



# Legislation on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in the European Union

European Commission, DG Environment  
ENV.F3 – Multilateral Environmental Cooperation

## Legal framework

- Text of the Convention + Resolutions
- EU Basic Regulation 338/97
- EU Implementing Regulation 865/2006
- EU Permit Regulation 792/2012
- EU Suspension Regulations

## EU WTR: the "Basic Regulation"

### **Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein**

- Overall framework for implementing CITES in the EU; directly applicable in all MS and legally binding on authorities, operators/citizens
- Four Annexes (A to D) listing particular (groups of) species
- Includes stricter measures (compared to CITES): stricter import conditions/suspensions; import permits for Annex B-listed species
- Annexes revised after each CITES CoP, and in between as needed
- Last revision after CoP19 (15 May 2023)

## EU WTR: Annexes to the Basic Regulation

| Annex A                                                                                                                                                                                                                         | Annex B                                                                                                                                                                                                  | Annex C                                                                                                                                         | Annex D                                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• ≈ CITES App. I</li> <li>• Some App. II, III or non-CITES species (-&gt; Birds + Habitats Dir.)</li> <li>• Trade permitted only exceptionally (e.g. scientific institutions)</li> </ul> | <ul style="list-style-type: none"> <li>• ≈ CITES App. II – vast majority of species</li> <li>• Export and (EU only) import permits required</li> <li>• "Non-detriment finding" (NDF) by MS SA</li> </ul> | <ul style="list-style-type: none"> <li>• ≈ CITES App. III</li> <li>• Export permit or certificate of origin + EU import notification</li> </ul> | <ul style="list-style-type: none"> <li>• No CITES equivalent</li> <li>• "Watchlist" to help monitor trade</li> <li>• EU import notifications required</li> </ul> |

If a species is listed, normally all live and dead specimens as well as part and products are subject to CITES as well

4

Annex A of the EU Regulation lists species that are equivalent to CITES Appendix I species. Trade in these species is only allowed under exceptional circumstances, such as scientific exchanges between institutions. The interpretation and application of these exceptions should be very limited.

Appendix B species are CITES Appendix II species. These species require export and import permits in the EU. Non-detrimental findings (NDFs) are required for import applications to assess whether the introduction of a species will be detrimental to its conservation status.

Annex C species correspond to CITES Appendix III species. They require an export permit or certificate of origin and an EU import notification.

Annex D is a watch list of species that are sensitive in the EU but not elsewhere. Import notifications are required for these species.

CITES annotations specify which parts or derivatives of a species are subject to the Convention. The system is complex and includes detailed rules for trade and conservation.

# Basic requirements for trade

| STATUS  | Import into EU         | (Re-)export out of EU           | Intra-EU              |
|---------|------------------------|---------------------------------|-----------------------|
| Annex A | Import permit          | Export permit / Re-export cert. | EU certificate        |
| Annex B | Import permit          | Export permit / Re-export cert. | Proof of legal origin |
| Annex C | Notification of import | Export permit / Re-export cert. | /                     |
| Annex D | Notification of import | /                               | /                     |



## EU WTR: Commission Regulations

### **Commission Regulation (EC) No 865/2006: „Implementing Regulation“**

- Detailed rules and practical aspects of implementing the Basic Regulation
- Transposing relevant CITES CoP Resolutions
- Amended regularly,
- Further amendment forthcoming in 2024 most probably, last amendment in February 2021

### **Commission Implementing Regulation (EU) 792/2012: „Permits Regulation“**

- Templates for permits/certificates; guidance on their use
- Revised as needed next rev. forthcoming in 2024 most probably

### **Commission Implementing Regulation (EU) 2019/1587: „Suspension Regulation“**

- Establishing bans on imports of certain species from particular countries
- Usually updated every 1-2 years
- Just updated this year

6

The Implementing Regulation (865/2006) provides detailed rules and practical aspects for the implementation of the Basic Regulation. It is a complex document with numerous exemptions and sub-exemptions, making it difficult for lawyers to navigate. However, it provides flexibility in transposing relevant Conference of the Parties (COP) decisions into EU law.

The Permits Regulation provides templates for permits and certificates and guidance on their use. Amendments to these regulations are made on a regular basis, with the last amendment due in 2021. Further amendments are expected to be adopted in 2024. This regulation is particularly important as the EU is working to implement an electronic permit system, initially for imports into the EU.

In addition, suspension regulation, which is unique to the EU, prohibit the import of certain species from certain countries. These regulations are usually updated every year or two. Although the latest version was recently published, the details were not discussed in detail during the presentation.

## Structure of CITES - EU

- Each MS designates a Management authority, Scientific authority and Enforcement authority
- Commission organises 3 or 4x/year:
  - Committee meeting (formal changes to EU Regulations) and an Expert Group meeting, attended by rep of MA
  - Scientific Review Group (SRG) meeting, attended by rep of SA
  - Enforcement Group (EG) meeting, attended by rep of EA

7

At EU level, each Member State designates a management authority responsible for processing import and export applications. These management authorities consult scientific authorities, in particular for Annex A and B species. Enforcement authorities, including police and customs, are also involved.

The European Commission organises committee meetings three to four times a year to discuss formal amendments to EU legislation. Expert group meetings deal with issues of interpretation of the legislation. There's also a meeting of the Scientific Review Group (SSRG), which brings together scientific authorities from the Member States.

There's also an Enforcement Group meeting, which brings together representatives of various enforcement authorities from Member States. Despite years of operation, many questions remain unanswered, leading to ongoing discussions and frequent meetings.

## EU Enforcement Group (EG)

- Chaired by Commission, meeting twice per year (Brussels/Den Haag ... or online)
- Member States' (and some neighbouring countries') enforcement authorities + relevant EU/international agencies (Europol, Eurojust, CITES Sec., Interpol, UNODC, WCO)
- Exchange of experience from recent investigations; coordination of activities
- EG = European regional "Wildlife Enforcement Network" (WEN) under CITES

8

The Enforcement Group, chaired by the European Commission, meets twice a year in Brussels, The Hague or online. Member States and neighbouring countries, in particular those involved in the accession process, may attend these meetings. Representatives of relevant EU and international agencies such as Europol, Eurojust, the CITES Secretariat, Interpol and the World Customs Organisation also attend.

These meetings serve as a platform for sharing investigative experience, coordinating activities and discussing recent investigations. In addition, the European Regional Wildlife Enforcement Network, which operates at CITES level, facilitates valuable cooperation between Member States.

## Multi-layer governance of international wildlife trade

| Multilateral                                                                                                                                                                                                                    | EU                                                                                                                                                                                                                                                                                                    | National                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• CITES + Appendices</li> <li>• Conference of the Parties (CoP) Resolutions, Decisions</li> <li>• Standing Committee; Animals, Plants Committees</li> <li>• CITES Secretariat</li> </ul> | <ul style="list-style-type: none"> <li>• Council Regulation 338/97</li> <li>• Commission (Implementing) Regulations</li> <li>• Commission guidance documents</li> <li>• Management Committee, Expert Groups (admin., science, enforcement)</li> <li>• Council Working Party (WP/IEI-CITES)</li> </ul> | <ul style="list-style-type: none"> <li>• CITES Management Authority (MA), Scientific Authority (SA)</li> <li>• Legislative/admin. provisions on penalties, sanctions</li> <li>• Enforcement action (customs, police, env. inspectorates, ...)</li> </ul> |

9

At the international level, the governance of international wildlife trade involves several levels. Under CITES, there are the Appendices, the resolutions and decisions of the Conference of the Parties, the Standing Committee and the Animals and Plants Committees, all of which meet annually. There's also the CITES Secretariat.

At EU level, there's a series of regulations, including the basic regulation, implementing regulations and guidance documents. Recent additions include guidelines on issues such as ivory and tigers. There's also the Management Committee, expert groups and Council working parties. These working groups discuss and adopt common positions for UN member states and decide which listings and resolutions to support at COP meetings.

At the national level, each member state has designated management and scientific authorities. Member States can implement regulations that are stricter than the basic EU regulation, which is allowed under the Convention. However, any stricter rules must still be compatible with EU rules on the free movement of goods. Enforcement will involve customs, police and environmental inspectors. These enforcement efforts are co-ordinated at both EU and international level, with relevant agencies and organisations such as Europol, Eurojust and the World Customs Organisation co-operating through fora such as the European Regional Wildlife Enforcement Network.

## CITES trade figures – and value

In 2020, the EU:

- key importing market for international wildlife trade, **with one third (32%) of global import transactions** (71,151 import transactions).
- key exporting market **with 59% of global (re)export transactions** (301,778 export and re-export transactions)

In 2020, the overall value of EU imports was estimated to be worth EUR 656 million for CITES-listed animals and EUR 266 million for plants, and the value of EU (re)exports was estimated to be worth EUR 1,154 million and EUR 319 million for animals and plants, respectively.

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## Environmental Crime Directive 2008/99

Member States shall ensure that trading in 'protected fauna and flora' constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence.

Article 2(a) - 'Unlawful' is defined as infringement of *inter alia* Regulation 338/97

Article 2(b)(ii) - 'Protected fauna and flora' - species listed in Annex A or B to Regulation 338/97 (in addition to species protected under Annex I of Birds Directive and Annex IV of Habitats Directive)

12

The future Environmental Crime Directive will extend its scope to species covered by the concept of protected fauna and flora, including those covered by CITES, such as Appendix C species.

In terms of enforcement, wildlife crime is an important issue that requires attention. Europol conducted a joint operation in which European eels were seized between autumn 2022 and June 2023. The value of the seized eels was €11 million and more than 1000 tonnes were confiscated. These highly lucrative crimes involve the trafficking of glass eels, which are easy to conceal and transport. Europol noted that glass eels are in high demand in Asia, particularly in China, which contributes to the profitability of this illegal trade.

## CITES COMPLIANCE PROCESS

### Article XIII of the Convention - 'International Measures'

'When the Secretariat in the light of information received is satisfied that any species included in Appendix I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information' to the MA of Party concerned. The information provided by the Party including any remedial measures are to be reviewed by Conference of the Parties (CoP), which 'may make whatever recommendations it deems appropriate'.

13

The CITES compliance process includes Article 14 of the Convention. This Article deals with compliance with the provisions of the Convention by Parties. If the CITES Secretariat receives information indicating that a species listed in Appendix I or II is being adversely affected by trade or that the Convention is not being effectively implemented, it transmits this information to the management authorities of the party concerned. The Party must then provide the Secretariat with the relevant information and any proposed remedial action. The Conference of the Parties then considers this information and may make appropriate recommendations or decisions.

## CITES COMPLIANCE PROCESS

- In Lyon, March 2022, the Standing Committee reviewed the case of the EU under Article XIII regarding registration of operations that breed Appendix-I animal species in captivity for commercial purposes
- Secretariat conducted technical assessment and a verification mission to several selected operations in 2 EU MS
- In November 2023, in Geneva, the Standing Committee, adopted Recommendations that Article III and Article VII para. 4 of the Convention are not being effectively implemented by the EU

14

In March 2002, the CITES Standing Committee considered a case involving the EU under Article 14. The case concerned the listing of operations breeding Appendix I species in captivity for commercial purposes. The CITES Secretariat, together with the EU and Member States, carried out a technical assessment and verification missions to selected operations in two Member States.

In November 2023, the Standing Committee in Geneva adopted recommendations stating that Articles 3 and 7(4) of CITES were not being effectively implemented by the EU. Article 7 allows Appendix I species bred in captivity to be treated under the Appendix II regime, thus allowing commercial trade. However, the conditions for this are set out in Resolutions and the EU's compliance with these Resolutions has been questioned.

One such resolution defines the conditions for Appendix I species to be considered as bred in captivity for commercial purposes, while another adds conditions for the use of Article 7 derogations. The Secretariat's technical assessment revealed inadequate registration of these activities by the EU, leading to the recommendations of the Standing Committee.

One of the recommendations on Article 3 requires further analysis as it was made at the request of a Party. The EU, together with Member States, is currently analysing possible steps to address the recommendations made by the Standing Committee.



## **CJEU**

### **Case C-659/20**

Request for a preliminary ruling from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic)

Interpretation of Article 8(3)(d) of Regulation 338/97 –  
Concept of 'specimens of animal species that are born and  
bred in captivity' – Concept of 'breeding stock' –  
Establishment of the breeding stock – Controlled ancestry

15

The case concerns the interpretation of Article 8(3)(d) of the CITES Regulation and the concept of specimens of species born and bred in captivity.

In this case, the request for a preliminary ruling came from the Supreme Administrative Court in the Czech Republic. The case concerned the refusal to issue a permit for the sale of parrots, which are protected species listed in Appendix I.

The Czech competent authority refused the permit on the grounds that the parrots could not be regarded as born and bred in captivity under Article 8(3)(d) of the Regulation. This was because the grandparent pair of the parrots had been illegally imported into the Czech Republic by a third party.

The first question raised by the national court was whether breeding stock includes the ancestors of specimens bred in the breeding establishment, even if they have never been owned or kept by that establishment.

The Court held that the concept of breeding stock refers to the animals present in a breeding operation, which includes the specific site and structures suitable for breeding animals. Therefore, the ancestral pair cannot be considered to belong to the breeding stock kept by the breeder if the breeder has never owned them.

While the acquisition of the breeding stock must be lawful and not detrimental to the survival of the species in the wild, the Court also examined the manner in which the

ancestors of the breeding stock were removed from the natural environment.

The Court concludes that the regulation, read in conjunction with the Charter and the principle of the protection of legitimate expectations, precludes specimens held by a breeder from being regarded as born and bred in captivity if the ancestors of the specimens were acquired before the entry into force of the regulation in a manner detrimental to the survival of the species in the wild.



## **CJEU**

### **Case C-659/20**

Article 8(1) of Regulation No 338/97 - Prohibition to sell specimens of the species listed in Annex A.

Article 8(3) of Regulation No 338/97 - allows Member States to derogate from such a prohibition where the specimens of an animal species are specimens born and bred in captivity.

## **CJEU**

### **Case C-659/20**

According to Article 54 of Implementing Regulation 865/2006, a specimen of an animal species is considered to be born and bred in captivity only if a management authority is satisfied that, inter alia, the breeding stock was established in accordance with the legal provisions applicable to it at the time of acquisition and in a manner not detrimental to the survival of the species concerned in the wild.



## **CJEU**

# **Case C-659/20**

Context of main proceedings: CA refused authorisation to sell parrots on the ground that they could not be considered to have been born and bred in captivity, within the meaning of Article 8(3) of Regulation No 338/97, because the grandparent pair had been unlawfully imported into the Czech Republic by a third party.

## **CJEU**

### **Case C-659/20**

1st Question asked by referring court – whether 'breeding stock' covers the ancestors of specimens bred in a breeding operation which have never been owned or kept by that operation

Literal interpretation of Article 1(3) of Regulation No 865/2006: concept of 'breeding stock' = all the animals of a breeding operation which are used for reproduction

Court considered the context in which the wording occurred and the objectives pursued by those rules + linguistic versions

## **CJEU**

### **Case C-659/20**

Court confirmed concept of 'breeding stock' as animals present in a breeding operation, that is to say, a specific site with structures suitable for breeding animals.

The ancestor pair does not belong to the 'breeding stock' kept by breeder, since the breeder has never owned or kept them.

## **CJEU**

### **Case C-659/20**

'While Article 54(2) of Regulation No 865/2006 requires those authorities to check the manner in which the ancestry of the breeding stock were removed from their natural environment in order to ensure that that removal did not take place in a manner detrimental to the survival of the species in the wild, it is apparent, by contrast, from the very wording of that provision that it does not require those authorities to check whether the ancestry of the breeding stock has been acquired in accordance with the legal provisions applicable at the date of their acquisition, but only to ensure that the legal provisions applicable to the acquisition of the breeding stock have been complied with.'

## **CJEU**

### **Case C-659/20**

'Article 54(2) of Regulation No 865/2006, read in conjunction with Article 17 of the Charter and the principle of protection of legitimate expectations, preclude a specimen, kept by a breeder, of a species of animal referred to in Annex A to Regulation No 338/97 from being regarded as born and bred in captivity, where the ancestors of that specimen, which do not form part of the breeding stock of that breeder, were acquired by a third party before the entry into force of those regulations in a manner which is detrimental to the survival of the species concerned in the wild.'



## **Revised EU Action Plan against wildlife trafficking**

- Builds on a previous action plan from 2016
  - Adopted on 9 November 2022

## Why an Action Plan at EU level

- Address the EU responsibility as a global hub for trafficking in wildlife
- Provide a comprehensive framework bringing together all aspects of the fight against wildlife trafficking
- Raise the profile of this fight at Member State level, within the EU and with international partners

24

The EU took time to address wildlife trafficking because it wanted to recognise the EU's responsibility as a global hub for wildlife trafficking and to establish a comprehensive framework to combat it.

Raising the profile of the fight against wildlife trafficking at Member State level, within the EU and with international partners was also a priority.

These efforts resulted in small actions with significant impact. For example, the EU included references to cooperation on wildlife trafficking in the Trade and Sustainable Development (TSD) chapters of trade agreements. These TSD chapters aim to integrate environmental elements into otherwise trade-oriented agreements.

Given the EU's significant role as a global importer and exporter, it was crucial to establish a comprehensive framework that brought together all aspects of the fight against wildlife trafficking. This involved linking different processes and platforms.

In addition, the EU has provided funding for wildlife projects, including in Africa, to further combat wildlife trafficking. Today's actions are part of this effort to connect the dots in the fight against wildlife trafficking.



The EU has launched a plan to combat wildlife trafficking until 2027. The plan has four main priorities: preventing wildlife trafficking and addressing its root causes, strengthening the legal and policy framework, enforcement and an international dimension focusing on partnerships.

The plan has 17 objectives and 69 actions to be implemented. One of the key objectives is to prevent wildlife trafficking by addressing its root causes. Another is to improve the legal and policy framework for wildlife trafficking. Enforcement is also a priority, with a focus on effectively combating wildlife trafficking. Finally, the plan emphasises the importance of international partnerships in the fight against wildlife trafficking, as exemplified by initiatives such as Operation Jaguar, a joint operation with Latin American countries.

This comprehensive approach also includes efforts to combat online wildlife crime, promote transparency, enhance cooperation between stakeholders and strengthen measures throughout the enforcement chain. The plan also considers the Digital Services Act, which came into force last year, as a tool to effectively combat online wildlife crime.

## **Implementation of the Action plan – collective effort**

- Member States, European Commission
- Other EU actors/agencies/networks (EEAS/HRVP, Europol, Eurojust, ENPE, EMPACT)
- International bodies (CITES, Interpol, UNODC, WB, WCO)
- Stakeholders: civil society, academia, private sector and local communities and indigenous peoples

## Tracking progress

Including to:

- build a light reporting mechanism for EU Member States and stakeholders, based on existing reporting frameworks.
- identify indicators to measure the results achieved in terms of the overall impact of the revised EU action plan against wildlife trafficking.

27

A major change in the new Action Plan is the introduction of a monitoring and evaluation framework to track progress on the 69 actions outlined in the Plan. This framework aims to measure the extent to which these actions are being implemented and their results. Monitoring will also include indicators to measure changes in funding, seizures and other relevant factors.

Although this monitoring and evaluation framework is not legally binding, efforts are being made to establish a reporting mechanism, taking into account existing reporting frameworks, in order to minimise the additional burden on Member States.

## Key sources

EU WTR:

[http://ec.europa.eu/environment/cites/legislation\\_en.htm](http://ec.europa.eu/environment/cites/legislation_en.htm)

Reference guide: [http://ec.europa.eu/environment/cites/pdf/referenceguide\\_en.pdf](http://ec.europa.eu/environment/cites/pdf/referenceguide_en.pdf)

*Species+* database: <https://speciesplus.net/>

EU-TWIX: <https://www.eu-twix.org/>

CITES Secretariat: [www.cites.org](http://www.cites.org)

CITES Virtual College: <https://cites.unia.es/>

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