i>	<i>20 107</i>	<table border="1"> <caption>Data for Live Animals Pie Chart</caption> <thead> <tr><th>Category</th><th>Percentage</th></tr> </thead> <tbody> <tr><td>Live animals</td><td>80%</td></tr> <tr><td>Derivatives</td><td>9%</td></tr> <tr><td>Plants</td><td>8%</td></tr> <tr><td>Other</td><td>3%</td></tr> </tbody> </table>	Category	Percentage	Live animals	80%	Derivatives	9%	Plants	8%	Other	3%
Category	Percentage											
Live animals	80%											
Derivatives	9%											
Plants	8%											
Other	3%											
<i>Skins</i>	<i>53</i>											
<i>Derivatives</i>	<i>2166</i>											
<i>Plants</i>	<i>2041</i>											
<i>Other (dead animals, invertebrates, eggs)</i>	<i>815</i>											

<i>MAIN TAXA</i>	<i>N.</i>													
<i>Mammals</i>	<i>517</i>	<table border="1"> <caption>Data for Main Taxa Pie Chart</caption> <thead> <tr><th>Taxa</th><th>Percentage</th></tr> </thead> <tbody> <tr><td>Reptiles</td><td>86%</td></tr> <tr><td>Plants</td><td>8%</td></tr> <tr><td>Invertebrates</td><td>3%</td></tr> <tr><td>Mammals</td><td>2%</td></tr> <tr><td>Birds</td><td>1%</td></tr> </tbody> </table>	Taxa	Percentage	Reptiles	86%	Plants	8%	Invertebrates	3%	Mammals	2%	Birds	1%
Taxa	Percentage													
Reptiles	86%													
Plants	8%													
Invertebrates	3%													
Mammals	2%													
Birds	1%													
<i>Reptiles</i>	<i>21 711</i>													
<i>Birds</i>	<i>128</i>													
<i>Invertebrates</i>	<i>785</i>													
<i>Plants</i>	<i>2041</i>													

Seizures/Confiscations of live Specimens of Annex B and C at Point of Introduction

During 1999, 869 live specimens have been seized in designated points of introduction, of which 56% were Reptiles, 41% Others (amphibians, molluscs), 2% Birds and 1% Mammalian from a total of 158 480 specimens checked (see table below).

In 2000 the seizures concerned 22,148 specimens, of which 91% were Reptiles and 9% Plants of 6 482 219 checked (see table below).

Table 7: Specimens seized in 1999

SPECIMENS SEIZED IN 1999	
<i>MAIN TAXA</i>	<i>No.</i>
Mammals	5
Reptiles	493
Pisces	-
Birds	16
Plants	-
Other(amphibian, molluscs)	355
TOT.	869

A 3D pie chart illustrating the distribution of specimens seized in 1999. The largest slice is Reptiles at 56%, followed by Other at 41%, Birds at 2%, and Mammals at 1%.

Table 8: Specimens seized in 2000

SPECIMENS SEIZED IN 2000	
<i>MAIN TAXA</i>	<i>No.</i>
Mammals	2
Reptiles	20 093
Amphibian	-
Birds	12
Pisces	-
Invertebrates	-
Plants	2041
TOT.	22 148

A 3D pie chart illustrating the distribution of specimens seized in 2000. Reptiles account for 91% of the total, and Plants account for 9%.

Table 9: Specimens confiscated by the National CITES Service

SPECIMENS CONFISCATED IN 1999/2000	
<i>MAIN TAXA</i>	<i>N.</i>
Mammals	4
Reptiles	407
Amphibian	-
Birds	144
Pisces	-
Invertebrates	-
Plants	-
TOT.	555

A 3D pie chart illustrating the distribution of specimens confiscated by the National CITES Service. Reptiles account for 73%, Birds for 26%, and Mammals for 1%.

Basic Summary of Enforcement Procedures

If customs, police and the National Forestry Corps suspect an illegal action, they can carry out all the necessary controls and once an illegality is discovered the law allows for the seizure of the items, which are then stored by National Forestry Corps, who, after having had the approval of the Scientific Commission, rehome the specimens as appropriate in case of doubt they can ask the support of a scientific expert.

There is no fixed timeperiod between seizures and court sentences and the penalties can vary depending on the nature of crime.

Infringements and legal Actions - Steps to ensure Compliance

As mentioned above Law 150/92 determines the specific penalties to prosecute infringements to CITES and EC Regulations, giving power to the State's Forest Corps, which has police status being also a competent Management Authority.

Since the introduction of the free market in the EU it has been clear that proper customs controls are crucial to properly implement CITES and related EU Regulations.

The use of non-designation ports of entry has been highlighted as one of the main problems for the introduction of illegal consignments of fauna and flora. Important and complicated investigations has been carried out using instruments and techniques that were new to the field of protected fauna and flora but that are commonly used in the prosecution of crimes connected to the illegal trade of drugs and weapons. It has been possible to add to the offences related to the CITES legislation those of certain articles of the penal Code for example laundering, criminal association, forgery and falsification of documents. Moreover, an extremely valuable tool has been constituted by the full participation and the consequent exchange of information represented by the INTERPOL Group on Wildlife Crime and its associated Police Corps, as well as the collaboration with forensic laboratories, and research institutes with the use of new identification techniques that proved to be an indispensable source of evidence during the presentation of criminal cases to Court.

Factual Summary on selected Cases

Apart from the cases, which were presented during the workshop (described in the article "Enforcement in Italy", by Marco Fiori & Cristina Avanzo, in this volume), some of the most significant infringements are summarised below:

OPERATION "VIPER"

Carried out by the Central Unit of the CITES Service of the Forest Corps and by the Provincial Office of the Forest Corps of Sienna, in collaboration with INTERPOL and the Australian Embassy in Italy.

Date: 1999-2000 (still in progress)

Species involved: Poisonous and non-poisonous reptiles: *Pseudonaja textilis*, *Acanthophis pirrhus*, *Tiliqua ugosia*, *Clamydosaurus* spp.

Specimens seized: 15

From the beginning, this operation turned out to be of significant importance, not only as to the numbers of specimens involved, but, most of all, owing to the peculiarity of the illegal activity under investigation. Different crimes had been committed by the same people who were responsible for taking the wild CITES specimens in Australia, for their export/import from and to the Country, through the air mail and parcel post channel, so highlighting a new route for reptiles illegal trade.

OPERATION "MAXIMUS"

Carried out by the Central Unit of the CITES Service of the State's Forest Corps, together with CITES Services of the State's Forest Corps of Civitanova Marche and Pescara.

Date: 2000

Species involved: *Elephas maximus*

Specimens seized: 2

Operation aimed to investigate the re-use of CITES certificates referred to specimens exported from Italy in the years '80 and now dead, falsified to cover the illegal export of wild specimens.

OPERATION "7X1"

Carried out by the Central Unit of the CITES Service of the State's Forest Corps, together with the Service CITES of the Forest Corps of Forli and the Provincial Office of the State's Forest Corps of Ravenna.

Date: 2000

Species involved: *Panthera tigris*

Specimens seized: 3, one with white coat

Operation aimed to investigate illegal import of specimens, according to the Italian ministerial Decree to regulate the keeping of dangerous animals, in application of EC Regulation 338/97.

OPERATION "VIETNAM"

Carried out by the Central Unit of the CITES Service of the State's Forest Corps, together with the Provincial Office of the State's Forest Corps of Frosinone and the Vietnam CITES Authority

Date: 2000

Species involved: *Leiothrix argenteauris*

Operation aimed to investigate an attempted illegal import of the above species, carried out by crudely falsifying the CITES permits, in order to comply with the expiry date of the certificate of origin of the specimens.

There has been a great deal of information coming from the CITES Service of the State's Forest Corps on the introduction of caviar (*Acipenseriformes* spp.) by passengers as personal belongings.

A survey performed in the years 1999 - 2000, has pointed out that the illegal introduction of caviar in Italy is more frequent in the Roma - Fiumicino and, especially, Bologna – Borgo Panigale and Rimini – Miramare airports, where the number of direct flights from/to Eastern-Europe countries (particularly from the Russian Federation) feeds a considerable amount of illegal trade of caviar in passengers' baggage. The CITES Operative Units of State's Forest Corps have seized, in about two years, more than 150 kilos of caviar, in Bologna and in Roma-Fiumicino airports. This quantity is very high, considering that it is made up only of caviar introduced as passengers personal belongings. Azerbaijan, Iran, Moldavia, Uzbekistan, Romania and Russia were the countries involved.

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in Luxembourg

Daniel Koener, Luxembourg Customs and Excise Administration &
Marie-Paule Kremer, Ministry of Environment/ CITES Management Authority of Luxembourg

Statistical Information on Confiscations

After having consulted our records of all CITES offences from 1990 - 2001, and after having questioned the colleagues who were responsible for CITES matters at Luxembourg Customs before, it appears that since 1995 no cases were brought to court, but that all smuggled items have been confiscated.

Since 1993, the only external EU border is the International Airport of Luxembourg. Customs detects about 12 to 15 offences against CITES regulations a year. Cases of seized merchandise from non-passenger flights are very rare. Most of the offences are committed by passengers who transport in their personnel luggage items which come under CITES regulations. In most cases these passengers ignore that they cannot import things like ivory carving, clothes, shoes and other items manufactured from reptiles' skins, traditional Chinese medicine, etc.

Last year, Customs stopped one passenger with 17.5 kilos of caviar in his luggage.

In 2000 a cargo shipment with 100 live snakes was intercepted. This shipment was covered by CITES import certificates, but Customs and CITES Management Authorities had some doubts about their authenticity. Within a few days of import nearly all the animals died.

Two years ago Customs discovered 2 live parrots in a suitcase of a passenger. They were confiscated and are now living in an animal park in Luxembourg.

Our national CITES legislation goes back to 1989, but a new law for the implementation of CITES is now being developed. (See: "Enforcement of International Wildlife Trade Controls in Luxembourg," by Robert Seelig, in this volume.) Under this new law, the jurisdiction of Customs officers will be expanded. In the future Customs will be formally allowed to make CITES checks not only at the external border but throughout the national territory as well, including checks in animal shops, fur shops, etc. In the same way the Public Prosecutor can direct customs officers to investigate CITES offences.

Apart from Customs and Excise, the following administrations are competent in CITES-Enforcement:

- Ministry of Environment and Administration (co-ordination, general responsibility)
- Veterinary Inspection (animals)
- Ministry of Agriculture (plants)
- Officers of the National Historical Museum (Scientific experts)
- Police officers

Seizures

The following tables contains a brief overview of the CITES seizures from 1995 to 2001. This shows the number of seizures is decreasing. However, it is not possible to extrapolate a general trend because there are too many variables. In addition, the sample size is not large enough to permit any extrapolation.

It would be interesting to make a comparison with other airports of the same class. A possible cause for the decrease of seizures after 1995 could be the cessation of the Aeroflot-flights to the South Americas (LIMA-LUXEMBOURG-MOSCOW), whose passengers were often intercepted with CITES-specimens.

To make an objective/valid trend analysis for airports would require a large financial and time commitment to obtain the necessary information, such as the following:

1. Number of passengers
2. Are passengers on business flights or tourist flights?
3. What airlines are connected with certain countries? (For drug smuggling, some airlines are used more than others by the carriers.)
4. Countries of origin of the flights (in Europe, some countries still have particular affiliations to their former colonies, in South Africa or in South America, a situation that can be favourable to the legal and illegal commerce of CITES-specimens.)
5. The political situation in the countries of origin can be a determining factor, as well as any planned CITES-amendments: The plan to reduce or even ban the sale of caviar from the Caspian sea in 2002 might lead to an increased risk of fraud for this particular product next season.
6. What is the priority given by Customs administration regarding CITES- issues? Which training do they get for CITES? Which technical tools are available for identification of CITES specimens (guides, multimedia, samples)?
7. Which experts are available easily and at any time of the day for questions or problems (for example: detention and care of live animals)?

The priority given to CITES is very different. Some countries have their own CITES-team at the airport Customs, unfortunately we do not have such a resource. All agents have other duties besides CITES.

Table 1

1995: 22 seizures

Species	Seizures	Article	Origin
Elephantidae	8	Ivory statues, jewellery, other	Nigeria, Senegal, South Africa, Congo, Zimbabwe, Japan, Togo
Crocodylia	5	Trophies, jewellery, shoes, clothes, handbags, bags	Senegal, Thailand, USA, Togo
Boidae	6	Bags, handbags, belts, shoes	Senegal, Congo, USA, Togo Indonesia
Testudinidae	1	1 turtle shell	Senegal
Sauria	1	Handbag	Cameroon
Felidae	1	Lynx fur	Russia/ Siberia

Source: D. Koener, Luxembourg Customs and Excise Administration

Table 2

1996: 7 seizures

Species	Seizures	Article	Origin
Crocodylia	4	Trophy, handbags, belts	Madagascar
Serpentes	2	Purses, shoes, bags	Senegal
Elephantidae	1	Ivory statue	Senegal

Source: D. Koener, Luxembourg Customs and Excise Administration

Table 3

1997: 1 seizure

Species	Seizures	Article	Origin
Boidae	1	Handbag	Nigeria

Source: D. Koener, Luxembourg Customs and Excise Administration

Table 4

1998: 4 seizure

Species	Seizures	Article	Origin
Boidae	2	Snake skin, bag	Abidjan
Stylophora ssp	1	Corals	USA, Vietnam
Crocodylia	1	Handbags	Nigeria

Source: D. Koener, Luxembourg Customs and Excise Administration

Table 5

1999: 10 seizures

Species	Seizures	Article	Origin
Elephantidae	1	Ivory statues	South Africa
Hippopotamidae	1	Trophy (tooth)	South Africa
Tridacnidae	2	Giant clams	Martinique, Dominican Rep.
Canis lupus	1	Wolf skin	Russia
Crocodylia	1	Handbag	Cameroon
Acipenseriformes	1	200 gram Caviar (over free quantity)	Russia
Boidae	1	Handbag	Nigeria
Psittacidae	1	2 live grey parrots	Benin
Boidae	1	Leather purses	Ghana

Source: D. Koener, Luxembourg Customs and Excise Administration

Table 6

2000: 3 seizures

Species	Seizures	Article	Origin
Acipenseriformes	1	17.5 kg Caviar	USA
Boidae	1	Leather vest	Benin
Acipenseriformes	1	200 gram caviar beyond free quantity	Russia

Source: D. Koener, Luxembourg Customs and Excise Administration

Table 7

2001: 3 seizures

Species	Seizures	Article	Origin
Testudinidae	1	1 Turtle shells	Senegal
Crocodylida	1	1 Leather bag	Nigeria
Boidae	1	9 purses, 3 leather bags	Senegal

Source: D. Koener, Luxembourg Customs and Excise Administration

Basic Summary of Enforcement Procedures

In passenger, cargo or postal traffic controls, if Customs suspect goods without CITES documents could come under CITES regulation, they do retain these items and provide a provisional report to the Public Prosecutor. These provisional measures have to be validated by an examining judge within five days. After this validation, a legal opinion ('expert analysis') is given by an expert from the National Historical Museum. If the result of this is negative, the items are returned to the owner. If it is positive a formal report is provided to the Public Prosecutor who, in regard to Article 12 of the national Law, has the opportunity to proceed at court. If the smuggler voluntarily gives up his merchandise, no formal procedures will take place, and the only penalty will be confiscation.

In case of problems with existing CITES documents, Customs officers do retain these items provisionally and ask the Management Authority for more details (for example waiting for the originals to arrive/copies to be confirmed by other Management Authorities). If it is not possible to validate import permits, it is sometimes decided to immediately send the merchandise back to the importer (at the expense of the airline or importer), without the intervention of the prosecutor.

Main Challenges

- Very often the offenders are non-residents, so that a formal procedure at court would become very complicated and expensive.
- For some species of exotic animals (like snakes), there are no experts within direct reach or even in the country, and have to be contacted, for instance at foreign Universities or detention facilities (identification, care).
- If there is a seizure of live animals, problems can arise in trying to house them because there are no zoos or detention facilities in Luxembourg.
- When goods enter through another point of entry of the community that is different from the final destination, coordination and information exchange could be better between these different offices. - For instance, it may occur that a cargo of CITES enters the EU at one place, even if the end destination has already refused or is about to refuse the import permit. - It may also occur that the 'personal effects' derogation is handled differently from Member State to Member State, even between some points of entry, a fact which is well known by some passengers who are always looking for the "easy way".
- When a passenger is stopped at Luxembourg-Airport with some CITES items in his baggage, we often notice that many (tourists) ignore CITES regulations.

Therefore the concerned administrations: Customs, Ministry of Environment and the National Historical Museum organised during May 2001, as part of the framework of the International Fair of Luxembourg, an exhibition with the aim to raise the awareness of the public to CITES issues. At this exhibition, we showed seized CITES articles, distributed leaflets, and answered to a lot of questions from a very interested public. This travelling exhibition is preserved and stored by the National Historical Museum and offered to potential users as educational material (for schools or other training events).

We also installed a show-window in the departure hall at Luxembourg-Airport containing some typical CITES items, which should not be imported as souvenirs from when travelling to exotic countries. The same leaflets as we had for the exhibition are distributed among the passengers.

Drawing a conclusion of all this, we think that information and prevention measures are at least as important as legal sanctions in order to prevent Wildlife Crime and the illegal trade of endangered species.

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in the Netherlands

Alexander Koning, CITES Management Authority of the Netherlands.

This article reflects his personal opinion and should therefore not be considered as the official opinion of the Dutch government.

Statistical Information on Court Cases and Seizures

Many of the goods seized in the Netherlands are brought into the country by private persons, and are made up largely of souvenirs from abroad. WWF and CITES-authorities have recently (2001) launched a project to raise peoples awareness of the rules in place. Many seized goods also concerned Traditional Chinese Medicines (TCM). In 2000 a TCM project was launched (Anon. 2001 b).

The General Inspection Service (AID) in the Netherlands, specifically targeted CITES-matters: 1999 – 2000

Table 1

Compliance with CITES regulations

	Number of “targeted” Inspections	Number of offences	Number of official reports	Number of official warnings
1999	1116	120	112	8
2000	796	66	61	5

Source: Anon. 2001 b

Table 2

Compliance with animal transport regulations, IATA rules

	Number of “targeted” Inspections	Number of offences	Number of official reports	Number of official warnings
1999	443	34	29	5
2000	386	25	21	4

Source: Anon. 2001 b

Table3**Seizures in the Netherlands 1999 – 2000**

Description of specimens	Number of seizures in 1999	Number of seizures 2000	Remarks
Live animals	70	52	Complete list included
Ivory objects	26	39	Most jewellery and small carved objects
Caviar	25	24	Largest seizure: 5000 grams
Meat	44	32	Most meat of <i>Strombus gigas</i> and <i>Crocodylus</i> spp.
Medicines with (root of) Ginseng (<i>Panax quinquefolius</i>)	214	319	Not always recognizable as roots; largest seizure: 5147 grams
Medicines with <i>Equus</i> spp. (E-JIAO)	202	293	
Medicines with Musk	38	57	
Medicines with gallbladder from Bears	6	Not registered	
Medicines with <i>Panthera</i> spp.	21	34	Mostly plasters
Other Chinese medicines, ingredients not specified	222	192	
<i>Strombus gigas</i>	255	199	Empty shells, most small seizures
<i>Tridacna</i> spp.	155	110	Empty shells, most small seizures
Corals	546	529	Most small seizures (< 10 pieces)
All other dead animals parts or products thereof	129	129	Exclusive all separate mentioned items
(Live) plants, incl. Bulbs	55	26	Largest seizures: 4000 <i>Orchidaceae</i> spp; 900 <i>Cactacea</i> spp.
Dead (parts of) plants, excl. rainsticks	52	33	
Rainsticks	107	76	Most seizures < 5 pieces
TOTAL AMOUNT	2167	2144	

Source: Anon. 2001 b

Basic Summary of Enforcement Procedure and Policy

The Public Prosecutor and the Ministry of Agriculture, Nature Management and Fisheries have a common responsibility regarding the enforcement of issues which are related to nature management. The General Inspection Service (AID), Customs Authorities and the Police are responsible for seizures. The Public Prosecutor plays a leading role in determining whether a seizure or a prosecution is the appropriate action to take. Aspects that concern criminal procedures are laid down in *het Wetboek Strafvordering* (the Criminal Procedure Act). In the *Besluit Inbeslaggenomen Voorwerpen* (Decree on Confiscated Goods) the Ministry of Agriculture, Nature Management and Fisheries is appointed responsible for the disposal of live and dead CITES-specimens (Anon. 2001 b).

On the basis of the Economic Offences Act and the Criminal Procedure Act, and on account of the Endangered Exotic Animal and Plant Species Act, Customs, the General Inspection Service (AID) and the Police (including the Central Bureau of Criminal Investigations) are entitled to enforce CITES regulations in the Netherlands. A CITES Enforcement Project group, comprised of representatives of these organizations and the Office of the Public Prosecutor, co-ordinated enforcement and training, which is now co-ordinated by the "Platform on Environmental Crime" (LMG) of the Central Police Unit in Zoetermeer (Anon. 2001 b).

Enforcement must be developed further in view of the increasing professionalism in the illegal trade in endangered species and the complexity of this trade (Anon. 2001 b).

The Public Prosecutor's national advise centre for environmental law (which focuses on environmental law related to pesticides, fertilizers, flora and fauna and destruction of animals), *Expertisecentrum Groen*, supports and helps with the enforcement of CITES regulations. The centre has contacts with the Ministry of Agriculture, Nature and Fisheries and enforcement partners, collects information and helps in the preparation of court cases (S. Vreeburg, Expertise Centre Green Public Prosecutor, *in litt.*, November 2001).

If specimens are illegally imported and Customs seizes them, a fine will usually be assessed. If identification proves difficult, the AID is asked for assistance. Depending on the situation the AID will investigate the case further and report it to the Public Prosecutor. The Public Prosecutor decides if the case will be taken to court or if a fine will be levied at the offender to avoid the case coming to court (G. Hübben, Ministry of Agriculture, Nature Management and Fisheries, General Inspections Service, *pers. comm.*, September 2001).

Factual Summary of selected Cases (1999 and 2000)

- In March 1999, a consignment of birds arrived at Schiphol Airport from Vietnam. They were *Copsychus malabaricus* (Annex D) and *Chloropsis aurifrons* (non-listed) which were packed together. Packing was in breach of the IATA guidelines that say that aggressive birds must be transported separately. Half of the *Chloropsis aurifrons* were dead on arrival. Practically all birds were dead some days later. The Airline Company was fined and had to pay 1135 Euro. Under international CITES regulations protected animals are to be transported in accordance with IATA standards (Anon. 2001 b).
- On 12 October 1999, the Supreme Court in the Netherlands ruled that a fine of 226 Euro was to be paid, or 10 days imprisonment for a case involving failure to keep updated records of the trade in exotic animal and plant species (Anon. 2001 b).
- On 24 September 1999, Dordrecht District Court ruled that the export of certain exotic frogs from Madagascar was illegal (Anon. 2001 b).
- On 30 November 1999, the Supreme Court in the Netherlands ruled that for failing to keep updated records of the trade in exotic animal and plant species a fine of 226 Euro had to be paid, or 10 days imprisonment (Anon. 2001 b).
- On 28 December 1999, there was a case at Breda District Court concerning three reptile traders smuggling reptiles including *Chondropython viridis* and *Chlamydosaurus kingii*. Initially the three suspects were sentenced as follows:
 - (1st suspect) – 15 months imprisonment and a fine of 22 008 Euro;
 - (2nd suspect) – 12 months imprisonment and a fine of 13 847 Euro;
 - (3rd suspect) – 12 months imprisonment and a fine of 11 642 Euro.There was a fourth suspect, a major trader of reptiles in the USA. His license rights were withdrawn for a 5-year period, he was sentenced to 8 months imprisonment, 8 months of house arrest with notification requirement, and a fine of USD 250 000 to be donated to the WWF for a reptile habitat conservation project in Indonesia (Anon. 2001 b).
- On 24 July 2000, Haarlem District Court sentenced a Dutch reptile trader to 6 months imprisonment and a fine of 34 033 Euro (of which 22 690 Euro was conditional) for smuggling 2000 *Phelsuma spp.* from Mauritius. In February 1999, customs officials at Schiphol Airport had found the reptiles in two suitcases (Anon. 2001 b).
- In February 2000, 139 packages of food supplements were seized in a shop in Amsterdam. They contained protected plant and animal species components such as American Ginseng. The shop was fined 3630 Euro (Anon. 2001 b).
- In 2000, 1023 cacti were smuggled in two suitcases via Madrid from Montevideo. The suspect claimed he himself had taken them from the wild and on investigation it was found that he had also smuggled cacti in the past. He was fined 1815 Euro or 45 days imprisonment, which was reduced to a suspended sentence of 910 Euro, or 35 days imprisonment with two years' probation (Anon. 2001 b).
- On 29 January 2001, there was a case at Arnhem District Court concerning *Psittacidae* with open leg rings. Some birds were returned to the rightful owner the others were seized. A fine had to be paid of 1134 Euro (Anon. 2001 b).
- January 2001, Rotterdam District Court: Illegal imports of Traditional Chinese Medicines (TCM) (still pending) (Anon. 2001 b).

- Haarlem District Court: Illegal imports of ivory (still pending) (Anon. 2001 b).
- Haarlem District Court: Illegal imports of cockatoos, scorpions and cobras (still pending) (Anon. 2001 b).
- Rotterdam District Court: import and transit of shells (*Strombus gigas*) (still pending) (Anon. 2001 b).
- Haarlem District Court. Spring 2000: illegally owned circus lions. Seized and suspect sentenced to costs of keeping the animals until they could be moved to a zoo in Belgium (Anon. 2001 b).
- Amsterdam District Court, 3 May 2000: trade in illegally owned parrots and cockatoos. The parrots were seized and a suspended sentence was given of a fine of 11 344 Euro, with two years' probation (Anon. 2001 b).
- Arnhem District Court, 24 July 2000: Trade in illegally owned cockatoos and failing to keep records of trade. The fine to be paid: 90 Euro or 4 days imprisonment (Anon. 2001 b).
- Maastricht District Court, 3 November 1999: legal import of peregrine falcon from Germany with open leg ring. The suspect was cleared on account of trade distorting restrictions (Anon. 2001 b).
- Council 3 April 2000: illegal ownership of eagle owls and golden eagle. Permits not to be issued afterwards (Anon. 2001 b).
- Dordrecht District Court February 2000: imports of Tillandsias, some of which illegally harvested from the wild. Case dismissed (Anon. 2001 b).
- In October 2000, the Court in The Hague ruled that ownership of four-toed turtle was illegal after the suspect was initially cleared by Dordrecht District Court. The Public Prosecutor had appealed against the ruling. The suspect has now appealed to the Supreme Court (Anon. 2001 b).
- Rotterdam District Court, on 24 November 2000, sentenced a German company to a fine of 568 Euro for the illegal import of orchids (*Dendrobium*) in 1999 (a misdemeanor) (L. M. van der Most, Arrondissementsparket Rotterdam, *in litt.*, October 2001).
- Rotterdam District Court, on 27 June 2001, sentenced a Swedish company to a fine of 2727 Euro for the illegal import of corals (a misdemeanor) (L. M. van der Most Arrondissementsparket Rotterdam, *in litt.*, October 2001).
- Rotterdam District Court, on 18 July 2001, sentenced an African, living in Greece, to a fine of 4545 Euro suspended with two years probation for the illegal import of leopard and snakeskins, hand/schoolbags of crocodile and leopardskin and shoes and wallets of snakeskin and varaan in 1999 (a crime) (L. M. van der Most, Arrondissementsparket Rotterdam, *in litt.*, October 2001).
- Rotterdam District Court, on 17 October 2001, sentenced a Dutch citizen to a fine of 909 Euro of which 454 Euro suspended with two years probation for the illegal import of corals and shells (L. M. van der Most, Arrondissementsparket Rotterdam, *in litt.*, October 2001).

Other significant infringements

Traditional Chinese/Oriental Medicines

In 1999 and 2000, inspection efforts for the trade in Traditional Chinese Medicines (TCMs) were stepped up. In cooperation with the police and Customs authorities the AID set up four projects which focused on the trade in illegal TCMs by importers and wholesalers. 20 000 packages with products containing components of protected plant and animal species were seized. The trade in TCMs has increased within the EU and increasingly we find that traders do not have the permits required. This group is therefore targeted for public information (Anon. 2001 b).

On most Traditional Chinese Medicines, the ingredients used are given in Chinese characters. If a description on a container indicates or suggests that it contains CITES related material, than this fact alone is sufficient as proof and could be reason for seizure. DNA analysis at this stage is impossible as components have been processed and reprocessed. In future, Chinese patent numbers may be used to trace the origin of the ingredients used (Anon. 2001 b).

Over 1999 the AID seized more than 10 000 TCM products (packages (12 000), pills (16 000), powders (2.7 kg), herbs (3.0 kg) and potions (10 litres)). In most cases settlements were being proposed, sometimes the case went to court. Fines ranged from 453 Euro to 2269 Euro, with or without probation. There are a considerable number of violations of CITES rules according to the AID. In 75% of the cases people were re-offending. The total street value of the seized goods was about 180 000 Euro. The Customs authorities also seized about 10 000 products, mostly bulk goods, of considerable

value (Anon. 2001 b).

Illegal trade in protected frogs and snakes

In 1999 the AID, in co-operation with the police, carried out a national investigation into the trade in protected *Dendrobatidae* species. This was because declarations presented by the traders stating that the frogs were grown in captivity aroused suspicion. A few dozen were seized. It was also found that 700 specimens were traded illegally at a value of 32 765 Euro. This consignment of *Dendrobatidae* had come from Costa Rica. In this action the AID co-operated with enforcement bodies in Germany and Belgium (Anon. 2001 b).

In 2000 the AID, in co-operation with a team of 5 police inspectors launched a major fraud investigation into the international trade in protected frogs and snakes. The investigation has not yet been completed as witnesses and suspects have to be interviewed abroad (Anon. 2001 b).

Main Challenges

Lack of awareness of crime related to wildlife trade

A lack of awareness of crime related to wildlife trade exists among police and judges although the Netherlands has one of the main ports of Europe. Without knowledge on how much trade comes through the Netherlands and with little information from other parts of Europe, the EU and the world, enforcement of wildlife trade controls is quite a difficult task (S. Vreeburg, Expertise Centre Green Public Prosecutor, *pers. comm.*, October 2001).

Incompatibility

One of the main problems is the range of software programs in which the data are stored by the different organizations. There is a need for harmonizing the databases to be able to exchange data in sufficient detail (S. Vreeburg, Expertise Centre Green Public Prosecutor, *pers. comm.*, October 2001).

Prosecution of non-residents

The prosecution of non-residents is a problem in general especially in regard to transits as it is difficult to hold someone in custody (S. Vreeburg, Expertise Centre Green Public Prosecutor, *pers. comm.*, October 2001).

Below are a number of examples that illustrate some of the problems that have been encountered in the Netherlands.

1. Who is responsible for importing illegal goods, and how can this be proved

Example

A certain amount of traditional Chinese medicines (TCM's) have been illegally imported into the Community by ship (e.g. bulk carrier).

Question

Who can be prosecuted, the captain, the owner of the ship, the sender and/or the consignee?

- The captain could claim that he is not able to check all items his ship carries and relies on the bill of lading.
- The owner of the ship is a company in another country, where different rules apply.
- The consignee claims that he never ordered this particular item.
- The sender is not known.

Would it make a difference if it concerns a world wide express service like UPS, DHL or Federal Express?

2. Relationship between document and specimen

Example

A bird keeper claims that 25 of his birds (specimens of a species listed in Annex B of Council Regulation 338/97) were born and bred in captivity and imported on the basis of a valid CITES import document. However, none of the birds have a seamless closed leg ring nor a microchip transponder. The prohibitions referred to in Article 8, paragraph 1, EC Regulation 338/97 (prohibition of the commercial use of specimens of species listed in Annex A) also applies to specimens of the species listed in Annex B *except where it can be proved to the satisfaction of the competent authority* that such specimens were acquired and, if they originated outside the Community, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora. The onus of proof rests with the bird keeper. He needs to prove that the purchase was legal. He therefore needs to refer to the person from whom he bought his birds. The import permit allowed the import of 45 specimens of this species. This fact however does not prove legality, because there is no link between the birds and the document. This problem becomes even more apparent when not only this bird keeper claims this fact but also other bird keepers who together own 75 birds. This brings the total amount to 100 birds, while the import permit is only for 45 birds.

Question

How can this relationship be proved, when is a Management Authority satisfied? What can serve as evidence? How can this problem be solved?

3. The import of personal possessions by non EC residents

Example

A person who lives in a non-EU country enters the Community with a necklace of tiger bones. Since this person lives outside the EC he cannot be considered as an EC resident. Therefore the exemption of article 7, paragraph 3 of (EC) Regulation 338/97 applies unconditionally in this situation. This means that this person can enter the community without the need of an import or export permit. (Articles 4 and 5 are not applicable says article 7, paragraph 3 of (EC) Regulation 338/97). The exemption however only applies when the goods are not be used for commercial gain (article 27 of EC Regulation 1808/2001).

Question

Can this product be considered as a personal possession and if not, why not?

How can the condition of article 27 be enforced if there is no way to check whether this necklace will be used for commercial gain or not. Is there a national rule that the owner needs to inform the authorities about the date of his return trip in order to give the appropriate authorities a chance to check whether the necklace is being exported again? Is there a national rule within the EC that requires that this necklace should be left behind at the customs until the moment of leaving the EC again?

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in Portugal

CITES Management Authority of Portugal

General statistical Information

Table 1

CITES Infractions in Portugal

Year	Trade inside country	Imports from third countries
1986	0	10
1987	0	17
1988	0	15
1989	0	8
1990	3	33
1991	11	36
1992	0	32
1993	1	29
1994	0	19
1995	0	27
1996	4	103
1997	4	43
1998	0	92
1999	3	69
2000	7	42
Total	33	575

Every infraction results in seizure unless a valid CITES permit is provided, even when a case is dismissed. A penalty is given for every case that is completed and the average amount is € 99.75.

Basic Summary of Enforcement Procedures

CITES infractions are dealt with, not through a judicial procedure but through an administrative one, since most infractions are not considered to be crimes. As it is, the few cases that go to court are the result of appeals against the Administration's decision to the judge.

The Instituto da Conservação da Natureza (ICN, CITES Management Authority) is the authority for the administrative procedure (artº 27º, nº 1, Decreto-lei nº 114/90, de 5 de Abril).

The administrative procedure begins with the report of the infraction, either made by Customs, by ICN or by the police. In every case the goods or animals are apprehended and sent to the ICN storage room or to Lisbon Zoo and other institutions until a valid CITES permit is provided. ICN will then notify the offender of the charge who will be given a time limit of ten days to respond, and present documents or witnesses in their defense. After this time, there will be a decision from the administrative authority (ICN) that can impose a penalty from € 74.81 to € 1995.19 and other penalties (e.g. the loss of all objects related to the infraction). Then, the offender is given twenty days to pay the amount or to appeal against this decision in court. Most cases are usually not taken to court. In court the Judge will examine the procedure and give a judicial decision, to dismiss the charge or to find the offender guilty.

According to the Decreto-lei nº 433/82, de 27 de Outubro, the case is closed if there is no development after one year. This has been a frequent occurrence as it is difficult to notify non-resident offenders.

Portuguese legislation has considered some amnesty laws (Lei nº 23/91, de 4 de Julho and Lei nº 15/94, de 11 de Maio) that lead to the pardon of some CITES infractions.

Main Challenges

The main challenge is to be able to carry a case through against non-residents in Portugal. Most of the offenders are from African and South American countries and the Administration cannot notify them of the charge, which leads to the dismissal of the case.

Another challenge is related to seizures. ICN cannot keep the animals that are seized and has to send them to Lisbon Zoo and other institutions. However, the Zoo and these institutions are now requiring fees to take care of the animals, fees that ICN has no means of paying.

From the analysis of these cases one can understand that most of the infractions are caused by ignorance of the Convention's existence and lack of information from the authorities in the countries of origin. Many of the offenders purchase CITES specimens from shops at airports and are not made aware of the need for a CITES permit for export and import. There should be more information at airports and shops about the need for a permit for such CITES specimens.

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in Spain

Mercedes Nuñez-Román, CITES Management Authority of Spain

General statistical Information

In the last years the following CITES infractions were reported:

Table 1

CITES Infractions in Spain

Year	Imports from third countries	Trade inside country
2000	211	406
1999	211	510
1998	86	462
1997	151	537
1996	227	440
1995	189	399
1994	154	314
1993	166	118
1992	117	113
TOTAL in 9 years	1512	3299

Source: CITES Management Authority of Spain

Almost all the specimens that came from a third country were specimens included in CITES appendix. The majority of these cases finished in seizure by the Customs Department (Civil Administration); very few of the cases were brought to the Court (Penal Administration).

Less than the half of the infractions reported inside the country finished with a seizure and a fine by a Custom Department (Civil Administration). Very few cases were sent to Court (Penal Administration).

The sanctions imposed in 1999 and 2000 were:

- 1999: 18 523 699 pesetas (111 600 Euro)
- 2000: 5 584 390 pesetas (33 641 Euro)

Basic Summary of Enforcement Procedures

The administrative procedure will be applied to those cases in which the value of the merchandise is less than 3 millions pesetas (18030.36 Euro). If the value of the merchandises is more than this amount, a penal procedure will be applied.

Administrative procedure

An infraction report made by the SEPRONA of the Guardia Civil, any security police, or the competent Customs Services, along with the confiscation of the merchandise, should be submitted within 48 hours to the competent Customs Department.

The confiscation may necessitate removing the specimens to a proper centre. Specimens seized at borders are moved to proper centres. In national seizures, specimens are moved to other centres in few cases. Specimens may only be moved if the Customs Office allows it.

The Customs Department, after checking and/or investigating the matter, may conclude:

- That the case is not an infraction, ordering the return of the specimens; or
- That the case may be an infraction.

If the Customs Office has understood that the case may be an infraction, the Customs Office should notify the suspect that an administrative procedure will begin. During the procedure, which normally does not take more than six months from the date it begins, the suspect may submit documents or proof whose authenticity may be checked by the Customs Office. This period of six months can in some cases be extended for six more months. The final resolution, if found guilty, consists in the confiscation of the merchandise and a fine whose amount could be between one and three times the value of the seized merchandise.

The Customs Office, in order to take the proper measures, may require during the procedure, species identification, document checking, value of merchandise, or other reports from other departments. This process can involve gathering information from both the main CITES Management Authority as well as the twelve CITES Offices in Spain.

During the procedure, at any time the Customs Office can decide that the case must go to Court. This usually happens when, during the procedure, it is found out that the value of the merchandises is over 3 millions pesetas.

Also, during the procedure, the Customs Office may decide that the case should be taken on by the competent Authorities of the *Comunidades Autónomas*. This usually happens when the specimens seized are found to be specimens taken from the wild within Spain. In this case, the penalty can be established by the *Comunidad Autónoma* with seizure and a fine according to its own laws and also according to the national law (*Ley 4/89 de 27 de marzo, de Conservación de Espacios Naturales y de la Fauna y Flora Silvestres (BOE 28.03.89), modificada por la Ley 40/97 de 5 de noviembre, sobre reforma de la Ley 4/89 (BOE 06.11.97), y modificada por la Ley 41/97 de 5 de noviembre, por la que se modifica la Ley 4/89 (BOE 06.11.97 y otras disposiciones aprobadas en desarrollo de la citada Ley)*). Nevertheless, if the case is found to be a crime, it should go to Court.

Judicial procedure

The judicial procedures do not differ from others related to other kind of crimes. Crimes related to wildlife are those to which the laws refer to, and to establish a penalty, *dolus* or jurisprudence must exist.

Penalty in wildlife crime could be the confiscation of the specimens, imprisonment from 6 months and one day to 6 years, as well as a fine of between two and four times the value of the seized merchandise.

Factual Summary of selected Cases

1. Seizure of 155 live Testudo graeca

After a seizure of two talapoins made during a luggage control at an airport, the airport Services asked the local Police to carry out an investigation into this person. The local Police found 155 live *Testudo graeca* owned by an associate of the suspect, as well as many other animals (birds mainly) of other species which were bred and sold regularly. An administrative procedure was started by the Customs Department. The tortoises were found to be acquired illegally by an unknown person. The owner had no prior record, so it was not possible to increase the fine. But because of the value of the merchandise seized, it was possible to increase the fine between 250% and 300%. The case concluded on 22nd February 1998, with the confiscation of the tortoises and a fine of 250% of the value of the merchandise (5.812.500 pesetas or 34933.83 Euro).

The time taken between the report made by the local Police and the case being completed was of two months.

This case has been chosen because:

- It shows the usefulness of the co-operation between two departments (the airport services and the local Police) which made possible the discovery of illegal animals;
- Also, taking account the periods that the law allows for the suspect to submit documents or evidence in his defence (15 days from the notification date to the suspect that procedures have begun), to check the evidence submitted (between 10 and 30 days), and to let the suspect know the suggested final outcome (15 days more in which the suspect may submit pleadings), this case is considered to have been solved in a very brief time; and
- It reveals that the value of the specimen is not necessarily linked with the level of protection for the species, as the market value of a *Testudo graeca*, a species included in Annex A, is much lower than other species that have either a lower level of protection or none at all.

2. Seizure of five Shahtoosh

In October 1999, information was distributed to several NGOs about the illegal trade of *Shahtoosh*, which was published through the mass - media.

On 14th December 1999, a multiple inspection was carried out in several shops in the main cities of the country, and five *Shahtoosh* shawls were found in a shop. This case was also quickly solved (less than three months), with the seizure of the shawls and a fine of 2 025 000 pesetas (12170.50 Euro).

3. Improvement of the procedures to cancel CITES Certificates under Regulation (EC) 338/97

In 1989, this Management Authority issued CITES Certificates for some chimps (*Pan troglodytes*) bred in captivity. After an international exhibition of several years, when the animals returned through Turkey and Italy, it was found out that the age of some animals did not correspond to the age on the Certificates. After DNA analysis, this Management Authority started in 1995 a procedure to cancel the CITES Certificates, through the *Consejo de Estado* (State Board), as this was the only way to do it before Regulation (EC) 338/97 came into force. The CITES Certificates were finally cancelled in 2000, as the report of the *Consejo de Estado* informed that Article 11.b of the new Regulation could be applied to this case. After this, the animals were seized and moved to another centre. The penalty and court case result will come out soon.

This case has been chosen because it shows the difficulties that we had before the Regulation (EC) 338/97 to cancel a CITES document when this was issued upon false declarations.

4. Delay in a judicial procedure

In June 1991, there were apprehended two chimps (*Pan troglodytes*), a male and a female, which were used by a circus with copies of CITES certificates whose age did not correspond to the animals exhibited. Also, there were apprehended three tiger cubs (still nursing) and a one year old tiger (*Panthera tigris*) with no CITES Certificates. The Chimps were moved to a centre, while the tigers were allowed to stay with the owner.

In June 2001 (ten years later), we received a request from the Judge to inform about the validity of the documents used for these animals, as the “oral hearing” (vista oral) was going to take place soon. It was found out that:

- The two chimps died in the centre in which they were placed after their seizure, and the CITES Certificates were not valid because they corresponded to other animals; and
- For the four tigers, they were issued CITES Certificates in 1992.

The Judge decision is yet not known.

This case shows:

- That even when a case is delayed, the Judge has to adopt a decision, as our legislation asks the Judge to adopt always a decision; and

- That in Spain, CITES Certificates may be applied and obtained even when the animals are involved in a judicial procedure.

5. A judicial mistake and an administrative sanction

In 1994, there were apprehended eleven monkeys (one of them a chimp; the other were Appendix II species) and eighteen birds (six included in Appendix I - two of them were *Probosciger aterrimus*, while the others were Appendix II species) from a German citizen who kept these animals in his garden with no documents. The value of the animals was understood to be more than 18030.36 Euro, so a judicial procedure began.

In 1996, the Judge established that the value of the animals was less than 18030.36 Euro (the reasons by which this new value was established are not known), quashed the case, and ordered that the animals should be returned to the owner. The local newspaper published an article about this decision, which was not well received by the NGOs.

The Customs Office then, started an administrative procedure in 1996, and in 1997 ordered the seizure of the animals and the German citizen was ordered to pay a fine.

6. No judge decision due to the non-appearance of the accused

In 1991, 52 birds were seized from a German citizen who kept these animals in his farm. Most of the birds had no documents. After the seizure, the birds were moved to other centres.

Since 1992, every year the Judge calls the German citizen for the hearing, but year after year the accused maintains he cannot leave Germany because of health problems.

The case cannot be solved because of non-appearance of the accused.

7. No crime indicia

In 1997, some tortoises were seized from a Spanish citizen-; ten of the tortoises were *Geochelone gigantea* introduced by a third person -a French citizen- in the EU with no import permit and with a falsified CITES export permit from Seychelles (the quantity was falsified to read twelve tortoises instead of two). The Public Prosecutor was not able to prove that the accused made the falsification of the CITES permit, but tried to obtain proof to demonstrate that this person had traded with the animals.

In 1999, the Judge decided to clear the Spanish citizen of the crime because it could not be proved that this person made the falsification of the export permit, or that this person was trading. Possession is not a crime, only when specimens are traded it is possible that a crime has been committed. Following the Judge decision, an administrative procedure was started because even though the possession of the tortoises is not a crime, the import of the tortoises was illegal. The final resolution of the Customs Office has not come out yet.

(Administrative procedures have been applied to cases 1, 2 and 3. In the other cases it has been or there is a judicial procedure, even when in some of these cases an administrative procedure has followed the judicial procedure.)

Main Challenges

In the administrative procedures, the main challenges are related to:

- Determine the value of certain merchandise: The Spanish legislation establishes the penalties depending on the value of the merchandise. If the value of the confiscated products is less than 3 millions pesetas, the procedure is administrative. If the value of the confiscated products is more than 3 millions pesetas, the procedure is judicial. In many cases, it is very difficult to know the value of the products, even more when they are specimens whose trade is forbidden. In many cases there is no value so this has to be estimated.

- Notify the suspect, specially if this is not a national resident or if this is a circus: to impose penalties, the Spanish punishing procedure establishes that it is necessary to inform the offender because he has the right of appealing against the penalty. Many times (for example in the case of circuses), it is very difficult or impossible to locate the offenders and it is not possible to inform them. In these cases, the procedure can not go ahead until the offenders have been informed.

In the judicial procedures, the main challenges are related to:

- The length of time before a conclusion is reached in certain cases, the procedure can take more than 10 year to be completed. Most cases are concluded in 2 to 4 years.
- The dismissal of the case as a result of not finding evidence of a crime, so the case is then deferred to the administrative procedure: sometimes after a judicial procedure, the Judge finds that there is no crime but that it is possible that the offender committed an infraction against CITES. The case then has to go through the administrative procedure.

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in Sweden

Compiled by TRAFFIC Europe. Source references are provided in the text.

Statistical Information on Seizures and Confiscations (2000)

During the year 2000 Customs made 11 seizures totalling 18 items (Mehnert, 2001).

There is no central police register that lists the confiscation of live animals separately. The records available at the Swedish National Criminal Investigation Department show that four confiscations of live animals, which are given protection via Regulation (EC) No 338/97, have been made in 2000 (Mehnert, 2001).

Basic Summary of Enforcement Procedures

Since 1 January 2000 a new organisation called the Division for Environmental Crime based within the Office of the Prosecutor-General has started. This new division has a central unit at the secretariat of the Office of the Prosecutor-General, which consists of the Director of the Office of the Prosecutor-General, the chief prosecutor and an administrator. The Office of the Prosecutor-General obtained funding for 19 specialist prosecutors with operational assignments in the six prosecuting districts working entirely or mostly on environmental crimes (Mehnert, 2001). Every environmental prosecutor has specially trained environmental policemen at their disposal. The training for both prosecutors and policemen started earlier but in the year 2000 the basic education of the environmental prosecutors was completed. This organisation is not yet at full strength, but there are far more cases in the courts today than was the situation in 1999. Special training for prosecutors and policemen was a requirement for this organisation (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001). So far, the rule has been to report all environmental crimes directly to the environment prosecutor, who is always in charge of the preliminary investigation, whether or not the cases concern serious crimes. The purpose is to give the environment prosecutors a complete overview and to make sure that the intentions of the Environmental Code have their effect as well as to make practice uniform (Mehnert, 2001).

Enforcement of CITES in Sweden is dealt with by Customs, the Coast Guard and the Police authorities. The central function of police enforcement is carried out by the Swedish National Criminal Investigation Department (Mehnert, 2001).

If customs or the police discover an infraction of CITES or the Regulation (EC) 338/97 they make a report to the Public Prosecutor and seize the specimen. The Prosecutor must confirm or revoke the confiscation and decide to withdraw or pursue the preliminary investigation. When customs or the police have finished the investigation the prosecutor decides if there are sufficient grounds to start a prosecution (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

However, the Public Prosecutor may choose to start a prosecution or to issue an order of summary punishment. If the suspect pleads guilty in the investigation, and does not challenge the confiscation, if any, then the punishment will be in the form of a fine, and the Prosecutor will administer the punishment. Otherwise, he or she will have to start a prosecution. A collegial court with one professional judge and three lay assessors decide the verdict. So far the fines have, with one exception, been very low. These types of cases are not well known to the court and since the prosecutors aim at as severe a punishment as possible the decision to prosecute is the usual choice. An appeal may result in a verdict being overturned (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

Factual Summary on selected Cases

1. The “cyberbear” in Ludvika.

The court of the city of Ludvika sentenced an owner of a business enterprise to pay fines related to income for advertising a bear (*Ursos arcos*) on the Internet. The bear was not found but the court believed it obvious that the bear existed and was for sale. Whether it was the business man who owned the bear or not, or if it was an employee who actually put the advert on the site was irrelevant since the advertising was placed on orders from the owner of the business enterprise (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

2. The shopkeeper in Örebro

The court of the city of Örebro sentenced a keeper of a zoo-shop to probation and fines related to income for having this shop without authorization from the County Administration. The court agreed it was difficult for a person to know all the legislation but found it extraordinary that a shopkeeper of zoological merchandise had not heard about it. The court said that a fair penalty was one-month imprisonment. Since it is not likely that the shopkeeper will commit another, similar crime, the court decided to suspend the sentence and combine it with fines. Göta Hovrätt (an appeal court) settled the verdict (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

The case shows that Swedish courts have begun to look more seriously upon these crimes. It would be interesting to compare this with the type of penalty that would be given in other countries for not having the correct permit to run a pet-shop selling species in Annex B of the Regulation (EC) 338/97 (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

3. Delay because of interpreting Regulations (EC) 338/97 and 939/97

A man was prosecuted in Sweden for violation of Swedish law implementing Regulation (EC) 338/97 for selling stuffed birds (Annex A) and keeping a stuffed bear (*Ursos arcos*) in the shop. In court, one of the most famous barristers in Sweden specifically asked that the European Court in Strasbourg be asked whether these activities were, in fact, a crime. He said, “if the legally trained cannot interpret the law, how can we expect ordinary people to do so?”. The court postponed the hearing and submitted a request to Strasbourg for interpretation of Article 2 w in Regulation (EC) 338/97, and of Article 32 d in Resolution (EC) 939/97. Their specific questions related to (i) the definitions of “worked specimen” and whether it would apply to a stuffed bear; (ii) whether it would be an infraction to buy a worked specimen that was acquired by the seller more than 50 years previously. and (iii) whether the same rule would apply to one who is holding the item for sale, as well as to the buyer (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

The case may indicate a basis for concern about CITES cases in the near future, given the success of the barrister in delaying the case by consulting Strasbourg, and the possibility that it may also influence other barristers to make similar “obstructions” (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

Other Court Cases

- Judgement passed in Stockholm district court on 26 August 1999. Art. 8 (1) and 8 (5) in (EC) No 338/97. Two persons were advertising for sale reptiles listed in Annex A and B. No confiscation took place. Both persons were sentenced to 30 days (dayfines) (Mehnert, 2001).
- Decision in the Supreme Court on 13 September 1999 not to give certiorari of a judgement passed in Växjö district court on 30 March 1999. Art. 8 (1) in (EC) No 338/97. The infraction was advertising for sale a stuffed sea eagle, *Haliaeetus spp.*, (A). The penalty given was 30 days (dayfines). The stuffed sea eagle that had been confiscated was declared forfeited (Mehnert, 2001).
- Judgement passed in the court of appeal in western Sweden on 9 August 1999. Art. 8 (1) and 8 (5) in (EC) No 338/97. Purchase of 11 snakes listed in Annex A and B. Criminal proceedings overruled regarding infringement of

Regulation (EC) No 338/97. The 11 live snakes that had been confiscated were declared forfeited based on other national legislation. This case has been included in the 1999 statistical data of confiscation (Mehnert, 2001).

- Judgement passed in Nacka district court on 29 February 2000. Art. 8 (1) in (EC) No 338/97. Offering to purchase a Goffin cockatoo, *Cacatua goffini*, (A). The penalty given was 30 days (dayfines) (Mehnert, 2001).
- Judgement passed in Sunne district court on 2 March 2000. The Swedish regulation (1998:179) on preservation of species, § 11. Advertising for sale of wolfhound puppies. Penalty was 70 days (dayfines) (Mehnert, 2001).
- Judgement passed in Uppsala district court on 7 December 2000. The Statutory Order (1998:179) on preservation of species, §§7 and 44. Keeping of eagle owls and snowy owls in cages without the permission of the competent authority. Penalty was 120 dayfines (120 times of a certain amount proportional to the income). Confiscation of 8 live eagle owls, *Bubo bubo*, (A) and 6 snowy owls, *Nuctea scandiaca* (Mehnert, 2001).

Table 1

Court Cases in Sweden

Date and Court, Court Case Number	Species involved	Protection Status	Offence	Law	Penalty	Date of seizure/ date of first report of offence	Details	Maximum penalty
1998-06-23 Halmstads tingsrätt	1 tusk from an African elephant	CITES, Regulation (EC) 338/97 Annex A	Offered for sale	8 a § lagen 1994:1818) Regulation (EC) 338/97 article 8	Fines related to income 30x 30 SEK=95 EURO		<i>The number of dayfines indicates the severeness of the crime (from 30 to 150) and each fine is 1/1000 of the income of the year before tax. The lowest fine related to income is 30 à 30 SEK = 95 Euro</i>	6 months imprisonment. If considered serious crime 2 years imprisonment
1998-04-29 Sala tingsrätt	Birds in Annex A	CITES, Regulation (EC) 338/97 Annex A	Offered for sale	8 a § lagen (1994:1818) Regulation (EC) 338/97 article 8	Fines related to income 30x 110 SEK=347 Euro		<i>law 1994:1818 is rescinded and replaced by artskyddsförordningen(Protection of species regulation)</i>	6 months imprisonment. If considered serious crime 2 years imprisonment
1999-03-04 Solna tingsrätt	2 pair of boots made of the skins of Caiman crocodilus and Varanus spp.	CITES, Regulation (EC) 338/97 Annex B	Offered for sale	8 a § lagen 1994:1818) Regulation (EC) 338/97 article 8	3 months imprisonment (also convicted for narcoticscrime)	11 November 1998		6 months imprisonment. If considered serious crime 2 years imprisonment
1999-02-09 Stockholms tingsrätt	1 Cacatua Goffini	CITES, Regulation (EC) 338/97 Annex A	Offered for sale	8 a § lagen 1994:1818) Regulation (EC) 338/97 article 8	Acquittal	3 October 1997		6 months imprisonment. If considered serious crime 2 years imprisonment
1999-03-30 Växjö tingsrätt	Stuffed Haliaeetus spp.	CITES, Regulation (EC) 338/97 Annex A	Offered for sale	8 a § lagen 1994:1818) Regulation (EC) 338/97 article 8	Fines related to income 30x140SEK=442 Euro	7 March 1998		6 months imprisonment. If considered serious crime 2 years imprisonment

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Date and Court, Court Case Number	Species involved	Protection Status	Offence	Law	Penalty	Date of seizure/ date of first report of offence	Details	Maximum penalty
1999-06-22 Växjö tingsrätt	Asio otus	CITES, Regulation (EC) 338/97 Annex A	Offered for sale	8 a § lagen 1994:1818) Regulation (EC) 338/97 article 8	Fines related to income 30+x30 SEK=95 Euro	October 1998		6 months imprisonment. If considered serious crime 2 years imprisonment
1999-07-16 Ljungby tingsrätt	Stuffed Panthera pardus	CITES, Regulation (EC) 338/97 Annex A	Bought it	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Also convicted for other crimes	Spring 1999		2 years imprisonment
1999-12-01 Ljungby tingsrätt	7 Carduelis spinus, 1 Carduelis carduelis	National legislation	Keeping at home	Miljöbalken 29 chapter 8 § 11 p and 7 § artskyddsförordningen (1998:179)	Fines related to income 40x30 SEK=126 Euro	January-February 1999		2 years imprisonment
1999-12-13 Uppsala tingsrätt	Bubo bubo, Tyto alba alba	CITES, Regulation (EC) 338/97 Annex A	Keeping without permission	Miljöbalken 29 chapter 8 § 11 p and 7 § artskyddsförordningen (1998:179)	Fines related to income 50x125 SEK=658 Euro			2 years imprisonment
1999-12-22 Ljungby tingsrätt	2 stuffed Strix aluco	CITES, Regulation (EC) 338/97 Annex A	Offered for sale	8 a § lagen 1994:1818) Regulation (EC) 338/97 Art. 8	Also convicted for other crimes	Autumn 1998		6 months imprisonment. If considered serious crime 2 years imprisonment
2000-02-29 Nacka, B277-00	1 Cacatua Goffini	CITES, Regulation (EC) 338/97 Annex A	Offered to buy	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Fine related to income 30 x 80 SEK=253 Euro			2 years imprisonment
2000-02-18 Falun tingsrätt	2 Testudo hermanni	CITES, Regulation (EC) 338/97 Annex A	Offered for sale in a zooshop	8 a § lagen 1994:1818) Regulation (EC) 3626/82	Acquittal	28 Nov. 1996		6 months imprisonment. If considered serious crime 2 years imprisonment
2000-03-15 Helsingborgs tingsrätt	2 Ara maracana		Bought it	8 a § lagen 1994:1818) Regulation (EC) 3626/82	Fine related to income 30 X 90 SEK=284 Euro			6 months imprisonment. If considered serious crime 2 years imprisonment
2000-03-23 Huddinge, applications for a summons	1 Testudo hermanni	CITES, Regulation (EC) 338/97 Annex A	Offered for sale	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Pending			2 years imprisonment
2000-06-13 Boden, applications for a summons	1 Ursus arctos	CITES, Regulation (EC) 338/97 Annex A	Sale completed	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Pending			2 years imprisonment
2000-08-24 Order of summary punishment Stockholm	1 Testudo hermanni	CITES, Regulation (EC) 338/97 Annex A	Offered for sale	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Fine related to income 30 x 50 SEK=158 Euro	2000		2 years imprisonment
2001-02-06 Karlskoga, B666-00	1 Caiman Crocodilus	CITES, Regulation EC 338/97 Annex A	Attempted smuggling	1§ and 8§ law (1960:418) against smuggling, regulation EC nr338/97	Fine related to income 60x150 SEK=947 Euro		Country: Bolivia	2 years imprisonment. If considered a serious 6 years imprisonment

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Date and Court, Court Case Number	Species involved	Protection Status	Offence	Law	Penalty	Date of seizure/ date of first report of offence	Details	Maximum penalty
200-07-26 Order of summary punishment	Tusks of <i>Odobenus rosmarus</i>	CITES, Regulation EC 338/97 Annex B	Attempted smuggling	1§ and 8§ law (1960:418) against smuggling, regulation EC nr338/97	Fine related to income 50 x 50 SEK=263 Euro		Country: Russia	2 years imprisonment. If considered serious crime 6 years imprisonment
2001-03-09 Örebro, B2286-00	1 <i>Cacatua Goffini</i>	CITES, Regulation EC 338/97 Annex A	Tried to sell the bird in a zoological store	The Swedish law Miljöbalken 29th chapter 8§, Regulation (EC) 338/97 Art. 8§	Fine related to income 50 x 30 SEK=158 Euro			
2001-03-15 Luleå, applications for a summons	1 <i>Lynx lynx</i>	CITES, Regulation (EC) 338/97 Annex A	Sale completed	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Pending	30 May 2000		2 years imprisonment
2001-05-07 Örebro, B2512-00	Different species	CITES, Regulation (EC) 338/97 Annex B	Trading without permit to sell	Miljöbalken 29 chapter 4§	Fine related to income 50 x 150 SEK=790 Euro			2 years imprisonment
2001-05-15 order of summary punishment	2 <i>Testudo graeca</i>	CITES, Regulation (EC) 338/97 Annex A	Offered for sale in the internet	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Fines related to income	2000		2 years imprisonment
2001-05-17 Sundsvall, applications for a summons	1 <i>Mulus bivitatus</i>	CITES, Regulation (EC) 338/97 Annex B	Offered for sale	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Pending			2 years imprisonment
2001-06-05 Stockholms tingsrätt	Skin rugs of <i>Ursus arctos</i>	CITES, Regulation (EC) 338/97 Annex A	Bought and sold	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Acquittal	1999		2 years imprisonment
2001-06-05 Ludvika, B102-01	1 <i>Ursus arctos</i>	CITES, Regulation (EC) 338/97 Annex A	Advertising on the Internet of a stuffed animal	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Fine related to income 30 x 100 kr=316 Euro			2 years imprisonment
1999-2000		CITES, Regulation (EC) 338/97 Annex A		Miljöbalken 29 chapter 8 § 11 p och 7 § artskyddsförordningen	Fines related to income 200 x 70 SEK =1473 Euro			2 years imprisonment
2001-06-05 Stockholm, B1023-01	1 <i>Ursus arctos</i>	CITES, Regulation (EC) 338/97	Sale completed	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Acquittal			2 years imprisonment
2001-07-06 Huddinge	2 <i>Anodorhynchus</i> spp.	CITES, Regulation (EC) 338/97 Annex A	advertising in the Internet	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Pending			2 years imprisonment
2001-10-11 Karlstad	1 <i>Cacatua Goffini</i>	CITES, Regulation (EC) 338/97 Annex A	Offered for sale	Miljöbalken 29 chapter 8§, Regulation (EC) 338/97 Art. 8	Pending			2 years imprisonment
2001-10-24 Skellefteå tingsrätt	1 stuffed female wolverine (<i>Gulo gulo</i>) with cub	National legislation	Offered for sale	Miljöbalken 29 chapter 8 § 11 p och 9 § artskyddsförordningen	Fine related to income 30 x 110 kr=347 Euro		Commercial value: 2947 Euro	2 years imprisonment

Source: L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001

Main Challenges

The main challenge in court is that the prosecutor has to educate the judges during the trials because they seldom know the legislation in these cases. A Swedish judge is supposed to know the law in every field. That is of course impossible (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

Another main challenge is co-operation with other authorities, which is essential to obtain enough evidence. Sometimes enforcement authorities do not provide enough basic information, as they do not think of crime in this context. Not understanding such crime can ultimately result in low penalties (L. Bergenstråle, Public Prosecutor in Stockholm, *pers. comm.* to TRAFFIC Europe, September 2001).

Little is known about the illegal import of reptiles. However, there are indications of a very large import, as the pet-shops are full of them. It is also known that some of the reptiles are exported to Norway where it is prohibited to keep reptiles (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

In Sweden, two rescue-centres – one in Stockholm and one in Malmö – and all Swedish zoological gardens under the Swedish Zoo Association with appropriate and suitable housing are appointed as rescue centres for seized species. Furthermore, the Swedish CITES Management Authority can on case by case basis appoint other suitable temporary housings. However, in some cases it has been necessary to annul the seizure or decide that the animals should stay with the suspect due to the expense of holding them and the problems of transporting the animals (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

Another problem in the north of Sweden are the long distances. If someone in the mountains of northern Sweden observes an infraction and makes a complaint to the police a day may pass before policemen arrives. By then it is often too late (L. Magnusson, Prosecutors Office in Luleå, *in litt.* to TRAFFIC Europe, October 2001).

Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in the United Kingdom

Compiled by TRAFFIC Europe. Source references are provided in the text

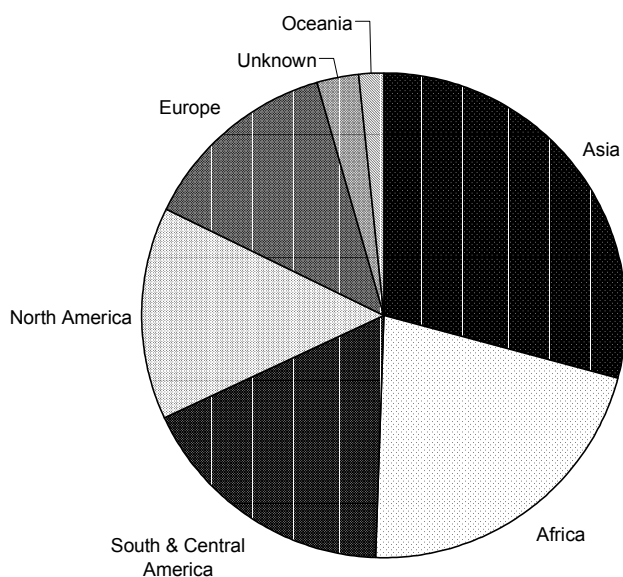
Statistical Summary of Infringements, Legal Actions and Seizures

The UK has no central record of statistics for offences under the COTES Regulations. During the period January 1999 to December 2000, however, DEFRA (Department for Environment, Food & Rural Affairs, CITES Management Authority) was involved with:

- 61 Police cases concerning breaches of the COTES Regulations - 14 of which resulted in successful prosecutions. Penalties ranged from £2,000 fines plus forfeiture of the vehicle used to commit the crime; to an absolute discharge with forfeiture of the specimens.
- 20 HMC&E cases - one of these was a major case, the details of which are outlined below (DEFRA, 2001).

Figure 1

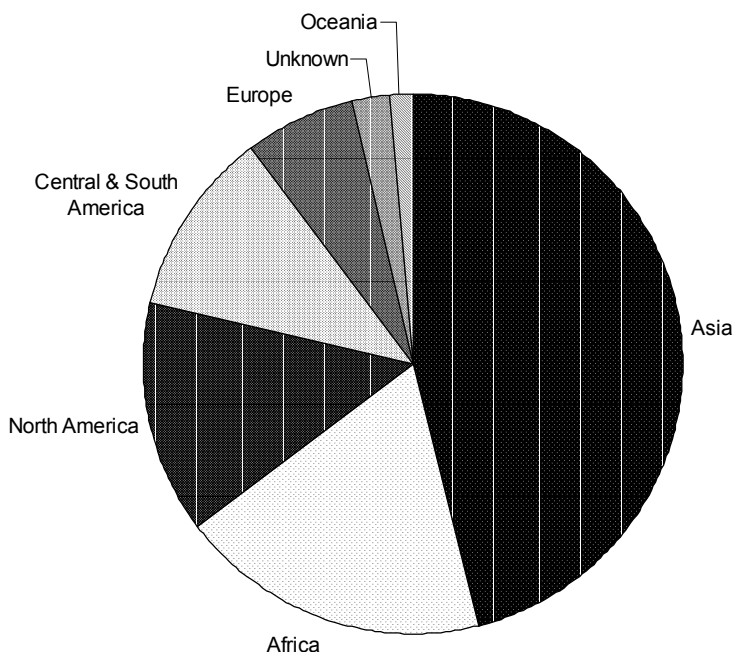
Origin of UK Customs Seizures by CITES Region in 1999 (total 310)



Source: DEFRA, 2001

Figure 2

Origin of UK Customs Seizures by CITES Region in 2000 (total 423)



Source: DEFRA, 2001

Summary of Enforcement Procedures

Her Majesty's Customs & Excise (HMC&E) is responsible for enforcing the third country import and export controls at UK ports and airports under the provisions of the Customs and Excise Management Act (CEMA) 1979. The Police are responsible for investigating offences arising from breaches of the sales and movement restrictions imposed by the EC CITES Trade Regulations (DEFRA, 2001).

In addition to the monitoring carried out by HMC&E and the Police on the activities of traders within the UK, UK's CITES Management Authority staff engaged in the processing of applications for CITES permits and certificates and wildlife inspectors undertook monitoring of the information supplied to them with applications. Any possible breaches of the Regulations are passed to an enforcement liaison team (comprising 3 full time members of staff), for a decision on what action would be appropriate (DEFRA, 2001).

HMC&E have a network of Customs Wildlife and Endangered Species Officers (CWESOs) throughout the UK (including a dedicated full time CITES enforcement team based at Heathrow) who have special responsibility for co-ordinating enforcement of the CITES import and export controls. There is also a national network of Police Wildlife Liaison Officers (PWLOs) who carry out investigations of wildlife offences (DEFRA, 2001).

Procedures from seizure to court

Cases under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES) are investigated by the police and the case is then passed onto the Crown Prosecution Service (CPS) who are responsible for the decision to

bring a case to court and to conduct the prosecution case. Offences under CEMA differ as they are investigated and prosecuted by HMCE (Holden, 1998).

The Crown Prosecution Service (CPS) was set up in 1986 and is responsible for prosecuting all criminal cases resulting from police investigations in England and Wales. The CPS makes the final decision on whether to bring a case to court. In Scotland, the Procurator Fiscal's office fulfils a similar function (Holden, 1998).

Offences under COTES and CEMA can be tried either on indictment at the crown court or summarily in the magistrates court. The type of trial is determined at the Magistrates' court. If the accused pleads guilty, the trial will proceed as if it were a summary trial in the Magistrates' court. The magistrates may commit the accused to the crown court for sentencing if they believe after hearing the case that their sentencing powers are not adequate. If the accused pleads not guilty, the magistrates must decide which mode of trial is more suitable taking into account the nature of the case, and the adequacy of the penalties available at summary level, along with the representations made by prosecution and the accused. The accused also has the right to elect trial by indictment. If the accused is convicted of a triable either way offence at summary trial, the magistrates may commit him or her to crown court to be sentenced if they believe that their powers of sentencing will not be adequate (Holden, 1998).

The Criminal Justice Act 1991 requires magistrates to take into account all the circumstances of an offence. They are required to consider whether a discharge or a fine is appropriate, whether the offence is serious enough for a community penalty or whether the offence is so serious that only a custodial sentence is appropriate. Factors which will be considered include pre-sentence reports; aggravating factors such as previous convictions, the high value of specimens, or the conservation status of the specimen; mitigating factors, for example good character, guilty pleas and co-operation with the police; and the financial circumstances of the offender (Holden, 1998).

In Scotland the two types of trial are referred to as trial by summary procedure, and trial by solemn procedure (equivalent to trial on indictment). The procurator fiscal makes the initial decision, and petitions the Sheriff's Court at the First Examination to commit the accused for trial. Once the accused is committed to trial, the procurator fiscal send special witness statements "precognitions" to the Crown Counsel who decides how the case will be dealt, including in which court (Holden, 1998).

Summary trials

Most offences under COTES and about half the wildlife offences under CEMA are tried summarily. These trials takes place in a magistrates court, where magistrates are the judges of law and fact. The large majority of magistrates are lay men and women, most of whom serve for many years and sit in court twice a month. There are also a few district judges (magistrates courts) who are paid full time, and appointed from barristers and solicitors of seven years standing. District judges (magistrates courts) can try a case alone, whereas at least two lay magistrates are needed to conduct a trial. All magistrates can seek advice from the Clerk of Courts, who is a fully trained lawyer. The maximum custodial sentence that can be imposed by a Magistrates Court is a total 6 months. The maximum fine is usually specified in the legislation involved (Holden, 1998).

In Scotland, the equivalent of Magistrates Courts are the District Courts, which are staffed by lay men and women justices. District Courts can only deal with summary matters, and can impose a maximum of 60 days imprisonment and fine of £2500. Unlike England, summary trials can also be heard at the next court level up, the Sheriffs Court. The judge (sheriff) is a professional lawyer of 10 years standing, and while sitting in a summary trial can impose prison sentences of up to 3 months (special cases up to 12 months) and fines as specified in the relevant laws (Holden, 1998).

Trial on indictment

Trial on indictment is the method used for trying more serious offences, and may be used for offences under COTES and CEMA. The trial takes place in the Crown Court, and is presided over by a paid professional judge who is, or was, a practising barrister or solicitor. The judge decides on all matters of law, admissibility of evidence, and the appropriate

penalty, while a jury determines issues of fact. The maximum prison sentence which can be imposed by the Crown Court is specified in the legislation (Holden, 1998).

In Scotland, trial by solemn procedure takes place in front of a judge and jury, usually in the Sheriff's Court, but in serious cases in the High Court. The sheriff can impose a prison sentence of up to three years, but can also send a case to the High Court for sentencing if it is considered a longer sentence is required (Holden, 1998).

Case Studies

- In April 1998 HMC&E received information that a well-known UK bird breeder and dealer had illegally imported rare CITES listed parrots. The investigation, which took almost two years and involved co-operation between authorities in six other countries across Europe and South America, uncovered a smuggling route, stretching from the Brazilian jungle, across Eastern and Western Europe to the UK (DEFRA, 2001).

Over 140 CITES Appendix I and II birds, worth hundreds of thousands of pounds, were seized. The defendant was eventually charged with smuggling Lear's macaws (*Anodorhynchus leari*) and Blue Headed macaws (*Ara couloni*). He was given a two and a half year prison sentence and ordered to pay £5000 costs; the prison sentence was reduced to 18 months on appeal in view of the defendant's age (61). This is the longest sentence given in the UK at that time for offences concerning the illegal trade in endangered species (DEFRA, 2001).

The breeder appealed against his conviction. As well as taking advantage of the recently introduced Human Rights Act in the UK, his defence team exploited the fact that this was the first time a case had been heard in this country involving European Regulation 338/97. They identified a potential loophole in the legislation and constructed a convincing legal argument that HM Customs & Excise did not have the power to prosecute the case. They argued that the initial offence had occurred in Austria, as this was the first point of entry into the European Community and not in the United Kingdom. However the court ruled that it was a continuous offence and the appeal was refused (C. Mackay, Her Majesty's Customs and Excise – CITES Team, *in litt.* to TRAFFIC Europe, November 2001).

- The Metropolitan Police Force made history with what is believed to be the first ever prosecution for selling shahtoosh shawls in the West. During raids as part of the 'Operation Charm' initiative, 138 shahtoosh shawls, with an estimated retail value of £353,000, were seized from the premises of a London company dealing in Indian artifacts and woolen goods. In April 2000, the company pleaded guilty to offering the shawls for sale and were fined £1500 and ordered to forfeit the shawls (DEFRA, 2001).
- A London taxidermist was charged with 59 counts relating to infringements of the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES) and the Wildlife and Countryside Act 1981 (which protects native wildlife species). When police raided the taxidermist's premises in March 1998, they found more than 60 animals and birds illegally being offered for sale. The taxidermist pleaded guilty to 29 counts of forgery relating to applications made to DETR and 12 counts of displaying specimens for sale without the relevant documentation. In December 2000, the taxidermist was sentenced to 6 months imprisonment for the forgery offences and 28 days for the display offences. The court also ordered the forfeiture of all animal specimens involved (DEFRA, 2001).
- An international covert police 'sting' trapped an international bird smuggler in the summer of 1998. A Dutch national had traveled to Scotland with the intention of buying 16 Peregrine falcons (*Falco peregrinus*), which had been illegally taken from the wild. The case came to trial in January 1999, when he was found guilty by the sheriff who fined him £2000, and ordered the forfeiture of the vehicle used to travel to Scotland, together with £4000 in cash, which was to be used to pay for the birds (DEFRA, 2001).
- In 2001, 710 live tortoises (*Testudo horsfieldii*) were detected in the luggage of a passenger a non-EU national travelling from Russia. The passenger did not possess any CITES documentation for the specimens. He was

arrested, interviewed and charged with offences under CEMA. A file was sent to the Customs Solicitors. When the passenger appeared at court he was given bail with a surety of £4000. During the four weeks prior to his next court hearing the passenger absconded on a false passport, to return to his home country. The passenger was also charged with an infringement of the Welfare of Animal Transport Order under the Animal Health Act 1981. The court issued an arrest warrant, but unless the passenger tries to enter the UK again he will escape the possible prison sentence for his crimes (C. Mackay, Her Majesty's Customs and Excise – CITES Team, *in litt.* to TRAFFIC Europe, November 2001).

Court Cases

The following table contains some basic statistical data relating to court cases in the United Kingdom between 1987 and 2001. It does not list all cases between those dates, which addressed or considered wildlife trade issues.

Table 1

Court Cases in the United Kingdom

Date and Court	Species involved	Protection Status	Market value	Offence	Detailed offence	Law	Penalty	Maximum penalty possible	Details
2nd October 1987	2 live birds of prey	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£1000 fine plus £50 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
23rd March 1988	reptiles and amphibians	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£2500 fine plus £175 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
6th January 1989. Uxbridge Magistrates Court	2 Indian pythons	CITES Appendix I	Not known	Illegal export	Illegal exportation under Section 68 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£200 fine	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
18th February 1989	snakes	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£750 fine plus £25 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
20th March 1989	18 birds of prey	CITES Appendix II	£1500	Sale/ possess for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£200 fine and £330 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Country: UK Date of seizure / date of first report of offence: 11th June 1987
6th June 1989	365 orchids	CITES Appendix I	£42 000	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	12 months in prison, £10 000 fine and £10 000 costs.	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	An appeal was heard on 13th July 1989 and the fine reduced to £2500 and sentence to 6 months imprisonment Country: South America
16th June 1989	4 gila monsters, 5 blue tongued skinks, 7 rattlesnakes, 1 Indian python	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£1000 fine and £1500 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	Not known Animals were given to London Zoo Country: USA
17th June 1989	12 000 imported birds and reptiles	Not known	VAT value £46 500	VAT fraud	Not known	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£46 500 VAT plus 3 months in prison, with 18 months suspended sentence	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	

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Date and Court	Species involved	Protection Status	Market value	Offence	Detailed offence	Law	Penalty	Maximum penalty possible	Details
6th August 1989. Southampton Crown Court	1 jaguar skin, various reptiles	CITES Appendix I / II		False declaration and illegal import	Section 167(1) False declaration and possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£1200 fine	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
7th October 1989. Durham Magistrates Court	Scarlet macaw	CITES Appendix I	£1000	Sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	No fine, £15 costs. 12 months conditional discharge	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Country: UK
7th November 1989. East Grinstead Magistrates Court	Scarlet macaw and Military macaw	CITES Appendix I	£2000	Offer for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	No fine, £100 costs. 12 months conditional discharge	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Country: UK Date of seizure / date of first report of offence: 31st January 1989
24th July 1990. Harwich Magistrates Court	18 cactus specimens	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£200 fine and £50 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	Country: Chile Date of seizure / date of first report of offence: Harwich 17th July 1990
10th August 1990. Maidstone Crown Court	12 peregrine falcon eggs	CITES Appendix I	£120 000	Illegal export	Export or attempted export of goods (Wildlife/products) under Section 68 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	1 defendant jailed for 30 months and one defendant jailed for 15 months	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	information received from an informant Country: UK Date of seizure / date of first report of offence: Dover April 1989
10 August 1990. Maidstone Crown Court	4 gyr falcon chicks	CITES Appendix I	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	18 months in prison	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
26th September 1990	Assorted owls and buzzards	CITES Appendix II	£2000	Possess for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£1500 fine and £400 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Country: UK Date of seizure / date of first report of offence: 1989
22nd April 1991. Uxbridge Magistrates Court	2 boa constrictors, 1 tortoise, 11 blue-cheeked amazons	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£950 fine	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
10th June 1991. Uxbridge Magistrates Court	853 North American slipper orchids	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£200 fine and £50 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	Country: USA Date of seizure / date of first report of offence: 14th November 1990 at Heathrow Airport
16th August 1991. Isleworth Crown Court	11 blue cheeked Amazons	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£250 fine and £250 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	5 of the birds died within days of importation. The remainder, all male were given to the World Parrot Trust Country: Guyana Date of seizure / date of first report of offence: 1st February 1990 at Heathrow Airport
21st September 1991	9 Rosellas	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£1275 fine including costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	1 rosella already dead when discovered stowed in the defendant's car at Ramsgate port Country: Belgium

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Date and Court	Species involved	Protection Status	Market value	Offence	Detailed offence	Law	Penalty	Maximum penalty possible	Details
29th September 1991. Solihull Magistrates Court	18 Galah eggs	CITES Appendix II	£30,000 +	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£1200 fine	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	Only 6 of the birds survived and were homed at Twycross Zoo Country: Australia
21st November 1991. Torbay Magistrates Court	9 marsh warbler eggs, 4 marsh harrier eggs	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£1800 fine	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
18th February 1992. Plymouth Magistrates Court	various reptiles and amphibians	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	2 months suspended sentence	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
16th March 1992	dead birds	CITES Appendix II	Not known	Sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£75 fine plus £25 costs and 12 month conditional discharge	Fines of up to £5000 per offence, imprisonment for up to two years, or both	
28th April 1992. Harrow Magistrates Court	Little owl	CITES Appendix II	£50	Sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	No fine, £100 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Country: UK Date of seizure / date of first report of offence: 25th June 1991
15th May 1992. Solihull Magistrates Court	50 red-kneed tarantulas	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£750 fine	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
4th June 1992. Cannock Magistrates Court	2 African grey parrots, 11 Australian cockatoos	CITES Appendix II	Not known	Illegal export and import	Possession and trade in illegally imported goods under Section 170 and of illegally exported goods under Section 68(2) of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£200 fine	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
7th July 1992	9 pieces of ivory	CITES Appendix I	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£50	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
24th August 1992	ivory carvings	CITES Appendix I	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£1000 fine and £50 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	Country: Hong Kong
28th September 1992. Thetford Magistrates Court	6 sparrow-hawks	CITES Appendix II	£700	Sale; possess for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£30 fine and £30 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Country: UK Date of seizure / date of first report of offence: 4th June 1992
6th June 1994	40 orange bellied parrots	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£1000 fine and £1000 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	Also pleaded guilty to VAT evasion Country: Tanzania
4 th July 1994	Spur-thighed tortoise	CITES Appendix II	Not known	Offering for sale; sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	12 months conditional discharge plus £100 costs		

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Date and Court	Species involved	Protection Status	Market value	Offence	Detailed offence	Law	Penalty	Maximum penalty possible	Details
21 st October 1994. SE Northumberland Magistrates Court	Pallid harrier and barn owl (taxidermy specimens)	CITES Appendix II	Not known	Possess for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£100 fine and £50 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Country: UK Date of seizure / date of first report of offence: 8 th December 1993
31 st October 1994. Bristol Crown Court	37 chameleons	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	80 hours community service	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
21 st February 1995	cobra skins	CITES Appendix II	Not known	Mis-described goods	Import of misdescribed goods under Section 174 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£500 fine	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
29 th June 1995. Cardiff Crown Court	17 Russell's Boa, 32 Hardwick's spiny tailed lizard	CITES Appendix II	£5000	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	4 months in prison	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	one of the first cases where a smuggler caught bringing wildlife into the UK has been sent to prison Country: Pakistan
10th July 1995	Little owl	CITES Appendix II	Not known	Sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	12 months conditional discharge plus £30 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	
10th July 1995	Sparrowhawk	CITES Appendix II	Not known	Sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£250 fine plus £175 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	
31st August 1995. Birmingham Magistrates Court	Tiger bones and plasters, rhino horn medicine	CITES Appendix I	Not known	Displaying for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£1000 fine	Fines of up to £5000 per offence, imprisonment for up to two years, or both	
6th September 1995	Tiger bones and plasters, rhino horn medicine	CITES Appendix I	Not known	Offering for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£3000 fine	Fines of up to £5000 per offence, imprisonment for up to two years, or both	
29th September 1995. Snaresbrook Crown Court	23 peregrine falcons	CITES Appendix I	£15 000	Offering for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	4 months in prison £1000 fine	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Case involved taking blood samples from 49 birds. DNA analysis showed that 23 birds were not related to their declared parents. Country: UK Date of seizure / date of first report of offence: Inquiry began in February 1993
7th January 1996. Swansea Crown Court	16 red-tailed black cockatoo, white tailed black cockatoo and yellow tailed black cockatoos	CITES Appendix II	£160 000	Conspiracy to import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	8 months in prison, £29 500 in assets confiscated by the Crown, £2500 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	Sentences could be considered light as the maximum possible under CEMA is 7 years Country: Australia Date of seizure / date of first report of offence: Customs at Perth Airport Australia apprehended the defendant in October 1994 which led to the South Wales connection

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Date and Court	Species involved	Protection Status	Market value	Offence	Detailed offence	Law	Penalty	Maximum penalty possible	Details
9th May 1996. Chester Crown Court	500 items including skulls of Amur Tiger, Babylusa, ring tailed lemur, Philippine eagle as well as skins of macaques and 15 species of Philippine birds	CITES Appendix I / II	£500 000	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	2 years in prison and £18 500 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	After the prosecution HMCE still possessed a large number of CITES listed specimens that had been seized. In November 1997, condemnation proceedings took place at Machynlleth Magistrates Court to decide which specimens should be returned. The court ordered all items other than two boxes of Philippine bird skins to be returned. HMCE appealed the decision, but Chester Crown Court upheld the magistrates decision. HMCE were ordered to pay £4000 towards costs. Date of seizure / date of first report of offence: August 1995 when a Philippine eagle skull ws taken to a taxidermist to be mounted. The taxidermist contacted TRAFFIC and RSPB and the investigation went on from there.
1st July 1996	Orchids	CITES Appendix II	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	£500 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	
4th November 1996. Cannock Magistrates Court	2 goffin's cockatoos and 2 Livingstone's turacos	CITES Appendix I / II	Not known	Keeping for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£300 fine and £100 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	
23rd January 1997. Cannock Magistrates Court	Barn owl	CITES Appendix II	£40	Sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£50 fine and £60 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Country: UK
13th March 1997. Hampshire Magistrates Court	Medicines containing tiger, leopard, bear, musk deer, saiga antelope, costus root and American ginseng	CITES Appendix I / II	Not known	Offering for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£2000 fine and £150 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	
4th April 1997. Luton Crown Court	12 Eleonora's falcons	CITES Appendix II	£8000	Offering for sale, sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	8 months in prison	Fines of up to £5000 per offence, imprisonment for up to two years, or both	The defence tried to argue that he did not know Eleonora's falcon was listed on Annex A of the regulations. However, the judge rejected this argument and held this defence could only be used when the accused did not know the nature of the specimen itself. Country: Majorca/Spain Date of seizure / date of first report of offence: warrant took place in October 1995
24th August 1997. Oldham Magistrates Court	1 merlin	CITES Appendix II / Annex A	Not known	Offering for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	2 year conditional discharge and £130 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Sold bird in 1994
15th September 1997. Bedford Magistrates Court	2 ivory tusks	CITES Appendix I	£2000	Purchasing	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£250 fine and £54 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	

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Date and Court	Species involved	Protection Status	Market value	Offence	Detailed offence	Law	Penalty	Maximum penalty possible	Details
19th November 1997	Stuffed hawksbill turtle, 3 tiger claws, a tiger tooth, 2 ivory and gold tusks, 3 ivory necklaces and 1 ivory bangle.	CITES Appendix I	Not known	Offering for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	£500 fine and £150 costs	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Date of seizure / date of first report of offence: warrant took place on premises in October 1996
11th March 1998. Kings Lynn Crown Court	127 rhino horns	CITES Appendix I	£2.88 million	Offering for sale	Section 3(1) COTES referring to Article 2(a) or 3(1) of the Principal Regulation ie Council Regulation (EC) No. 3626/82	Control of trade in Endangered Species (Enforcement) Regulations 1985	15 months in prison, £700 costs and forfeit horn; 120 hour community service order; nine months in prison	Fines of up to £5000 per offence, imprisonment for up to two years, or both	Case went to appeal against the forfeiture of the horns. As there was no proof that the horns had not been legally acquired, the penalty of forfeiture had been inappropriate and the rhino horns have been returned. The conviction and jail sentence still stand. Under legislation introduced in 1997 forfeiture is mandatory so this could not happen again. Date of seizure / date of first report of offence: warrant took place on 3rd September 1996. Investigation began in April 1996
11th March 1998. Marlow Magistrates Court	Owls and a buzzard	CITES Appendix II / Annex A		Display for commercial purpose	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£1200 fine and £200 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Country: UK Date of seizure / date of first report of offence: 11th March 1998
21 st June 1998. Chichester Magistrates Court	2 marsh harriers	CITES Appendix II / Annex A	£1400	Sale of Annex A birds	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£1350 fine, £700 compensation and £455 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Country: UK Investigation began February 1998
5 th October 1998. Peterborough Magistrates Court	Northern goshawk exchanged for a saker falcon	CITES Appendix II / Annex A	Not known	Purchasing Annex A bird	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	2 year conditional discharge and £69 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	This is the first conviction for the new offence of 'purchasing an EU Annex A specimen' under COTES 1997 Country: UK
4 th December 1998. Marylebone Magistrates Court	Elephant tusk, ivory bracelet and ivory pieces, tiger skin, polar bear skin, puma skin, python and monitor skins	CITES Appendix I/II / Annex A/B	Not known	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations	Case dismissed	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	Due to the considerable time lag between the warrant and coming to trial (over 2 years) the magistrate considered this an abuse of process and dismissed the summons issued under COTES. HMCE went ahead for condemnation proceedings over the puma and polar bear skin. This came to court on 19 th March. The puma skin was not forfeited as there was no evidence that it had been imported. The polar bear skin was forfeited. Date of seizure / date of first report of offence: Warrant was executed on 8 October 1996
25 th January 1999	Little owl	CITES Appendix II / Annex A	£50	Sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£50 fine and £70 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Country: UK Date of seizure / date of first report of offence: 28 th July 1998
28 th January 1999. Inverness Sheriff Court, Scotland	16 peregrine falcons	CITES Appendix I / Annex A	Not known	Offering to purchase Annex A specimens	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£2000 fine and forfeited car and £4000 cash	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	This is the first successful implementation of COTES 97 in Scotland Date of seizure / date of first report of offence: Offence first reported in February 1998
12 th May 1999. Northallerton Magistrates Court	10 sparrow-hawks, 12 tawny owls, 1 kestrel, 1 little owl	CITES Appendix II / Annex A	Not known	Keeping for sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£500 fine and £200 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Search warrant carried out in July 1998. All specimens were carcasses found in the freezers and for taxidermy purposes Country: UK

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Date and Court	Species involved	Protection Status	Market value	Offence	Detailed offence	Law	Penalty	Maximum penalty possible	Details
24 th May 1999	Eagle owls	CITES Appendix II / Annex A	Not known	Offering for sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£500 fine	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	
29th October 1999. Hamilton Sheriff Court	1 red kite, 1 sparrow-hawk	CITES Appendix II / Annex A	Not known	Offering for sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	Found guilty and admonished (conviction with no penalty)	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Second COTES case in Scotland Country: UK Date of seizure / date of first report of offence: Advert seen in October 1998
6th January 2000. Thetford Magistrates Court	18 trays of snowdrop bulbs	CITES Appendix II / Annex B	Not known	Acquiring, keeping and offering for sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	180 hours community service, £100 costs and forfeit equipment.	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Also tried for theft on 29 November 1999. As no one could be found to take charge of the seized bulbs, they were returned to the defendant. In another case in January 2000 t men were jailed for the theft of 300 000 snowdrop bulbs valued at £60 000. They received sentences of 21 months and 15 months under the theft act on 14th January 2000 at St Albans Crown Court. The offence took place in February 1999. Country: UK Date of seizure / date of first report of offence: Offence committed on 4th March 1999
12th April 2000. Horseferry Road Magistrates Court	138 shahtoosh shawls	CITES Appendix I / Annex A	£353 000	Offering for sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II).	Control of trade in Endangered Species (Enforcement) Regulations 1997	£1500 fine and all shawls forfeited	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	This viewed as a poor result considering it was a corporation that was taken to court. In hindsight if Customs had been involved and charges had been laid and tried under CEMA it may have had a different result Country: Jammu and Kashmir Date of seizure / date of first report of offence: warrant was in February 1997
14th April 2000. Newcastle Crown Court	3 Lear's macaws, 6 blue headed macaws	CITES Appendix I / Annex A	£100 000	Illegal import	Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations / COTES 1997	Two and a half years in prison and £5000 costs	Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment	Over 140 other parrots were seized during the warrant. This is the toughest sentence yet to be handed out for such an offence. The defendant went to appeal based on 3 points of law. The judges dismissed all three points of law, but did reduce the sentence to 18 months after taking the defendants age into account. Asset Forfeiture Proceedings have now been completed. The judge made a confiscation order of £160 000 which included £60 000 for the lears and the blue headed macaws. Country: Yugoslavia and Slovakia Date of seizure / date of first report of offence: Imports occurred in 1997 and 1998. warrant on premises was in April 1998
11th July 2000. Swansea Crown Court	1 goshawk	CITES Appendix II / Annex A	Not known	Sale of Annex A bird	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	Conditional discharge, no costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	The regulations made the forfeiture of the goshawk mandatory by the court, the saker which was exchanged for it was returned to the defendant Country: UK Date of seizure / date of first report of offence: Same case as 1998 Peterborough one with the exchange of a goshawk for a saker. Under COTES exchange constitutes a sale

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Date and Court	Species involved	Protection Status	Market value	Offence	Detailed offence	Law	Penalty	Maximum penalty possible	Details
18th August 2000. Tavistock Magistrates Court	1 peregrine, kingfishers, tawny owls, otters, buzzards, 3 sparrow-hawks.	CITES Appendix I/II / Annex A/B	Not known	Offering for sale; sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	Conditional discharge, £55 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Country: UK Date of seizure / date of first report of offence: Investigation began March 1999. A warrant was executed on 30 June 99
24th August 2000. Liverpool Magistrates Court	5 barn owls, 3 little owls, 1 buzzard, 1 sparrow-hawk and 1 kestrel	CITES Appendix II / Annex A	Not known	Offering for sale, keeping for sale and sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	All birds confiscated and £100 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	All taxidermy specimens. The defence put forwards was that being unaware of the legislation he could not be found guilty. However this defence was not allowed as it relates to a mistake of fact not law ie whether the defendant know what species he was selling and not whether he knew the regulations existed. Country: UK Date of seizure / date of first report of offence: Advert appeared 19th January 2000. Warrant executed on 24th January 2000.
28th September 2000. Okehampton Magistrates Court	Otters, buzzards and tawny owls	CITES Appendix I/II / Annex A/B	Not known	Displaying for sale and acquiring for sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	Absolute discharge and £275 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	At the defendants premises a 0.22 rifle and shotgun were found. He was convicted at Okehampton Magistrates Court on 16th April 2000 for failing to take reasonable precautions for the safe custody of firearms and fined £2000 with £170 costs. This conviction was cited before he was sentenced for the COTES offences and may have had a bearing on the sentence handed out by the magistrates. Country: UK Date of seizure / date of first report of offence: Warrant was executed on 19th October 1999
29th September 2000	Stuffed birds of prey	CITES Appendix II / Annex A/B	Not known	Sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	Conditional discharge plus £100 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	
9th October 2000. Bristol Crown Court	6 hyacinth macaws	CITES Appendix I / Annex A	£23 000	Commercial trade in Annex A specimens	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	Absolute discharge and £330 costs. The birds were forfeited	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Country: Philippines Date of seizure / date of first report of offence: nformation was received February 1999
8th November 2000. Gloucestershire Crown Court	Moluccan cockatoo	CITES Appendix I / Annex A	£1000	Possess for sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£500 fine and £260 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Country: UK Date of seizure / date of first report of offence: 27th August 1999
1st December 2000. Snaresbrook Crown Court	65 specimens including tigers, leopard, gorilla, elephant tusk	CITES Appendix I/II / Annex A/B	Not known	Buying, selling and displaying for commercial purposes	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	6 months in prison and all items forfeited	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	The defendant applied for a judicial review after the warrant was executed, arguing he had been publicly humiliated in the publicity that follows as a result of a TV crew that attended the warrant. The application was dismissed, but the judge criticized the practice of allowing film crews to accompany investigating officers for immediate broadcast. Date of seizure / date of first report of offence: Warrant was executed on 10th March 1998

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Date and Court	Species involved	Protection Status	Market value	Offence	Detailed offence	Law	Penalty	Maximum penalty possible	Details
February 2001 Southwark Crown Court	2 rhino horns	CITES Appendix I / Annex A	Not known	Transporting for sale	Regulation 8(1) COTES referring to EU Wildlife Trade Regulations Article 8	Control of trade in Endangered Species (Enforcement) Regulations 1997	6 months in prison and items forfeited	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	
8th March 2001. South Sefton Magistrates Court	2 little owls	CITES Appendix II / Annex A	Not known	Purchase	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£300 fine and £75 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Country: UK
4th June 2001. Sunderland Magistrates Court	Buzzard	CITES Appendix II / Annex A	£60	Sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£250 fine, £60 compensation and £75 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Country: UK Date of seizure / date of first report of offence: Advertised in local paper and sold in November 2000
15th June 2001. Southwark Crown Court	Tantalus monkey, African pangolin, monitor skins, rock python skin	CITES Appendix II / Annex B	Not known	Illegal import and offering for sale, sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II). Possession and trade in illegally imported goods under Section 170 of the Customs and Excise Management Act 1979	Customs and Excise Management Act 1979 contrary to the EU Wildlife Trade Regulations / COTES 1997	4 months in prison	CEMA: Summary: £1000 or 3 x the value of the goods, whichever is greater and / or maximum 6 months imprisonment. Indictment: any sum and / or maximum 7 years imprisonment. COTES: Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	First case to come to court involving bushmeat Country: Nigeria Date of seizure / date of first report of offence: Warrant executed in November 1999
28th June 2001	Buzzard	CITES Appendix II / Annex A	Not known	Purchase / sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£100 fine plus £45 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	
11th July 2001. Southport Magistrates Court	Radiated tortoise, 9 hermann's tortoises, 10 spur-thighed tortoises, 3 barn owls, 4 tawny owls, 1 scarlet macaw, 3 ocelots, 3 cotton topped tamarins	CITES Appendix I/II / Annex A	Not known	Displaying for commercial purposes	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	£5000 fine and £350 costs and forfeited all animals mentioned in the charges	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Date of seizure / date of first report of offence: Warrant executed on 20th November 2000
16th August 2001. Durham Crown Court	14 eggs peregrine falcon, 95 eggs other raptors, 46 eggs owls	CITES Appendix I/II / Annex A	£750	Sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	4 months suspended sentence. Costs of £1150	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	First case involving sale of eggs under COTES Country: UK Date of seizure / date of first report of offence: Eggs sold October 1996, evidence uncovered March 1999
29th August 2001	dead birds	CITES Appendix II / Annex B	Not known	Sale	Regulation 8(1)(2) COTES referring to EU Wildlife Trade Regulations Article 8 (App 1) or 4 (App II)	Control of trade in Endangered Species (Enforcement) Regulations 1997	Conditional discharge, £90 fine plus £60 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	
Not known	clutch of peregrine eggs	CITES Appendix I / Annex A	Not known	Purchase	Regulation 8(1) COTES referring to EU Wildlife Trade Regulations Article 8	Control of trade in Endangered Species (Enforcement) Regulations 1997	£750 fine and £118 costs	Summary: £5000 maximum and / or 3 months imprisonment. Indictment: Maximum 2 years imprisonment and / or fine of any amount	Charged with 3 offences under WCA as well as 1 under COTES in relation to collection of 250 birds eggs - the fine and costs were for all 4 offences not just COTES ones Country: UK

Source: S. Pendry, TRAFFIC International, in *litt.* to TRAFFIC Europe, October 2001

The UK's main Challenges for bringing Prosecutions on the illegal Trade in Wildlife

Many challenges can arise at any stage in the procedures for enforcement of wildlife trade laws, from the first point of detection of illegal trade to dealing with an appeal case in court. The UK, as with any other country, has finite resources for its enforcement agencies. Illegal wildlife trade investigations cannot normally take priority above some other types of serious crimes (eg. terrorism, drugs offences, etc). Great advances have been made in the UK - enforcement agencies acknowledge the existence of wildlife trade and within the resources they have at their disposal, work very hard to target, interdict and prosecute illegal trade (DEFRA, UK CITES Management Authority, *in litt.* to TRAFFIC Europe, November 2001).

However, both the Police and Customs must work to given priorities as guided by the government. It is a balancing act to ensure the most effective deployment of finite resources available in combating all forms of crime. The UK government has been consistently supportive of enforcement of wildlife trade laws both domestic and international and has established many innovative protocols to enhance enforcement (DEFRA, UK CITES Management Authority, *in litt.* to TRAFFIC Europe, November 2001).

The removal of internal borders within the EU has brought about a change in Customs practices, with an emphasis on intelligence led deployment of resources, rather than traditional inspection methods.. This is also true for the Police, who follow the National Intelligence Model which lays down a structure for the handling, management and analysis of intelligence (DEFRA, UK CITES Management Authority, *in litt.* to TRAFFIC Europe, November 2001).

Upon detection of a possible offence, the Police prepare a case file for the Crown Prosecution Service (CPS), who will then decide whether to prosecute the case based on the information presented. In deciding whether to prosecute, the CPS must apply the two tests: is there enough evidence to provide a 'realistic prospect of conviction' and if yes, then is the prosecution in the public interest? Public interest factors operating in favour of prosecution include that; the defendant was a ringleader, the offence was premeditated, carried out by a group or likely to be repeated. The probability of light penalties tends against prosecution, as does whether loss or harm was minor. An incomplete or poorly prepared case file can result in the CPS recommending that there is no case to answer in court. In addition, because the CPS deal with the entire range of offences that can occur in the UK, the relative infrequency of wildlife trade cases, can mean that some personnel within CPS will not have experience in dealing with these types of cases. This could affect recommendations made or the way a case is presented in court. As Customs pursue prosecutions concerning illegal imports or exports under their own legislation (The Customs & Excise Management Act 1979) they also have their own separate legal advisory department (DEFRA, UK CITES Management Authority, *in litt.* to TRAFFIC Europe, November 2001).

Because of the infrequency of wildlife cases coming to court, both magistrates and judges can be unfamiliar with the legislation involved. They are reliant on the presentations made in court to inform them fully of the laws, impact and seriousness of the offence. A lack of sentencing guidelines in the UK for illegal wildlife trade has resulted in what appear to be a wide range of penalties being handed down under the same legislation for similar offences. The CPS, magistrates and judges can be unaware of the significance of the impact these crimes can have on highly endangered species. However, when magistrates and judges have been well informed, the results have been very positive (DEFRA, UK CITES Management Authority, *in litt.* to TRAFFIC Europe, November 2001).

In the UK, the situation is constantly monitored and improvements developed through a national interagency initiative, under the banner of the "Partnership for Action against Wildlife Crime" (PAW). Since 1995 this initiative has ensured that legislation is improved and tools are developed and awareness raised. It has also developed an initiative and funding for the establishment of a National Wildlife Crime Intelligence Unit. The Unit will be launched in April 2002. The CPS is involved in discussion with the PAW partnership, exploring ways to develop areas of expertise on wildlife within the CPS, acting as a central resource on wildlife crime issues for prosecutors and Police. In addition, there are a number of ways that have been identified to raise the awareness of the judiciary to the impacts and seriousness of wildlife crime (DEFRA, UK CITES Management Authority, *in litt.* to TRAFFIC Europe, November 2001).

The enforcement powers and penalties available under current legislation are, for the most part, appropriate. However, while appropriate penalties are available, more may be able to be done to encourage Magistrates and Judges not to shrink from imposing penalties up to the maximum available. In 2002 the regulation dealing with domestic trade in endangered species, the Control of Trade in Endangered Species Enforcement Regulation (COTES), will be under review, and the option for increasing the penalties under this regulation will be considered. Since 2001 there has been an improvement in sentencing as a result of increased awareness arising from some major international cases (DEFRA, UK CITES Management Authority, *in litt.* to TRAFFIC Europe, November 2001).

Reported Seizures of CITES listed Specimens involving EU Member States

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Introduction

The European Community represents one of the world's largest markets for wild plants and animals, including many species regulated in international trade by CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora). Legal imports into the European Union (EU) of CITES-listed species in 1996 included 7000 live primates (30% of global trade), 850 000 live birds (65% of global trade), 55 000 live reptiles (15% of global trade), 330 000 snake skins (45% of global trade) and 800 000 wild collected plants (75% of global trade) (Anon. 1999).

As harvest for international trade can have a detrimental impact on the survival of wild populations, CITES aims to ensure that international trade in specimens of CITES-listed species does not threaten their survival. All EU Member States are CITES Parties and have implemented its provisions through Council Regulation (EC) 338/97 and Commission Regulation (EC) 1808/2001. Even though the Member States enforce these regulations by controlling trade transactions and by punishing offenders, illegal trade continues to exist and is of serious conservation concern. In order to improve the enforcement of wildlife trade controls in the EU, it is important for prosecutors and enforcement officials to have adequate knowledge on the nature and extent of this illegal trade. For the purpose of obtaining an overview, CITES Management Authorities were requested to provide data on seizures and seizures. Available data have been incorporated in the "Statistical Information and Factual Summaries on the Enforcement of Wildlife Trade Controls in the EU Member States" (see Annex B above). In addition, CITES annual report data compiled by UNEP-World Conservation Monitoring Centre (UNEP-WCMC) in the form of comparative tabulations were analysed with regards to reported seizures for the years 1990 to 2000 (in *litt.* to TRAFFIC Europe, November 2001). The comparative tabulations show all reported trade – imports, exports and re-exports - in CITES-listed species by the EU Member States. Further explanation of comparative tabulations and its limitations are given in the methodology section below.

The following sections describe various characteristics of reported illegal trade involving EU Member States as importing or (re-) exporting Parties. Firstly, a general overview is given to show the taxa composition of the seized specimens and the EU Member States involved in this trade. Secondly, the reported illegal trade is examined in more detail for each Member State to provide additional information on the role of individual countries, in particular whether they were involved mainly as importing, exporting or re-exporting Parties and which taxa were most dominant in the reported seizures.

Methodology

Comparative tabulation data detail records of trade involving any EU Member State as an importing, exporting or re-exporting country. Normally, all data presented in the format of comparative tabulations are summed. This means that quantities of specimens illegally traded are added together for all seizures where the following details are the same – taxon, description of items traded, country of import, country of export, country of origin, reporting country, purpose of transaction, source of material and the year in which the trade occurred. It is therefore not possible to determine the exact number of seizures made.

Before the levels of illegal trade could be determined, it was necessary to make slight adjustments to the data. In order to prevent double counting of seizures that had been reported by both the importing and the exporting country, identical import and export records were combined into one record. However, this method does not allow for cases with reporting differences, e.g. purposes and source code differences. Therefore, an overestimation of the actual numbers of seized specimens may still exist.

Limitations of comparative tabulation data

In addition to the limitations described above, there are several other factors that may have influenced the results of the analyses presented in this report:

- **Submission of CITES annual reports**
As some Member States have not submitted CITES annual reports for every year during the period 1990 to 2000, the incompleteness of the data available for analysis may lead to potentially incorrect assumptions being made, i.e. that certain countries seized fewer specimens than others. Since EU Member States may not necessarily have reported all seizures, data have been drawn from annual reports of EU Member State as well as other CITES Parties that have traded with EU Member States. Therefore, the submission and quality of CITES annual reports of non-Member States are pertinent to corroborate or complete the data contained within EU Annual Reports.
- **Reliability of reported seizure data versus overall illegal trade**
The number of seized specimens reported in CITES annual reports depends strongly on the quality of reporting. Therefore, reported seizures do not necessarily reflect all seizures that actually took place.
- **Enforcement effort versus overall illegal trade**
Furthermore, the number of seized specimens reported in CITES annual reports depends strongly on the level of enforcement effort. Large numbers of seized specimens in one Member State does not necessarily mean that there is a larger illegal trade market in that country compared to others but may reflect the effectiveness of wildlife trade controls, i.e. Customs are very active and have a lot of expertise in detecting illegal trade.
- **Seized taxa versus all taxa involved in illegal trade**
The taxa composition of seized specimens is dependent on the knowledge of and targeted activities by Customs and enforcement authorities and does not necessarily reflect the complete taxa composition in the illegal trade market.
- **CITES source code system**
Seized specimens can reappear in trade, e.g. when a specimen is exported to another country for educational or law enforcement purposes, the source code in the data remains “I” (confiscated or seized specimen), while the transaction itself is perfectly legal. This can lead to an overestimation of the volume of seizures.

It is important to note that, due to the limitations mentioned above, the results of this study can only give an indication of the nature and level of illegal trade.

Key for abbreviations used in the figures and tables

- R = Reported by; followed by a country code of either the Member State or of another country (XX)
- i = imported by; followed by a country code of either the Member State or of another country (XX)
- e = exported by; followed by a country code of either the Member State or of another country (XX)
- r = re-exported by; followed by a country code of either the Member State or of another country (XX)

Live = Live specimens

Other = Dead specimens including parts and derivatives

Country Codes:

AT = Austria	GR = Greece
BE = Belgium	IE = Ireland
DE = Germany	IT = Italy
DK = Denmark	LU = Luxembourg
ES = Spain	NL = Netherlands
FI = Finland	PT = Portugal
FR = France	SE = Sweden
GB = United Kingdom	XX = Other Countries

Examples:

RAT-iAT = Reported by Austria, imported by Austria

RXX-eAT = Reported by another country, exported by Austria

Specimens reported in units

Seized specimens reported in units will be discussed separately from the other data to allow a clearer presentation of the results.

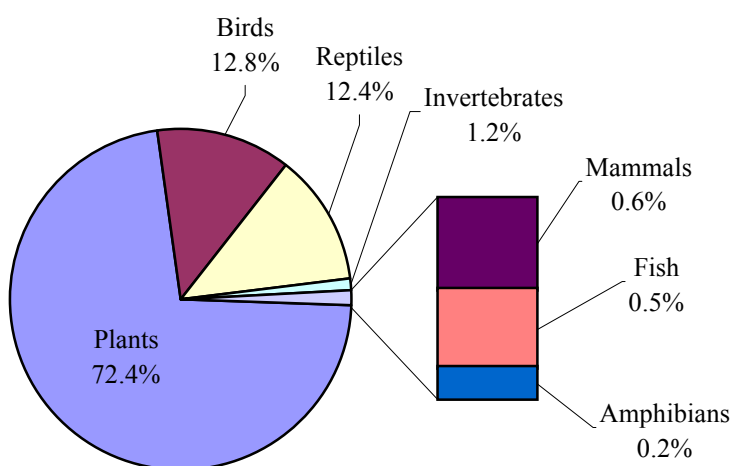
Overview of Illegal Trade as reported by EU Member States

According to CITES annual report data (UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001) 372 634 specimens in trade by the EU Member States (import, export or re-export) were seized from 1990 to 2000 either by an EU Member State itself or by another trading CITES Party. This consisted of 29% live specimens and 71% dead specimens including parts and derivatives (e.g. bodies, tusks, small leather pieces, watchstraps). In addition, some seized specimens were reported in units. As stated in the methodology, these specimens will be discussed in more detail in the data analyses for EU Member States, separately from the data reported with no units specified.

Looking only at live specimens, the taxa composition was as follows:

Figure 1

Taxa composition of seized live specimens (excluding those reported in units) involving the European Union 1990 - 2000



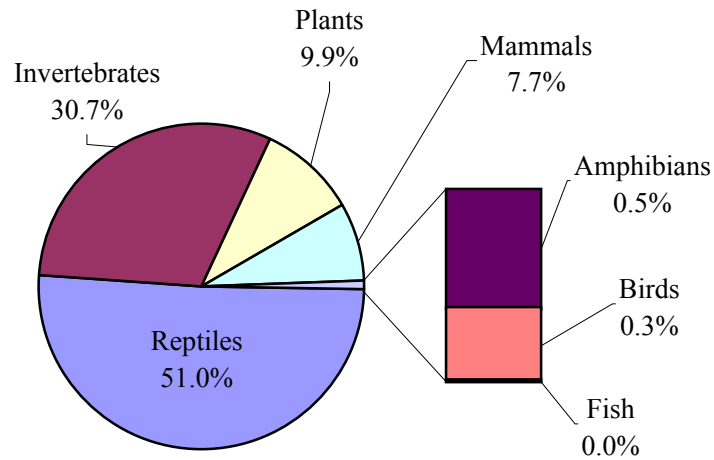
Source: CITES annual report data (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

The data show that plants make up nearly three quarters (72.4%) of all reported seized live specimens involving EU Member States 1990 to 2000, followed by birds (12.8 %) and reptiles (12.4%). The percentages of reported seized invertebrates (1.2%), mammals (0.6%), fish (0.5%) and amphibians (0.2%) are very small in comparison.

Looking only at dead specimens and their parts and derivatives, the taxa composition was as follows:

Figure 2

Taxa composition of seized dead specimens, parts and derivatives (excluding those reported in units) involving the European Union 1990 - 2000



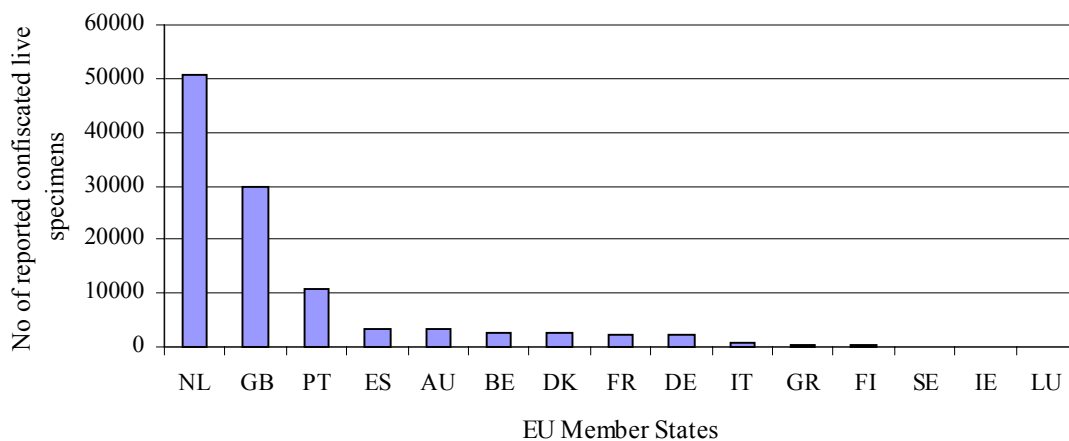
Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Half (51%) of the reported seized dead specimens, including parts and derivatives, involving the EU for 1990 to 2000 were reptiles, followed by invertebrates (30.7%), plants (9.9%) and mammals (7.7%). According to the data, amphibians (0.5%) and birds (0.3%) were rarely seized.

The number of live seized specimens for each EU Member State is as follows:

Figure 3

Number of seized live specimens for each EU Member State 1990 - 2000



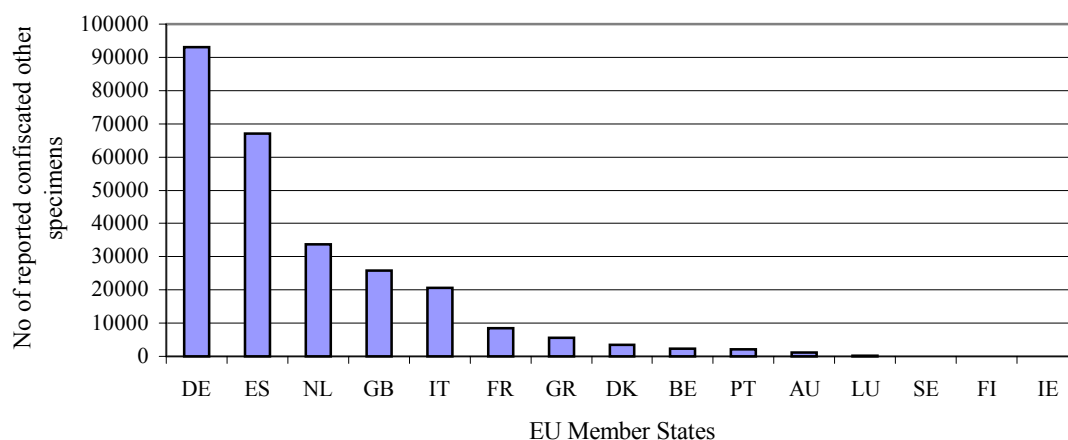
Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

According to Figure 3, the Netherlands has been reported as having the highest number of live specimens seized, followed by the UK and Portugal.

The number of dead specimens, parts and derivatives seized for each Member State is as follows:

Figure 4

Number of seized dead specimens, parts and derivatives for each EU Member State 1990 - 2000



Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

The highest number of reported seized dead specimens including parts and derivatives have involved Germany as a trading Party, followed by Spain. The Netherlands, United Kingdom and Italy also show high levels of reported seized dead specimens including parts and derivatives.

Seizures for each EU Member State

This section gives an overview of available reported seizures (import, export or re-export) from 1990 to 2000 for each EU Member State according to CITES annual report data (comparative tabulations, compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001; see limitations of comparative tabulation data analysis as outlined in the methodology above.)

The following tables are provided for each Member State:

- Overview of the volumes, types of transactions and time trends concerning seized specimens that were not reported in units
- Overview of the taxa of seized specimens that were not reported in units
- Overview of the volumes, taxa, types of transactions and time trends concerning seized specimens that were reported in units

Certain taxa that were represented in significant numbers in the reported seizure figures will be looked at in more detail. However, it is not known how many seizures these numbers of reported seized specimens belong to (see methodology section for more details).

Austria

According to CITES annual report data, 4364 specimens (excluding specimens reported in units) have been seized from 1990 to 2000 (see Table 1). The majority of these specimens (3976 or 91%) were illegally imported into Austria, while the remaining specimens concerned export and re-export by Austria.

Table 1
Reported seized specimens involving Austria 1990 – 2000

Situation	1993	1994	1995	1996	1997	1998	1999	2000	Total
RAT-iAT					894	3 079			3 973
RXX-iAT	1			2					3
RXX-eAT	1					1			2
RXX-rAT	1	205	20	9		104	43	4	386
Total	3	205	20	11	894	3 184	43	4	4 364

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Live reptiles comprise a large proportion (62%) of seized specimens involving Austria 1990 to 2000 according CITES annual reports data (see Table 2) totalling 2727 out of a total of 4364. The seizure of 2000 live Testudinidae (46% of all reported seized specimens from 1990 to 2000, excluding seized specimens reported in units) illegally imported from the USA in 1998 is most significant in terms of volume. Other high seizure levels were reported as follows:

- 426 live reptiles (*Testudo hermanni*) illegally imported in 1997 from Greece;
- 291 dried plants (Cactacea) illegally imported in 1998 from Mexico.

Table 2
Number of seized specimens by taxa: Austria 1990 – 2000

Taxa	Specimens	Quantity	No of Taxa
Birds	Live	206	16
	Other	47	12
Invertebrates	Live	0	0
	Other	28	5
Mammals	Live	49	4
	Other	492	18
Plants	Live	259	15
	Other	318	2
Reptiles	Live	2 727	15
	Other	238	13
Total		4 364	92

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 3 shows seized specimens reported in units by Austria 1990 to 2000. The table shows large amounts of seized fish eggs (40 kilograms), 30 kilograms of which were Acipenseriformes and 10 kg were *Acipenser sturio*.

Table 3
Seized specimens reported by units: Austria 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RAT-iAT	1998	Fish	31	kilograms	Eggs
	1998	Invertebrates	2	kilograms	Raw corals
RXX-rAT	2000	Fish	9	kilograms	Eggs

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Belgium

According to CITES annual report data, 4733 specimens (excluding specimens reported in units) have been seized in Belgium from 1990 to 2000 (see Table 4). The majority of these specimens (2785 or 59%) were illegally imported, 1237 specimens (26%) were illegally exported.

Table 4
Reported seized specimens involving Belgium 1990 - 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
RBE-iBE	146	91	79				658	1	1 775	24	4	2 778
RBE-rBE			103				56	54			2	215
RXX-iBE				2	5							7
RXX-eBE	9	10	500	4		1	8	2		3	700	1 237
RXX-rBE	38	1		8		3	403	1	5	25	10	494
RXX&BE-rBE											2	2
Total	193	102	682	14	5	4	1 125	58	1 780	52	718	4 733

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Dead reptile parts and derivatives comprise a large proportion of seized specimens involving Belgium (see Table 5), i.e. 1625 specimens (34%), which consist of only three taxa, out of a total of 4733 seized specimens. Seized live birds comprise 28% (1338) and live plants make up 22% (1059). The seizure of 1623 reptile skins of *Caiman crocodilus crocodilus* illegally imported into Belgium in 1998 from Switzerland (country of origin: Argentina) is most significant in terms of volume. Other large seizures are:

- 600 live birds (*Serinus mozambicus*) illegally exported in 2000 to the United States;
- 400 live birds (*Serinus mozambicus*) illegally re-exported in 1996 to the United States.

Table 5
Number of seized specimens by taxa: Belgium 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Birds	Live	1 338	15
	Other	1	1
Invertebrates	Live	0	0
	Other	24	8
Mammals	Live	1	1
	Other	76	12
Plants	Live	1 059	113
	Other	544	11
Reptiles	Live	65	6
	Other	1 625	3
Total		4 733	169

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 6 shows seized specimens reported in units by Belgium. Large amounts of *Huso huso* fish eggs (40 kilograms) have been illegally re-exported to the United States; 3967 reptile skins (sides; *Caiman crocodilus crocodilus*) from Brazil and 13 420m² of *Swietenia macrophylla* veneer from Switzerland (country of origin: Argentina) were illegally imported.

Table 6

Seized specimens reported by units: Belgium 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RBE-iBE	1998	Plants	13 420	m ²	Veneer
	1998	Reptiles	3 967	sides	Skins
RXX-rBE	1999	Fish	40	kilograms	Eggs

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Denmark

According to CITES annual report data, 5840 specimens (excluding specimens reported in units) have been seized from 1990 to 2000. The majority of these specimens (5321 or 91%) were illegally imported into Denmark (see Table 7).

Table 7
Reported seized specimens involving Denmark 1990 – 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
RDK-iDK	156	1 932	1 018	2		211	543	804	600			5 266
RDK-rDK							1					1
RXX-iDK	1		4			48	2					55
RXX-eDK			41	4	211	7	100			10	20	393
RXX-rDK	2	12	59	2	3	27		1	14		5	125
Total	159	1 944	1 122	8	214	293	646	805	614	10	25	5 840

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Dead plant parts and derivatives comprise a large proportion of seized specimens (see Table 8), i.e. 2515 (43%), followed by 2108 seized live plants (36%). High seizure levels were reported as follows: 1000 plant seeds of *Agave parviflora* in 1992 from the USA, 553 live plants (Orchidaceae) in 1997 from India and 382 ivory products (*Loxodonta africana*) in 1998 from an unknown country. All were seized for being illegally imported.

Table 8
Number of seized specimens by taxa: Denmark 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Birds	Live	50	16
	Other	131	18
Invertebrates	Live	0	0
	Other	65	5
Mammals	Live	3	3
	Other	606	18
Plants	Live	2 108	147
	Other	2 515	16
Reptiles	Live	272	12
	Other	90	13
Total		5 840	247

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 9 shows seized specimens reported in units by Denmark 1990 to 2000. Notable seizures include e.g. 12 kilograms of *Loxodonta africana* tusks from the United Arab Emirates and 6 kilograms of Crocodylidae teeth from Indonesia.

Table 9
Seized specimens reported by units: Denmark 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RDK-iDK	1998	Mammals	12	kilograms	Tusks
	1998	Reptiles	6	kilograms	Teeth
RXX-eDK	1993	Amphibians	5	shipments	Meat
RXX-rDK	1999	Fish	500	grams	Eggs

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Finland

According to CITES annual report data, 359 specimens (excluding specimens reported in units) have been seized from 1990 to 2000, 353 of which (98%) were illegally imported (see Table 10).

Table 10
Reported seized specimens involving Finland 1990 - 2000

Situation	1993	1994	1995	1996	1997	1998	1999	2000	Total
RFI-iFI			1		321		29		351
RFI-eFI							3		3
RXX-iFI							1	1	2
RXX-eFI					1	1			2
RXX-rFI	1								1
Total	1	0	1	0	322	1	33	1	359

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Live reptiles comprise a large proportion of seized specimens involving Finland during the period 1990 to 2000. With 295 *Testudo horsfieldii* illegally imported in 1997 from the Russian Federation they make up 82% (see Table 11).

Table 11
Number of seized specimens by taxa: Finland 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Birds	Live	4	1
	Other	2	2
Invertebrates	Live	0	0
	Other	24	3
Mammals	Live	0	0
	Other	30	6
Reptiles	Live	295	1
	Other	4	3
Total		359	16

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

France

According to CITES annual report data, 10 836 specimens (excluding specimens reported in units) have been seized from 1990 to 2000. The majority of these specimens (9700 or 90%) were illegally re-exported (see Table 12).

Table 12
Reported seized specimens involving France 1990 - 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
RFR-iFR			11			3	2	21	33	1		71
RFR-eFR								1			1	2
RFR-rFR			4	23		200	3	7	37	19	55	348
RXX-iFR		13		4	36	1			20	14	6	94
RXX-eFR	8	12	14	1		364	45	29	486	7	1	967
RXX-rFR	918	603	592	2 781	142	815	2 079	104	295	268	755	9 352
RXX&FR-rFR							1			1		2
Total	926	628	621	2 809	178	1 383	2 130	162	871	310	818	10 836

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Dead reptile parts and derivatives comprise a large proportion (65% or 7073 specimens) of seized specimens involving France 1990 to 2000 (see Table 13). High seizure levels were reported as follows:

- 820 reptile watchstraps (*Varanus salvator*) illegally re-exported in 1993 to the United States;
- 575 reptile specimens (*Testudo graeca*) illegally re-exported in 1993 to the United States;
- 526 small reptile leather products (*Alligator mississippiensis*) illegally re-exported in 2000 to the United States;
- 504 live plants (*Mammillaria* ssp.) illegally re-exported in 1996 to Mexico;
- 500 reptile specimens (*Testudo hermanni*) illegally re-exported in 1993 to the United States.

Table 13
Number of seized specimens by taxa: France 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Birds	Live	27	8
	Other	8	1
Fish	Live	0	0
	Other	4	1
Invertebrates	Live	436	4
	Other	62	11
Mammals	Live	29	12
	Other	1 321	30
Plants	Live	1 603	56
	Other	0	0
Reptiles	Live	273	11
	Other	7 073	37
Total		10 836	166

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 14 shows seized specimens reported in units. Notable seizures include e.g. large amounts (294 kilograms) of seized fish eggs, 267 kilograms of which were of *Acipenser persicus*, 25 kilograms of *Acipenser* spp. and 2 kilograms of *Acipenser stellatus*.

Table 14

Seized specimens reported by units: France 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RFR-iFR	1993	Amphibians	800	cartons	Legs
RXX-rFR	1993	Mammals	1	kilograms	Specimens
	1998	Fish	23 555	grams	Eggs
	1999	Mammals	1	pieces	Cloth
	2000	Fish	270 840	grams	Eggs
	2000	Fish	500	milliliters	Specimens

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Germany

According to CITES annual report data, 95 264 specimens (excluding specimens reported in units) have been seized from 1990 to 2000 (see Table 15). The majority of these specimens (88 969 specimens or 93%) were illegally imported.

Table 15
Reported seized specimens involving Germany 1990 - 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
RDE-iDE	17	9	5	172	4	128	2	3			2	342
RDE-rDE	2	171	260	12	11	6	6	10	9	1	666	1 154
RXX-iDE		5	9	25	334	30		74	9	39 604	49	40 139
RXX-eDE	9	33	649	688	14	13	2	35	200	59	294	1 996
RXX-rDE	278	208	220	176	31	46	622	1 021	314	20	207	3 143
RXX&DE-iDE					13						48 475	48 488
RXX&DE-rDE						1	1					2
Total	306	426	1 143	1 073	407	224	633	1 143	532	39 684	49 693	95 264

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Dead reptile parts and derivatives comprise the largest proportion (94% or 89 492 specimens) of seized specimens (see Table 16). High seizure levels were reported as follows:

- 48 475 reptile skins (*Ptyas mucosus*) illegally imported in 2000 from Singapore;
- 39 500 reptile skins (*Ptyas mucosus*) illegally imported in 1999 from Singapore;
- 984 *Mustela sibirica* (unspecified; mammals) illegally re-exported in 1997 to the United States.

Table 16
Number of seized specimens by taxa: Germany 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Amphibians	Live	0	0
	Other	42	4
Birds	Live	283	36
	Other	42	13
Fish	Live	11	1
	Other	32	1
Invertebrates	Live	571	8
	Other	203	27
Mammals	Live	34	15
	Other	1 697	29
Plants	Live	680	17
	Other	1 499	21
Reptiles	Live	678	29
	Other	89 492	25
Total		95 264	215

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 17 shows seized specimens reported in units by Germany 1990 to 2000. Large amounts of ivory carvings, fish eggs and plant extracts have been found in illegal trade by Germany, including 90 kilograms of *Loxodonta africana* ivory carvings, 101 kilograms of *Acipenser schrencki* fish eggs, 40.564 kilograms of *Acipenser gueldenstaettii* fish eggs, 17 kilograms of *Acipenser stellatus* fish eggs, and 50 kilograms of *Prunus africana* plant extract.

Table 17

Seized specimens reported by units: Germany 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RDE-rDE	1994	Mammals	90	kilograms	Ivory carvings
RXX-eDE	1994	Plants	113	grams	Seeds
	1995	Plants	19	bags	Seeds
RXX-rDE	1998	Fish	58 300	grams	Eggs
	1999	Fish	2 564	grams	Eggs
	2000	Fish	106 335	grams	Eggs
	2000	Plants	100	grams	Dried plants
	2000	Plants	50	kilograms	Extract
	2000	Plants	4	m ³	Sawn wood

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Greece

According to CITES annual report data, 6095 specimens (excluding specimens reported in units) have been seized from 1990 to 2000. The majority of these specimens (5935 or 97%) were illegally imported (see Table 18).

Table 18
Reported seized specimens involving Greece 1990 - 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	Total
RGR-iGR			5 464								5 464
RXX-iGR								428		43	471
RXX-eGR			2	22	3	1	1		107	3	139
RXX-rGR	5		4	3		2		1	4	2	21
Total	5	0	5 470	25	3	3	1	429	111	48	6 095

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Seized dead invertebrate parts and derivatives comprise 90% (5467 specimens; see Table 19). The seizure of 5464 *Antipatharia* spp. raw corals illegally imported in 1992 from the Philippines is most significant in terms of volume, followed by the seizure of 414 illegally imported live reptiles (*Testudo hermanni*) in 1997 from Slovakia (country of origin: Greece).

Table 19
Number of seized specimens by taxa: Greece 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Birds	Live	4	3
	Other	2	1
Invertebrates	Live	0	0
	Other	5 467	3
Mammals	Live	0	0
	Other	138	12
Plants	Live	4	4
	Other	8	3
Reptiles	Live	472	3
	Other	0	0
Total		6 095	29

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 20 shows seized specimens reported in units by Greece 1990 to 2000 that consisted of 36 kilograms of *Lynx canadensis* plates and 127 metres of *Ovis ammon hodgsonii* hair.

Table 20
Seized specimens reported by units: Greece 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RGR-rGR	2000	Mammals	36	kilograms	Plates
RXX-rGR	2000	Mammals	127	meters	Hair

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Ireland

Table 21 and 22 show that there have been only very few reported seized specimens (total: 14; excluding specimens reported in units) involving Ireland 1990 to 2000.

Table 21

Reported seized specimens (not reported in units) involving Ireland 1990 - 2000

Situation	1993	1994	1995	1996	1997	1998	1999	2000	Total
RXX-iIE		1							1
RXX-eIE	5	2						1	8
RXX-rIE		1	3		1				5
Total	5	4	3	0	1	0	0	1	14

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 22

Number of seized specimens by taxa: Ireland 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Mammals	Live	0	0
	Other	6	4
Plants	Live	8	2
	Other	0	0
Total		14	6

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Italy

According to CITES annual report data, 21 174 specimens have been seized from 1990 to 2000. The majority of these specimens (8862 or 73%) were illegally imported (see Table 23).

Table 23
Reported seized specimens involving Italy 1990 - 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
RIT-iIT	199		2									201
RIT-eIT									2			2
RXX-iIT		2	19	3 341	204		3	5	7	153	4 927	8 661
RXX-eIT	30	4	14	16	9			14	16	6	58	167
RXX-rIT	3 315	2 376	559	316	508	732	1 151	329	674	385	1 798	12 143
Total	3 544	2 382	594	3 673	721	732	1 154	348	699	544	6 783	21 174

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Dead reptile parts and derivatives comprise the largest proportion of seized specimens (see Table 24), i.e. 20 285 specimens (96%). High seizure levels were reported as follows:

- 4926 reptile skins (*Ptyas mucosus*) illegally imported in 2000 from Malaysia;
- 3340 reptile skins (*Iguana iguana*) illegally imported in 1993 from Venezuela;
- 622 reptile shoes (*Varanus salvator*) illegally re-exported in 1991 to the United States;
- 532 reptile shoes (*Ptyas mucosus*) illegally re-exported in 1991 to the United States;
- 471 reptile shoes (*Caiman crocodilus crocodilus*) illegally re-exported in 1990 to the United States.

Table 24
Number of seized specimens by taxa: Italy 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Birds	Live	188	9
	Other	8	1
Invertebrates	Live	3	1
	Other	62	4
Mammals	Live	5	3
	Other	228	16
Plants	Live	120	14
	Other	0	0
Reptiles	Live	275	6
	Other	20 285	39
Total		21 174	92

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 25 shows seized specimens reported in units by Italy 1990 to 2000. Notable seizures include e.g. 1191 *Caiman yacare* reptile skins (sides) and 640 kilograms *Caiman* spp. reptile skin pieces.

Table 25

Seized specimens reported by units: Italy 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RXX-rIT	1990	Reptiles	1 191	sides	Skins
	1991	Reptiles	650	kilograms	Skin pieces
	1991	Reptiles	27	meters	Skins
	1996	Mammals	27	kilograms	Skin pieces
	1999	Fish	2	kilograms	Eggs
	2000	Mammals	2	m ²	Plates

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Luxembourg

Table 26 shows the few reported seized specimens (total: 146; excluding specimens reported in units) involving Luxembourg 1990 to 2000. The number of seized specimens by taxa are shown in Table 27. The seizure of 18 kilograms Acipenseriformes fish eggs (see Table 28), which were illegally imported in 2000 from the USA (country of origin: Russian Federation), is most significant in terms of volume.

Table 26

Reported seized specimens (not reported in units) involving Luxembourg 1990 - 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
RLU-iLU	58		22	22		16		1		14	1	134
RXX-rLU	12											12
Total	70	0	22	22	0	16	0	1	0	14	1	146

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 27

Number of seized specimens by taxa: Luxembourg 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Birds	Live	2	1
	Other	0	0
Invertebrates	Live	0	0
	Other	4	2
Mammals	Live	0	0
	Other	64	11
Plants	Live	0	0
	Other	25	1
Reptiles	Live	0	0
	Other	51	15
Total		146	30

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 28

Seized specimens reported by units: Luxembourg 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RLU-iLU	1999	Fish	200	grams	Eggs
	2000	Fish	18 200	grams	Eggs

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Netherlands

According to CITES annual report data, 84 433 specimens (excluding specimens reported in units) have been seized from 1990 to 2000 (see Table 29). The majority of these specimens (76 022 or 90%) were illegally imported.

Table 29

Reported seized specimens involving the Netherlands 1990 - 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
RNL-iNL			2					6 716	69 262	1		75 981
RNL-rNL			482	202		16		53	21	60	2	836
RXX-iNL			3	20				15	3			41
RXX-eNL	19	187	7	32	133	311	60	206	19	121	5 262	6 357
RXX-rNL	35	21	118		180	13	535	14	57	5	27	1 005
RXX&NL-rNL									24	173	16	213
Total	54	208	612	254	313	340	595	7 004	69 386	360	5 307	84 433

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Live plants comprise a large proportion of the seized specimens (see Table 30), i.e. 49 158 (58%), followed by 13 354 seized dead plant parts and derivatives (16%), 9705 seized dead mammal parts and derivatives (11%) and 7696 dead invertebrate parts and derivatives (9%). The seizures of 41 000 live plants of *Bletilla* spp., which comprise 49% of all reported seized specimens, illegally imported in 1998 from the USA is most significant in terms of volume. Other high seizure levels were reported as follows:

- 7496 plant roots (Orchidaceae) illegally imported in 1998 from Japan;
- 5000 plants roots (*Pecteilis radiata*) illegally imported in 1998 from USA;
- 3903 derivatives of mammals (*Ursus* spp.) illegally imported in 1998 from China;
- 3785 raw corals (invertebrates, Scleractinia) illegally imported in 1997 from an unknown country.

Table 30

Number of seized specimens by taxa: Netherlands 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Amphibians	Live	34	3
	Other	1 290	1
Birds	Live	421	23
	Other	331	19
Fish	Live	0	0
	Other	7	2
Invertebrates	Live	0	0
	Other	7 696	3
Mammals	Live	358	18
	Other	9 705	28
Plants	Live	49 158	162
	Other	13 354	6
Reptiles	Live	806	31
	Other	1 273	29
Total		84 433	310

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 31 shows seized specimens reported in units by the Netherlands 1990 to 2000. Notable seizures include e.g. 19 090 kilograms of *Hoplobatrachus tigerinus* meat (amphibians) illegally imported from Vietnam, 5640 kilograms of raw corals (invertebrates, *Scleractinia* spp.) illegally imported from Cuba, 81 kilograms of *Loxodonta africana* tusks (mammals) illegally imported from Malawi, 13 805 kilograms of *Strombus gigas* meat (invertebrates) illegally exported

to the United States, 4000 kilograms of *Fitzroya cupressoides* timber illegally re-exported to Switzerland, 306.080 kilograms of *Acipenser schrencki* fish eggs and 21 kilograms of *Acipenser* spp. fish eggs illegally re-exported to the United States.

Table 31

Seized specimens reported by units: Netherlands 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RNL-iNL	1997	Amphibians	19 090	kilograms	Meat
	1997	Invertebrates	2	kilograms	Raw corals
	1997	Invertebrates	5 640	kilograms	Raw corals
	1997	Mammals	3	liters	Derivatives
	1997	Reptiles	4	kilograms	Meat
	1997	Reptiles	1	cans	Meat
	1998	Fish	11 982	grams	Eggs
	1998	Fish	76	cans	Eggs
	1998	Fish	6	boxes	Eggs
	1998	Mammals	59	bags	Derivatives
	1998	Mammals	3	bottles	Derivatives
	1998	Mammals	1 086	grams	Ivory carvings
	1998	Plants	200	bags	Derivatives
	1998	Plants	24	pieces	Roots
	1998	Plants	100	grams	Powder
	1998	Plants	14 244	grams	Roots
	1998	Reptiles	32	bags	Derivatives
	1998	Reptiles	20	kilograms	Meat
RNL-eNL	1997	Plants	2	boxes	Derivatives
RXX-iNL	1993	Mammals	81	kilograms	Tusks
RXX-eNL	1995	Invertebrates	13 805	kilograms	Meat
RXX-rNL	1994	Plants	4 000	kilograms	Timber
	2000	Fish	327 330	grams	Eggs

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Portugal

According to CITES annual report data, 13 032 specimens (excluding specimens reported in units) have been seized from 1990 to 2000 (see Table 32). The majority of these specimens (12 815 or 98%) were illegally imported.

Table 32
Reported seized specimens involving Portugal 1990 - 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
RPT-iPT				159			835	9 690	452	1 490	189	12 815
RPT-rPT					7		3					10
RXX-ePT	1		47		2			29		3		82
RXX-rPT	99		5	2		4	11				4	125
Total	100	0	52	161	9	4	849	9 719	452	1 493	193	13 032

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Live birds comprise the largest proportion of seized specimens involving Portugal 1990 to 2000 (see Table 33), with 10 615 specimens making up 81%. Seized dead mammal parts and derivatives comprise 8% (1033). High seizure levels were reported as follows:

- 900 live birds (*Leiothrix lutea*) illegally imported in 1997 from Hong Kong (country of origin: China);
- 688 live birds (*Poicephalus senegalus*) illegally imported in 1997 from Senegal;
- 620 live birds (*Serinus mozambicus*) illegally imported in 1997 from Guinea-Bissau;
- 600 live birds (*Agapornis roseicollis*) illegally imported in 1997 from South Africa;
- 600 live birds (*Amadina fasciata*) illegally imported in 1997 from Senegal;
- 600 live birds (*Estrilda troglodytes*) illegally imported in 1997 from Guinea-Bissau.

Table 33
Number of seized specimens by taxa: Portugal 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Birds	Live	10 615	96
	Other	9	2
Invertebrates	Live	0	0
	Other	13	4
Mammals	Live	62	15
	Other	1 033	13
Plants	Live	185	5
	Other	622	2
Reptiles	Live	63	16
	Other	430	12
Total		13 032	157

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 34 shows seized specimens reported in units involving Portugal 1990 to 2000. The table shows large amounts of seized flowers (238 kilograms of *Cymbidium* spp. illegally imported from New Zealand), tusks (1500 kilograms of *Loxodonta africana* illegally imported from South Africa) and timber (117 602 kilograms of *Pericopsis elata* illegally imported from the Democratic Republic of Congo).

Table 34

Seized specimens reported by units: Portugal 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RPT-iPT	1993	Mammals	26 350	grams	Ivory carvings
	1996	Mammals	15	items	Hair
	1997	Plants	238	kilograms	Flowers
	1999	Mammals	1 500	kilograms	Tusks
	1999	Plants	117 602	kilograms	Timber

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Spain

According to CITES annual report data, 70 437 specimens have been seized form 1990 to 2000, 67 134 (95%) of which were illegally imported (see Table 35).

Table 35
Reported seized specimens involving Spain 1990 - 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
RES-iES		578	34 020	4	12 582	6 952	614	445	1 354	1 703	8 656	66 908
RXX-iES		220							5	1		226
RXX-eES	2	15	5	1	19	6	1	6	46	5	6	112
RXX-rES	106	1 575	41	19	430	228	62	100	320	24	169	3 074
RXX&ES-iES					117							117
Total	108	2 388	34 066	24	13 148	7 186	677	551	1 725	1 733	8 831	70 437

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Dead invertebrate parts and derivatives comprise the largest proportion of seized specimens (see Table 36), i.e. 51 935 (74%), followed by 10 488 (15%) seized dead reptiles including parts and derivatives. High seizure levels were reported as follows:

- 26 640 *Acropora* spp. carvings (invertebrates) illegally imported in 1992 from China (these comprise 38% of all reported seized specimens excluding seized specimens reported in units);
- 4000 *Strombus gigas* shells (invertebrates) illegally imported in 1995 from Haiti;
- 3604 *Tridacna squamosa* carvings (invertebrates) illegally imported in 1994 from the Philippines;
- 3584 *Fungia* spp. carvings (invertebrates) illegally imported in 1994 from the Philippines;
- 3584 *Pocillopora* spp. carvings (invertebrates) illegally imported in 1994 from the Philippines.

Table 36
Number of seized specimens by taxa: Spain 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Amphibians	Live	115	1
	Other	0	0
Birds	Live	451	33
	Other	8	6
Fish	Live	0	0
	Other	1	1
Invertebrates	Live	44	3
	Other	51 935	32
Mammals	Live	101	19
	Other	1 176	37
Plants	Live	130	9
	Other	3 456	1
Reptiles	Live	2 532	39
	Other	10 488	56
Total		70 437	217

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 37 shows large amounts of seized specimens reported in units. Notable seizures include e.g. 2400 kilograms of *Hippopus porcellanus* shells (invertebrates), 50 650 kilograms of *Loxodonta africana* ivory products (mammals), 7000 kilograms of *Strombus gigas* meat (invertebrates) and 20 kilograms of Acipenseriformes fish eggs.

Table 37

Seized specimens reported by units: Spain 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RES-iES	1992	Invertebrates	2 400	kilograms	Shells
	1992	Mammals	35	kilograms	Ivory products
	1994	Mammals	2	kilograms	Ivory products
	1995	Mammals	3 150	grams	Ivory products
	1995	Mammals	3	kilograms	Meat
	1996	Invertebrates	7 000	kilograms	Meat
	1996	Mammals	5	kilograms	Ivory carvings
	1996	Mammals	9	kilograms	Ivory products
	1997	Mammals	1 500	grams	Ivory products
	1998	Invertebrates	6	kilograms	Raw corals
	1998	Invertebrates	5	kilograms	Shells
	1998	Mammals	3 800	grams	Carvings
	1998	Mammals	12	kilograms	Small leather products
	1998	Plants	20	kilograms	Live
	1999	Fish	2	kilograms	Eggs
	1999	Invertebrates	2 350	grams	Raw corals
	1999	Mammals	3 768	grams	Carvings
	1999	Mammals	500	grams	Hair
	1999	Mammals	2 200	grams	Tusks
	1999	Plants	3 402	grams	Live
	1999	Reptiles	15	pairs	Small leather products
	2000	Fish	20	kilograms	Eggs
	2000	Invertebrates	123 142	grams	Raw corals
	2000	Mammals	350	grams	Carvings
RXX-rES	1998	Mammals	1 406	items	Hair
	2000	Fish	175	grams	Eggs

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Sweden

Table 38 shows the few reported seized specimens (total: 147; excluding specimens reported in units) involving Sweden 1990 to 2000. Table 39 describes the taxa found in trade involving Sweden. Seized specimens reported in units are shown in Table 40.

Table 38
Reported seized specimens involving Sweden 1990 - 2000

Situation	1994	1995	1996	1997	1998	1999	2000	Total
RSE-iSE						43	13	56
RXX-iSE				3				3
RXX-eSE		13	2	4	43		8	70
RXX-rSE	5			9	2	2		18
Total	5	13	2	16	45	45	21	147

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 39
Number of seized specimens by taxa: Sweden 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Birds	Live	8	5
	Other	16	6
Fish	Live	0	0
	Other	1	1
Invertebrates	Live	0	0
	Other	3	1
Mammals	Live	0	0
	Other	37	6
Plants	Live	3	1
	Other	0	0
Reptiles	Live	46	10
	Other	33	12
Total		147	41

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 40
Seized specimens reported by units: Sweden 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RSE-iSE	2000	Birds	3	sets	Feathers
RXX-rSE	2000	Fish	500	grams	Eggs

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

United Kingdom

According to CITES annual report data, 55 760 specimens have been seized from 1990 to 2000 (see Table 41). The majority of these specimens (50 312 or 90%) were illegally imported.

Table 41
Reported seized specimens involving the United Kingdom 1990 - 2000

Situation	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
RGB-iGB					1 948			33 751	14 464	12	4	50 179
RGB-eGB									3			3
RGB-rGB			1					4		11	12	28
RXX-iGB	20	4		10	53		1	34	1	3	7	133
RXX-eGB	28	78	25	62	39	239	62	313	19	67	134	1 066
RXX-rGB	1 473	258	525	228	175	951	91	114	266	85	185	4 351
Total	1 521	340	551	300	2 215	1 190	154	34 216	14 753	178	342	55 760

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Live plants comprise a large proportion of seized specimens (see Table 42), i.e. 23 739 (43%), followed by 15 199 seized dead invertebrate parts and derivatives (27%) and 4986 seized live reptiles (9%). High seizure levels were reported as follows:

- 21 600 live plants (*Dicksonia antarctica*) illegally imported in 1997 from Trinidad and Tobago;
- 4554 raw corals (invertebrates, Scleractinia) illegally imported in 1998 from an unknown country;
- 2500 stems of plants (Cactaceae) illegally imported in 1998 from Chile;
- 2016 raw corals (invertebrates, Scleractinia) illegally imported in 1997 from the USA;
- 2010 raw corals (invertebrates, *Diploria labyrinthiformis*) illegally imported in 1997 from Mauritius.

Table 42
Number of seized specimens by taxa: United Kingdom 1990 - 2000

Taxa	Specimens	Quantity	No of Taxa
Amphibians	Live	59	7
	Other	0	0
Birds	Live	353	51
	Other	122	34
Fish	Live	526	2
	Other	1	1
Invertebrates	Live	260	5
	Other	15 199	29
Mammals	Live	22	11
	Other	3 625	59
Plants	Live	23 739	47
	Other	3 679	17
Reptiles	Live	4 986	73
	Other	3 189	51
Total		55 760	345

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Table 43 shows seized specimens reported in units. Notable seizures include e.g.

- 1668 items of *Panthera tigris* derivatives (mammals) illegally imported in 1997 from Thailand;
- 50 kilograms of dried *Gastrodia elata* (plants);
- 80 kilograms of *Bletilla* spp. roots (plants);
- 228.450 kilograms of Acipenseriformes fish eggs;

- 403.334 kilograms Scleractinia raw corals (invertebrates);
- 140 kilograms of *Loxodonta africana* ivory carvings (mammals).

Table 43

Seized specimens reported by units: United Kingdom 1990 - 2000

Situation	Year	Taxa	Quantity	Unit	Term
RGB-iGB	1997	Invertebrates	2	pieces	Derivatives
	1997	Mammals	1	pieces	Bones
	1997	Mammals	6	bottles	Derivatives
	1997	Mammals	2	boxes	Derivatives
	1997	Mammals	1 668	items	Derivatives
	1997	Plants	70	bags	Derivatives
	1997	Plants	12	cartons	Derivatives
	1997	Plants	50	kilograms	Dried plants
	1997	Plants	80	kilograms	Roots
	1997	Plants	2	bags	Seeds
	1997	Plants	16	boxes	Timber
	1997	Reptiles	19	pieces	Carapaces
	1997	Reptiles	1	items	Carapaces
	1997	Reptiles	2	boxes	Derivatives
	1998	Fish	228 450	grams	Eggs
	1998	Invertebrates	251 890	grams	Raw corals
	1998	Mammals	4	pieces	Bones
	1998	Mammals	1	bags	Derivatives
	1998	Mammals	12	cartons	Derivatives
	1998	Mammals	1	sets	Ivory carvings
	1998	Mammals	550	grams	Ivory products
	1998	Plants	10	kilograms	Derivatives
	1998	Plants	2	bags	Derivatives
	1998	Plants	6	boxes	Derivatives
	1998	Plants	63	cartons	Derivatives
	1998	Plants	43	kilograms	Roots
	1998	Plants	3	boxes	Roots
RXX-iGB	1990	Invertebrates	152	kilograms	Raw corals
RXX-eGB	1991	Plants	1	ounces	Seeds
	1992	Plants	5	grams	Seeds
	1999	Plants	2	bags	Seeds
RXX-rGB	1991	Mammals	140	kilograms	Ivory carvings
	1991	Plants	1	ounces	Seeds
	1995	Reptiles	5	kilograms	Meat
	1999	Fish	50	grams	Eggs
	2000	Fish	3 114	grams	Eggs

Source: CITES annual reports (comparative tabulations) compiled by UNEP-WCMC, *in litt.* to TRAFFIC Europe, November 2001

Annex B References

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ANNEX C

List of Workshop Participants

**INTERNATIONAL EXPERT WORKSHOP ON THE ENFORCEMENT OF WILDLIFE TRADE CONTROLS
IN THE EUROPEAN UNION, 5TH AND 6TH NOVEMBER 2001, FRANKFURT/MAIN**



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TRAFFIC

IUCN

The World Conservation Union

TRAFFIC, the wildlife trade monitoring network established in 1976, works to ensure that trade in wild plants and animals is not a threat to the conservation of nature. TRAFFIC is a joint programme of WWF and IUCN.

TRAFFIC Europe is one of TRAFFIC network's 8 Regional offices co-ordinated by TRAFFIC International based in Cambridge, UK. The objective of TRAFFIC Europe is to address the relationship between Europe's wildlife trade and key biological as well as human concerns, and the need for international co-operation in ensuring that trade is at sustainable levels in Europe.

IUCN - The World Conservation Union

Founded in 1948, The World Conservation Union brings together States, government agencies and a diverse range of non-governmental organizations in a unique world partnership: over 980 members in all, spread across some 140 countries.

The **IUCN Environmental Law Centre (ELC)** was first established in Bonn, in 1970. It has grown from having one full-time staff member to being a professional international office with 20 highly skilled legal and information specialists. The ELC is today recognized around the world as a leading global centre of excellence in environmental law.

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