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The international and EU legislative framework



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1. The International context for addressing wildlife crimes



Background (I)

- Over the last 40 years, there has emerged an **extensive body of treaties, agreements, declarations and organizations** that seek to **protect the environment**, natural resources, habitats, and the world's wild fauna and flora.
- There is **no specific treaty dealing comprehensively with the many aspects of wildlife offences**, such as poaching, trafficking in wild fauna and flora, the possession and consumption of illegally traded plant and animal material, and associated offences such as money-laundering. The absence of such a treaty impedes the prosecution of many acts since they may not be considered to be criminal offences.
- At the international level, **a structured legal opinion on the status of wild species is still lacking**. International law instruments, that will be mentioned later, spend different expressions with arguably distinct meanings.



Background (I)

- Despite this legal gap, many international treaties and domestic laws provide frameworks that, directly or indirectly, regulate, control and limit international trade in wild fauna and flora, and criminalize illegal activities in the wildlife sectors.
- Wildlife laws presents nowadays common features worldwide owing to international instruments steering the approaches adopted at national level.
- National laws have also helped to shape international wildlife law and protection.
- However, **each state has evolved at different pace** when it comes to integrating biodiversity protection requirements into its legal system.
- This is **partially reflected also in SWiPE' project involved countries.**



Background (II)

- In the European and International law, wildlife' protection has been established on two different but logically intertwined pillars that have not evolved simultaneously:

- a) *The designation of protected areas;*
- b) *The protection of species;*

establishing rules concerning the listing of priority species, different prohibitions affecting a wide range of topics, and a limited number of exceptions.

- The third recital to the preamble of the **Convention on Biological Diversity (CBD)** states that biological diversity itself is a “**common concern of humankind**”.





Background (II)

- The concept of “**environmental crime**” under EU law is reserved to criminal law, to acts or omissions that are committed contrary to EU laws and regulations intended to protect natural resources and to administer their management.
- The concept of “**environmental harm**”, which also includes acts that are legal under EU legislation, **is not included in the EU understanding of environmental crime.**
- A reflection is that, nowadays, there are **legal acts that cause environmental harm.**





Background (II)

- The competence of the EU in criminal law matters is rather limited. According to Article 83 TFEU, the EU “*may adopt minimum rules on the definition of criminal offences*”. For particularly serious crimes with a cross-border dimension, it also may fix itself sanctions.
- Wildlife crime is not mentioned in this list. The Council may, by unanimous decision, identify other areas of crime that will be considered to be particularly serious but has not yet done so
- Another possibility was opened by Article 83(2) second subparagraph TFEU, which allows the adoption of EU directives also on sanctions “*in an area which has been subject to harmonisation measures*”.
- As such harmonization measures were adopted by the EU in the area of environmental policy, which will be discussed in this presentation, it would thus be possible to fix also criminal sanctions for wildlife crime at the EU level.
- However, this has not yet been done.



2. The International legal framework for wildlife trade



Background

- Annually, **international wildlife trade** is estimated to be worth billions of dollars and to include hundreds of millions of plant and animal specimens.
- The trade is diverse, ranging from live animals and plants to a vast array of wildlife products derived from them, including food products, exotic leather goods, wooden musical instruments, timber, tourist curios and medicines. Levels of exploitation of some animal and plant species are high and the trade in them, together with other factors, such as habitat loss, is capable of **heavily depleting** their populations and even bringing **some species close to extinction**.
- Many wildlife species in trade are not endangered, but the existence of an **agreement to ensure the sustainability of the trade is important in order to safeguard these resources for the future**.

The Convention on international Trade in Endangered Species of Wild Fauna and Flora (CITES)

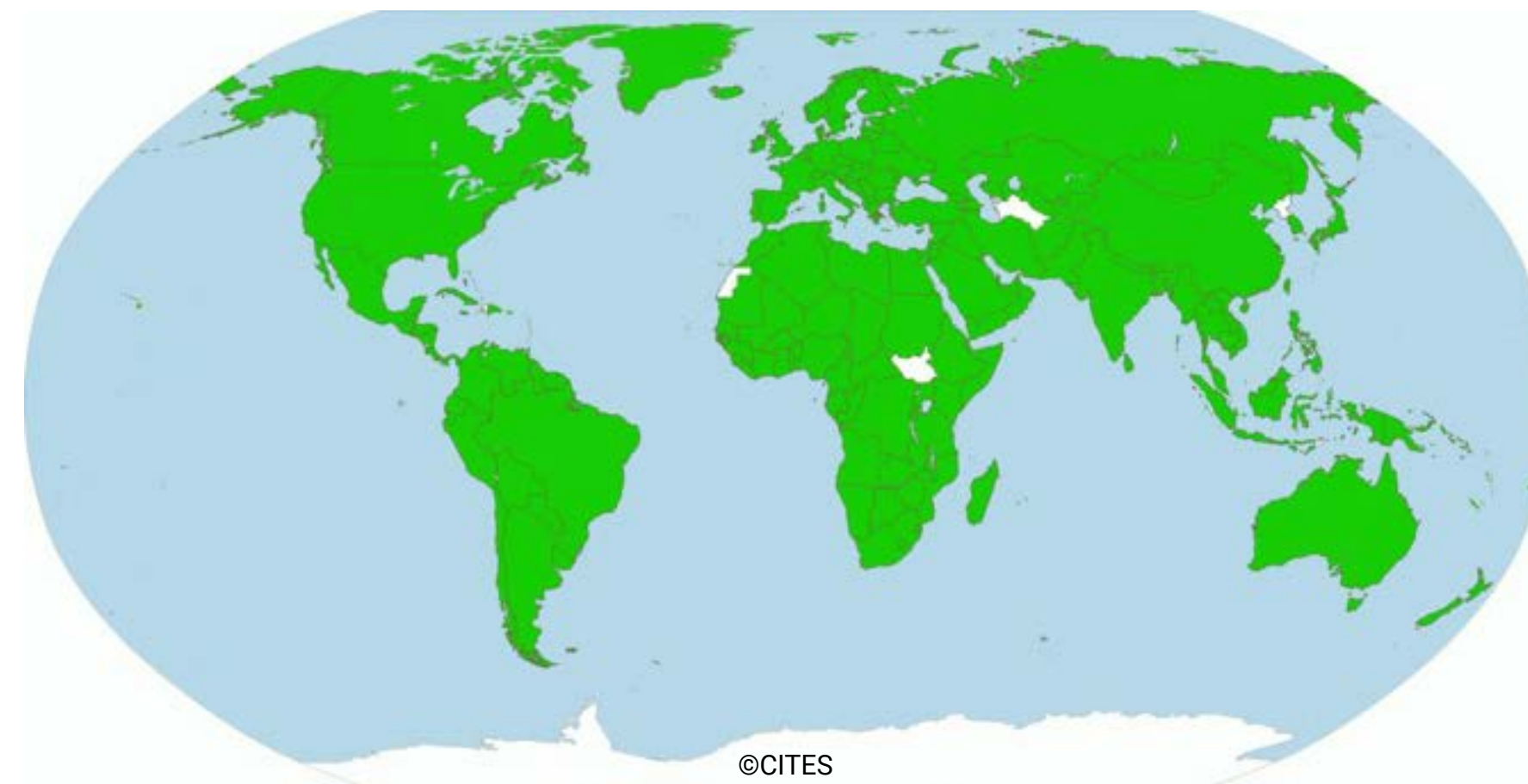
- As the trade in wild animals and plants crosses borders between countries, the effort to regulate it requires international cooperation to safeguard certain species from over-exploitation.
- The **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)** was conceived in the spirit of such cooperation. It is the principal international instrument to control and regulate international trade in protected species and to suppress any illegal dealings in wild fauna and flora.
- CITES was signed in Washington on 3 March 1973 and entered into force on 1 July 1975 (<https://cites.org/eng>).





CITES: Parties and Non-Parties

- Since 1973, the number of countries that have ratified has continued to increase. With **184 Parties**, (<https://cites.org/eng/disc/parties/index.php>), CITES is widely regarded as one of the most important international conservation instruments.
- CITES accords varying degrees of protection **to more than 38,000 species of animals and plants**, whether they are traded as live specimens, fur coats or dried herbs.
- There are a number of countries that are **not Parties to CITES**. The Convention addresses this issue by requesting that Parties require documentation from non-Parties that substantially conforms to the requirements for CITES permits and certificates.





CITES: Introduction

- CITES is an international agreement between governments that establishes the international legal framework for the prevention of trade in endangered species and for an effective regulation of trade in others. It gives source and destinations countries their share of the joint responsibility and provides the necessary tools for the international cooperation that is essential for fulfilling this responsibility.
- Although CITES is legally binding on the Parties, which they have to implement, it does not take the place of national laws (art. XIV of the Convention).
- Rather it provides a framework to be respected **by each Party, which has to adopt its own domestic legislation to ensure that CITES is implemented at the national level.**





CITES: Structure

The Convention provides for:

- a **Secretariat**, which is administered by the United Nations Environment Program (Article XII of the Convention) and is hosted in Geneva, Switzerland.
- a **Conference of the Parties** (CoP), which is the decision-making body, (Article XI of the Convention). The CoP is convened every two to three years and considers proposals to amend the Appendices, review the implementation of CITES and progress made and makes recommendations to improve the effectiveness of the Convention. It established several permanent committees, which play an important role in between its three-yearly meetings:
 - the Standing Committee (<https://cites.org/eng/disc/sc.php>),
 - the Animals Committee and
 - the Plants Committee (https://cites.org/eng/disc/ac_pc.php)

How CITES works

CITES works by subjecting international trade in specimens of selected species to certain controls:

- All import, export, re-export and introduction from the sea of species covered by the Convention has to be **authorized through a licensing system**.
- Each Party to the Convention must designate one or more **Management Authorities in charge of administering that licensing system** and one or more **Scientific Authorities to advise** them on the effects of trade on the status of the species.



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Specimens covered by CITES (I)

The species covered by CITES are **listed in three Appendices, according to the degree of protection they need:**

- **Appendix I** includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances.
- **Appendix II** includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.
- **Appendix III** contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade. Changes to Appendix III follow a distinct procedure from changes to Appendices I and II, as each Party's is entitled to make unilateral amendments to it.

□ <https://cites.org/eng/app/index.php>

Specimens covered by CITES (II)

- CITES provides protections for over **38,750 species**, including roughly 5,950 species of animals and 32,800 species of plants. Member states vote to list species under CITES Appendices according to how threatened they are by international trade, and how much protection they require.
- What usually receives attention is the illegal trade in endangered species. To better understand the effects of criminalization and the regulation of its harm, it will be important also to not exclude the victims of legal wildlife trade, from the perspective of the animals.





Specimens covered by CITES (II)

The following **specimens are covered by the Convention** as a result of Resolutions and amendments to the Interpretation of the Appendices:

- any animal or plant, whether alive or dead;
- in the case of an animal: for species included in Appendices I, II and III, any readily recognizable part or derivative thereof, and
- in the case of a plant: for species included in Appendix I, any readily recognizable part or derivative thereof with the exception of seedlings and tissue cultures of orchids obtained in vitro, in solid or liquid media, transported in sterile containers, and, for species included in Appendices II and III, any readily recognizable part or derivative thereof unless such parts and derivatives are specifically exempt.

Criteria to determine whether a species falls under Appendix I or II of CITES

The Conference of the Parties (CoP) has agreed in Resolution Conf. 9.24 (Rev. CoP17) on a **set of biological and trade criteria to help determine whether a species should be included in Appendices I or II:**

A specimen of a CITES-listed species may be imported into or exported (or re-exported) from a State party to the Convention only if the appropriate document has been obtained and presented for clearance at the port of entry or exit. There is some variation of the requirements from one country to another and it is always necessary to check on the national laws that may be stricter, but the basic conditions that apply for Appendices I and II are listed under art II-VI of the Convention



CITES Exemptions*

Article VII of the Convention allows or requires **Parties to make certain exemptions to the general principles**, notably:

- for specimens in transit or being transhipped [see Resolution Conf. 9.7 (Rev. CoP15)];
- for specimens that were acquired before CITES provisions applied to them (known as pre-Convention specimens, see Resolution Conf. 13.6 (Rev. CoP18));
- for specimens that are personal or household effects [see Resolution Conf. 13.7 (Rev. CoP17)];
- for animals that were ‘bred in captivity’ [see also Resolution Conf. 10.16 (Rev.)];
- for plants that were ‘artificially propagated’ [see also Resolution Conf. 11.11 (Rev. CoP18)];
- for specimens that are destined for scientific research [see also Resolution Conf. 11.15 (Rev. CoP18)];
- for animals or plants forming part of a travelling collection or exhibition, such as a circus [see also Resolution Conf. 12.3 (Rev. CoP18)].

* Such exemptions usually apply to noncommercial purposes only and have to be considered as not full exemptions.

CITES Reservations

The operation and application of CITES may be limited in relation to specific plants or animals if:

- a State enters a reservation with regard to any species included in the three Appendices or any parts or derivatives specified in relation to a species included in Appendix III (in accordance with article XXIII, paragraph 2, of the Convention).
- This may be done upon becoming a Party to the Convention or upon amendments to the Appendices with respect to trade in the species or part or derivative concerned.
- The reservation mechanisms under CITES effectively allow countries to act as non-Parties in relation to specific species.

CITES Monitoring system (I)

The monitoring of trade is an essential tool for achieving the aims of the Convention.

- **Scientific Authorities** must monitor export permits granted for Appendix-II species as well as the actual export thereof and advise their Management Authorities of suitable measures to limit the issue of export permits whenever they determine that the export should be limited in order to maintain a species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which it might become eligible for inclusion in Appendix I.

CITES Monitoring system (II)

A second important monitoring system is based on the trade **records to be kept by all Parties and to be reported to the Secretariat** on an annual basis.

- The annual reports of all Parties together should provide statistical information on the total volume of world trade in CITES species. The Parties annually report on legal and illegal trade status.
- The biennial report is now called “***CITES Implementation Report***” and is required to be submitted before each CoP from Parties are intended to provide information on the implementation of the Convention through legislation, compliance, enforcement action, etc. The above new timing makes that the biennial reports are to be submitted “only” **every 3 years**, which is not in accordance with the Convention (WIJNSTEKERS, 2018).
- The CITES Trade Database is not an exhaustive picture of the legal wildlife trade yet but can be considered the best source of trade information for specific number of taxonomies.

CITES Enforcements

The Convention obliges **Parties to take appropriate measures** to enforce its provisions and to prohibit trade in specimens in violation thereof.

These shall include measures:

- to penalize trade in, or possession of, such specimens, or both; and
- to provide for the confiscation or return to the State of export of such specimens.
- In addition, a Party may provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures.





3. Other international conventions which may help curtailing wildlife crimes



The UN Convention against Transnational Organized Crime (UNTOC)

- The Convention is the main instrument in the fight against transnational organized crime.
- Since both the perpetration and the effects of wildlife and forest offences are often transnational in nature and given the frequent involvement of organized criminal groups in these undertakings, there is considerable potential for invoking the Convention against Transnational Organized Crime in a legal response to the cross-border aspects of wildlife and offences.
- In 2021, the European Commission updated the declaration of competence to bring it in line with the Lisbon Treaty changes and to ensure that the European Public Prosecutor's Office (EPPO) can make use of UNTOC rules on international mutual legal assistance to cooperate with third countries' authorities.





The UN Convention against Corruption (UNCAC)

- The Convention contains a comprehensive set of preventive measures aimed at establishing integrity, transparency and accountability that can help to curb corruption in the agencies involved in the fight against wildlife and forest offences, such as law enforcement agencies, Customs, wildlife and forestry departments, but also prosecutors and the judiciary.
- It is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem.
- Corruption is also addressed in the first ever **World Wildlife Crime report**, published by UNODC in 2016*, with support from the International Consortium on Combating Wildlife Crime (ICCWC). A second report has been published in 2020.

* [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf](https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf)

** <https://www.unodc.org/unodc/en/data-and-analysis/wildlife.html>



The Convention on Biological Diversity

- The Convention seeks to protect ecosystems, including forests.
- It requires States Parties to take steps to **limit activities that threaten the extinction of species** or the degradation of ecosystems within their territory; to take active steps in the rehabilitation and restoration of degraded ecosystems; to create and enforce laws and regulations to protect threatened species; to establish special protection areas; and to conduct environmental impact assessments of development projects.
- The Convention on Biological Diversity (CBD) has an important role in addressing wildlife issues **identifying unsustainable hunting of bushmeat and its effect on non-target species** as a priority for Parties and seeking to heighten awareness on the multiple dimensions of sustainable wildlife management, including through the Collaborative Partnership on Wildlife Management.



The Convention on Biological Diversity

- The overall objective of legal frameworks in the Convention, might be found in the effort of establishing coherence and defining clear roles, responsibilities and accountability for an integrated approach, one that may well require significant changes involving many sectors, stakeholders and legal acts that have not previously acted coherently.
- The law can act as an empowering tool by creating incentives and recognizing rights and responsibilities to engage individuals, indigenous peoples and local communities, entrepreneurs, businesses and others in taking action for biodiversity and ecosystem services.



**Convention on
Biological Diversity**



The Convention on Migratory species (Bonn Convention, CMS)

- It is a Multilateral Environmental Agreement focused on species that regularly travel across international borders.
- It defines migratory species as those “whose members cyclically and predictably cross one or more national jurisdictional boundaries”.
- CMS also covers several species that **cross international borders** but are nonmigratory such as marine otters (*Lontra felina*) and mountain gorillas (*Gorilla gorilla*).
- The term “migratory species” covers the population or part of the population of any wild animal species or lower taxon “*a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries*” (Article 1).





The Convention on Migratory species (Bonn Convention, CMS)

- Despite the ecological importance of transboundary species movements (Clobert et al. 2012), CMS is the only MEA focused broadly on migratory species across taxonomic divisions. Unlike CITES, CMS lacks stringent participation requirements for party states.
- Despite covering an important group of species, **CMS is under-utilized compared to other conservation-focused MEAs**. CMS suffers from a lack of participation across North America and most of Asia (Henz, Soberon; 2018).
- CMS signatories agree to (i) undertake active conservation of migratory species under the first appendix of the agreement, (ii) form additional international agreements to conserve species in the second appendix, (iii) participate in the tri-annual Conference of the Parties, and (iv) financially support the CMS secretariat (CMS 1979).



The Convention on Migratory species (Bonn Convention, CMS)

- An important obstacle to encouraging large, economically powerful states to joining the convention is the cost of being a signatory. Similar to the General Assembly of the United Nations, the cost of participation in CMS is weighted by the GDP of signatory states (UNEP/CMS Res 12.2).
- CMS does not place stringent legal requirements upon its signatories unlike other MEAs such as CITES or CBD. Rather, CMS encourages the creation of smaller agreements that may themselves contain strict requirements. This approach appeals to states that opposed broad restrictions but may hinder the efficacy of implementing localized conservation plans and protections.



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The Convention Concerning the Protection of the World Cultural and Natural Heritage

- Does not protect particular plant or animal species.
- Does not require mandatory steps of protection and conservation.
- Provides a set of guidelines to encourage Parties to protect their cultural and natural heritage.





4. The EU legislative framework for nature and biodiversity protection and for addressing wildlife crimes



Overview

- Regarding the protection of the environment, the responsibility is shared between the EU and its member states, so that the principles of subsidiarity and proportionality apply.
- This repartition of power has significant consequences for the question of identifying and regulating environmental crime.
- The consequences of the shared competence between the EU and its Member States become obvious when the **questions of enforcement and sanctions are considered**.
- Member States have a very **large discretion to follow their traditional line in law** to provide for criminal, administrative, or civil law sanctions. Member States, such as the Malta, have a long tradition to recur to criminal sanctions, whereas Member States such as Germany, rather fix first of all administrative sanctions.
- The effect has been clearly underlined by the SWiPE European Summary Report.



Overview

- Member States are obliged to inform the Commission on the kind of sanctions they adopted, as well as on modifications in this regard but:
 - the Commission does not insist in the transmission of such information;
 - does not either compare the different types of sanctions that were adopted in the different Member States or examine whether indeed the sanctions are effective, proportionate, and dissuasive;
 - the Commission does not either monitor the practical application of sanctions in the different Member States;





Overview

Within the **EU**, the **legislative framework for nature and biodiversity protection and for addressing wildlife crimes encompasses** the following acts should be considered:

- a set of Regulations known as the EU Wildlife Trade Regulations implementing CITES
- Directive 2009/147/EC on the conservation of wild birds (codified version of Directive 79/409/EEC as amended)
- Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (consolidated version of 1 January 2007)
- Directive 2008/99/EC on the protection of the environment through criminal law
- Other EU relevant legislative acts



EU Wildlife Trade Regulations implementing CITES

CITES is implemented in the EU through a set of Regulations known as the “**EU Wildlife Trade Regulations**” that are **directly applicable in all EU Member States** and go beyond the original provisions of CITES.

These are:

- Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein: the Basic Regulation;
 - Commission Regulation (EC) No 865/2006: the Implementing Regulation;
 - Commission Regulation (EU) No 792/2012 laying down rules for the design of permits, certificates and other documents: the Permit Regulation.
- https://ec.europa.eu/environment/cites/legislation_en.htm



Regulation No 338/97. The Basic Regulation (I)

Council Regulation (EC) No 338/97: (as further amended)

- introduces provisions for import, export and re-export as well as internal EU trade in specimens of species listed in its four Annexes;
- provides for procedures and documents required for such trade (import and export permits, re-export certificates, import notifications and internal trade certificates);
- regulates the movement of live specimens;
- sets out specific requirements for Member States to ensure compliance with the Regulation and to impose adequate sanctions for infringements;
- establishes a number of bodies at EU level, i.e., the Committee on Trade in Wild Fauna and Flora, the Scientific Review Group and the Enforcement Group, all of which consist of representatives of the MS and are convened and chaired by the European Commission.



Regulation No 338/97. The Basic Regulation (II)

Council Regulation (EC) No 338/97 covers species listed in **4 Annexes**:

- Annex A includes: all CITES Appendix I species, except where EU Member States have entered a reservation; Some CITES Appendix II and III species, for which the EU has adopted stricter domestic measures; Some non-CITES species
- Annex B includes: all other CITES Appendix II species, except where EU Member States have entered a reservation; Some CITES Appendix III species; Some non-CITES species
- Annex C includes: all other CITES Appendix III species, except where EU MS have entered a reservation
- Annex D includes: some CITES Appendix III species for which the EU holds a reservation; some non-CITES species in order to be consistent with other EU regulations on the protection of native species, (e.g., the Habitats Directive and the Birds Directive)



Regulation No 3865/2006. The Implementing Regulation

Commission Regulation (EC) No 865/2006: (as further amended)

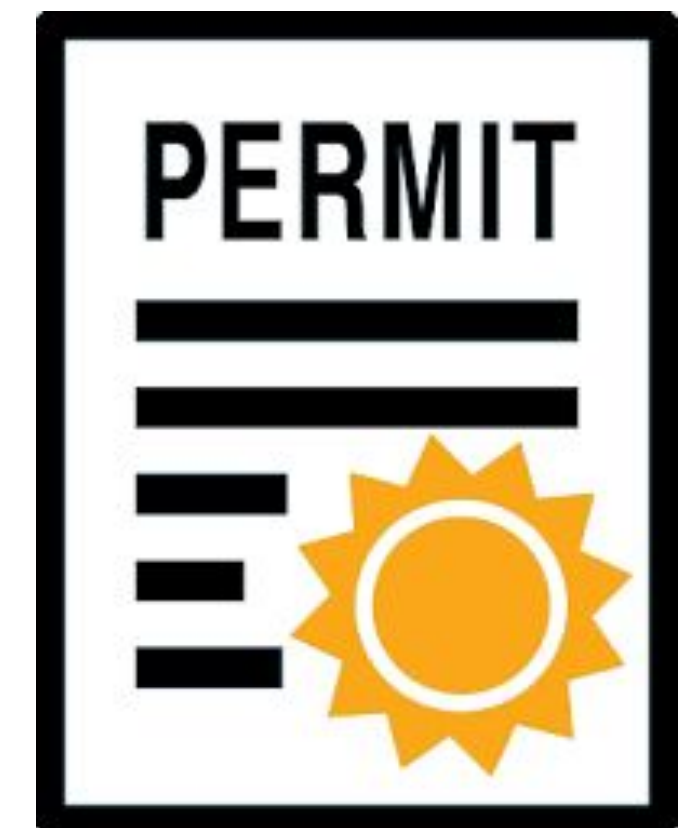
- **lays down detailed rules** for the implementation of Council Regulation (EC) No 338/97 and **addresses practical aspects** of its implementation. It also implements the bulk of currently applicable recommendations of the Conference of the Parties on the interpretation and implementation of CITES provisions;
- **defines additional rules** for the issue, validity and use of documents needed for the import, export, re-export and internal EU trade of specimens of species listed in the four Annexes to the Basic Regulation;
- **introduces provisions** for animals born and bred in captivity, artificially propagated plants, personal and household effects and for the marking and labelling of certain specimens;
- **is regularly amended**. The latest amendment was adopted on 16 December 2021 (2021/2280).



Regulation No 792/2012. The Permit Regulation

Commission Regulation (EU) No 792/2012: (as further amended):

- introduces the standard model forms that must be used for permits, certificates, notifications and applications provided for in Regulation No 338/97 and Regulation No 865/2006, as well as labels for scientific specimens.





Additional EU provisions on wildlife trade: Suspension Regulation and Commission Recommendation (I)

In addition to the core legislation described before,

- a **Suspension Regulation** provides the Commission with the possibility to restrict the introduction of species into the European Union from certain countries. This is done after consultation with the countries of origin concerned and taking into account any opinion of the Scientific Review Group.

The most recent Suspension Regulation (2019/1587) was adopted on 24 September 2019.



EU legislation on nature and biodiversity protection (I): BIRDS Directive

Directive 2009/147/EC on the conservation of wild birds (codified version of Directive 79/409/EEC as amended):

- addresses the **conservation of all species of birds naturally occurring in a wild state within the European Union**;
- applies to the birds themselves, as well as their eggs, nests and habitats;
- places an overarching obligation on MS to take whatever measures that are necessary to maintain or restore their EU populations at a level which corresponds in particular to their ecological, scientific and cultural requirements.





EU legislation on nature and biodiversity protection (I): BIRDS Directive

- introduces **two types of protection measures**:
 - a) the first deals with **habitat conservation and the need to preserve, maintain or re-establish a sufficient diversity and area of habitats for Europe's wild bird species**, particularly for threatened species listed in Annex I as well as for other migratory birds, paying particular attention to the protection of wetlands of international importance;
 - b) the second **set of measures deals with the protection of the species themselves and introduces a ban on the deliberate disturbance, killing, capture or trade of wild birds and destruction of their nests throughout the EU.**
- **Derogations are possible but only** if there is no other satisfactory solution and their use is not incompatible with the objectives of the Directive.



EU legislation on nature and biodiversity protection (I): BIRDS Directive

Wild bird species are protected in various ways:

- **Annex 1:** enlisted species and sub-species are particularly threatened. MS must designate Special Protection Areas (SPAs) for their survival and all migratory bird species.
- **Annex 2:** enlisted bird species can be hunted. However, the hunting periods are limited, and hunting is forbidden when birds are at their most vulnerable: during their return migration to nesting areas, reproduction and the raising of their chicks.
- **Annex 3:** overall, activities that directly threaten birds, such as their deliberate killing, capture or trade, or the destruction of their nests, are banned. With certain restrictions, MS can allow some of these activities for 26 species listed here.
- **Annex 4:** provides for the sustainable management of hunting but MS must outlaw all forms of non-selective and large scale killing of birds, especially the methods listed in this annex.
- **Annex 5:** promotes research to underpin the protection, management and use of all species of birds covered by the Directive, which are listed in this annex.



EU legislation on nature and biodiversity protection (I): BIRDS Directive

- Member States have to report on the implementation and application of the Directive every three years.
- In practice, though, Member States reported more or less every six years. This led the Commission not to enforce the regular reporting, but to propose, in 2018, that the reports be submitted **every six years**.
- Member States, furthermore, almost entirely reported on transposition and administrative measures (regulatory reporting), but not on the application of the Directive in practice (environmental monitoring)





EU legislation on nature and biodiversity protection (II): Habitats Directive

Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (consolidated version of 1 January 2007):

- sets up a **coherent European ecological network** of special areas of conservation under the title Natura 2000.
- This **Natura 2000** network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, includes also the special protection areas classified by the MS pursuant to the Birds Directive.



EU legislation on nature and biodiversity protection (II): Habitats Directive

Animal and plant species, as well as habitat types, listed in the Habitats directive's annexes are protected in various ways:

- **Annex II** species: core areas of their habitat are designated as sites of Community importance (SCIs) and included in the Natura 2000 network. These sites must be managed in accordance with the ecological needs of the species.
- **Annex IV** species (including many annex II species): a strict protection regime must be applied across their entire natural range within the EU, both within and outside Natura 2000 sites.
- **Annex V** species: MS must ensure that their exploitation and taking in the wild is compatible with maintaining them in a favourable conservation status.



EU legislation on nature and biodiversity protection (II): Habitats Directive

- The establishment of a European list of designated habitats (“Natura 2000”) progressed well, but the actual **protection measures** within the designated habitats **are still largely incomplete**.
- In 2010, the European Environment Agency informed that of the species listed in Directive 92/43, other than birds, 17 percent had a favorable conservation status as required by the Directive, 52 percent had an unfavorable conservation status, and for 31 percent the status was unknown.
- This balance has not significantly changed until 2020.





The State of Implementation of the Birds and Habitats Directives

- If the majority of the Member States have fully incorporated the Birds and Habitat Directives into their national law, **they have failed** to implement them properly. This means EU protected wildlife and habitats are not receiving the protection they need. Just with sufficient resources, commitment and willingness to learn from each other, full and effective implementation of the Directives is achievable.
- 75% of Member States have a patchy Natura 2000 network, with many sites that should be designated **lacking official protection**. Almost 90% of the Member States do not engage well enough with stakeholders to ensure real stakeholder dialogue (BirdLife, WWF, EEB and FoEE, 2018).
- There are no specific actions or programmes by the Commission to fight environmental crime with regard to certain species.



The State of Implementation of the Birds and Habitats Directives

- While the costs from the implementation of the Habitats and Birds Directives are greatly outweighed by the environmental and socio-economic benefits provided, implementation is hampered in many cases and local and regional authorities continue to face various challenges.
- Main barriers raised include stakeholder conflicts in the designation of Natura 2000 sites, infringement cases (predominantly in southern Member States), **limited or underqualified personnel, and lacking strategic approaches of regional authorities** to successfully apply for the different funding programmes (CoR, 2018).
- Monitoring of the Directives by the Commission is limited. The Commission concentrated on the transposition of the legal provisions into the national legal order, but only exceptionally addressed actual infringements of the wildlife provision.



The State of Implementation of the Birds and Habitats Directives

- The Commission did take action against Member States when the national legislation on the conservation of birds or with the Habitats Directive was not in compliance with EU law.
- About **100 cases were decided** by the Court of Justice on request from the Commission, regarding the Birds and the Habitats Directives, for example:
 - I. Poland had been “too generous” in allowing derogations (*Commission v. Poland, C-192/11*)
 - II. Malta allowed the capturing of seven species of finches, without respecting the provisions of Directive 2009/147 (*Commission v. Malta, C-557/15, EU:C:2018:477*)

The Commission usually monitors the legal transposition of Directives 2009/147 and 92/43 into the national legal order, but much less the practical application of the Directive.



EU protection of the environment through criminal law (I)

The Directive 2008/99/EC on the protection of the environment through criminal law:

- directive 2008/99 is based on Article 175 of the European Community Treaty (ECT) in the text following the Amsterdam Treaty reforms. It was enacted under the legal and institutional framework of the Union following the Lisbon Treaty.
- sets out minimum requirements relating to criminal law in the Member States in order to ensure better protection of the environment;
- lays down a list of environmental offences that must be considered criminal offences by all Member States, if committed intentionally or with serious negligence;
- requires Member States to attach criminal sanctions to the breach of prohibitions deriving from relevant sectorial legislation listed in two Annexes to the Directive;
- requires that Member States ensure that both individuals and legal persons can be held liable for offences committed for their benefit;



EU protection of the environment through criminal law (I)

- requires that Member States ensure that the commission of the offences is subject to effective, proportionate and dissuasive criminal sanctions. For legal persons the sanctions can be of a noncriminal nature;
- prescribes that the Member States are free to maintain or introduce more stringent protective measures;
- does not lay down measures concerning the procedural part of criminal law nor does it touch upon the powers of prosecutors and judges.





EU protection of the environment through criminal law (I)

- The directive focuses on the technical and legal sides of the implementation of the directive of environmental crimes but **lack a question of how much it can challenge a state's sovereignty over their legal systems.**
- The EUs goal as stated in the directive is to make a system, with similar laws, which can be used when criminal actions go over borders (Directive 2008/99/EC, 2-4). Therefore, their goal is **to create a system which can handle larger criminal activity as well as expand to more common laws** between nations to ease the burdens of environmental crimes on the former systems.
- The Directive does not include, and does not provide criminalisation for, increasingly relevant criminal activities such as illegal logging which is covered by EU environmental legislation respectively through the EU Timber Regulation (2013). Annexes to the ECD have not been updated since its adoption and those environmental legislations adopted later were not covered under the ECD.



EU protection of the environment through criminal law (I)

- Directive 2008/99/EC is the **only criminal law instrument for environmental matters that exist at the EU level**. As Directive 2008/99 was adopted on the basis of Article 192 TFEU, Member States are, under Article 193 TFEU, entitled to maintain or introduce more stringent protective measures. Such measures may also include sanctions, and these sanctions may be of criminal, administrative, or civil law.
- Member States should inform the Commission of any more stringent measures they adopted. However, there is no sanction if they do not. And nothing is known with regard to extended definitions of wildlife crime at the national level.



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EU protection of the environment through criminal law (II)

Since the Biodiversity Strategy, Zero Pollution Action Plan and the European Green Deal Communication are calling for a more effective protection of the environment, also through criminal law, in 2021 the European Commission adopted a **proposal for a new EU Directive (COM(2021) 851 final) on the protection of the environment through criminal law**



“The Commission evaluated the Directive in 2019/20 and published its findings in October 2020. It found that the Directive did not have much effect on the ground: over the past 10 years the number of environmental crime cases successfully investigated and sentenced remained very low. Moreover, the sanction levels imposed were too low to be dissuasive and cross-border cooperation did not take place in a systematic manner”. (The European Union 2021, p. 1)



EU protection of the environment through criminal law (III)

On **15 December 2021**, the Commission adopted the proposal on the new ECD

- The initiative demonstrates that the directive 2008/99/EC was not strong enough to reach the goals but also that the relationships between member states did not reach a satisfactory level. One of the reasons for its failure was the lack of reporting and reliable statistics, as also clearly reported by SWiPE national reports, which damage both the evaluation and the member states own law making.





EU protection of the environment through criminal law (III)

This proposal, once adopted will replace **Directive 2008/99/EC**

The proposal has **six main objectives**:

1. Improve the effectiveness of investigations and prosecution by updating the scope of the Directive;
2. Improve the effectiveness of investigations and prosecutions by clarifying or eliminating vague terms used in the definitions of environmental crime;
3. Ensure effective, dissuasive and proportionate sanction types and levels for environmental crime;
4. Foster cross-border investigation and prosecution;
5. Improve informed decision-making on environmental crime through improved collection and dissemination of statistical data;
6. Improve the operational effectiveness of national enforcement chains to foster investigations, prosecutions and sanctioning.



EU protection of the environment through criminal law (III)

Refined and new offences under Article 3:

- Update and addition of new criminal offences to reflect the current state of EU environmental law such as: illegal timber trade; illegal ship recycling; serious breaches related to dealing with fluorinated greenhouse gases and illegal water abstraction causing substantial damage to water resources. Total: **18 criminal offences**. The current directive only cover 9 offences.
- Strengthening the legal clarity by introducing specific criteria to assess the terms used to define environmental offences: “substantial damage”; “negligible quantity”; and “likelihood to cause damage” to the environment.

Among the offences under Article 3 (1) point I:

- *“The killing, destruction, taking of, possession, sale or offering for sale of a specimen or specimens of wild fauna or flora species listed in Annexes IV and V (when species in Annex V are subject to the same measures as those adopted for species in Annex IV) to Council Directive 92/43/EEC⁴⁹ and the species referred to in Article 1 of Directive 2009/147/EC of the European Parliament and of the Council, except for cases where the conduct concerns a negligible quantity of such specimens”;*



EU protection of the environment through criminal law (III)

Noteworthy are also Article 3 (1) point M, prosecuting:

“trading in specimens of wild fauna or flora species or parts or derivatives thereof listed in Annexes A and B to Council Regulation (EC) No 338/9751, except for cases where the conduct concerns a negligible quantity of such specimens”;

And Article 3 (1) point N, prosecuting:

“the placing or making available on the Union market of illegally harvested timber or of timber products that were made of illegally harvested wood, falling within the scope of Regulation (EU) No 995/2010 of the European Parliament and of the Council”.



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EU protection of the environment through criminal law (III)

In March 2022, WWF has adopted a position paper on the new Environmental Crime Directive, welcoming the Commission's proposal which addresses the recommendations WWF made during the consultation process.

Despite positive elements, WWF considers that there is room for improvements in the proposal regarding its **scope, the clarity of certain definitions, the level and scope of sanctions, and its implementing provisions.**

The entire document is available at the following link:

<https://stopwildlifecrime.eu/resources/policy-recommendations/>





Other EU relevant provisions (I)

In addition to the legislative framework described above, the following **EU acts** may help addressing wildlife crimes:

- Regulation (EU) No 1143/2014 setting out rules to prevent, minimize and mitigate the adverse impact on biodiversity of the introduction and spread within the Union, both intentional and unintentional, of invasive alien species. These provisions apply to all invasive alien species animals, plants, fungi or microorganisms introduced outside its natural range.
- Directive 1999/22/EC on the keeping of wild animals in zoos. Member States are required to adopt particular measures as regards the licensing and inspection of zoos, thereby strengthening the role of zoos in the conservation of biodiversity.



Other EU relevant provisions (II)

- Regulation (EEC) No 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.
- Regulation (EC) No 1007/2009 introducing a ban on commercially importing and marketing all seal products and any related products. This includes products from seals, walruses and sea lions (for example, fur skin pelts, clothing and accessories). The measure has been very controversial, triggering a strong reaction, both from neighboring exporting States, in particular Canada and Norway, and from indigenous people living in the Arctic region. Seal hunting represents a traditional practice carried out for the purpose of personal consumption of seal meat, as well as for commercial trade of related by-products by the indigenous communities (mainly Inuit) living in the Northern Pole.
- Directive 83/129/EEC concerning the importation into Member States of skins of certain seal pups and products derived therefrom



Other EU relevant provisions (II)

- Action Plan for the Conservation and Management of Sharks (SEC(2009) 103) (SEC(2009) 104) (SEC(2009) 106) elaborated and structured under the Common Fisheries Policy and was oriented to ensure the continued fishing of sharks.
- Council Regulation 1100/2007 on establishing measures for the recovery of the stock of European eel establishing measures for the recovery of stocks of European eel and asking Member States to elaborate eel management plans. No implementation report was published.
- Action Plan for Reducing Incidental Catches of Seabirds in Fishing Gears, at 2 COM (2012) 665 final dealing with the identification of the problem, the collection of data, the implementation of mitigating measures, education, and training and research. Nothing is known on the results of the action plan.





EU protection of the environment (IV)

The EU Strategy to tackle Organised Crime 2021-2025*:

- This Strategy builds on past achievements, identifies priority work strands to better protect citizens and the economy from organised crime groups and puts forward concrete **medium and long-term actions**, which will be developed in full respect of fundamental rights. It constitutes the first dedicated Strategy on organised crime since the entry into force of the Lisbon Treaty.
- One of the key tools to implement the present Strategy and to step up efforts against organised crime structures through coordinated operations is the European Multidisciplinary Platform Against Criminal Threats (**EMPACT**).
- The European Commission works, together with all relevant EMPACT stakeholders, to put in place a number of measures, outlined in detail in the Staff Working Document accompanying this Strategy, in order to use EMPACT to its full potential, and turn it into a true EU flagship instrument for multidisciplinary and multiagency operational cooperation to fight organised crime at EU level.

* <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0170>



EU protection of the environment (IV)

Main general suggested actions:

- Propose the creation of an EU Police Cooperation Code (2021);
- Propose to revise the Advanced Passenger Information Directive (2022);
- Work with all relevant stakeholders, to streamline, expand and **modernise** the European Multidisciplinary Platform Against Criminal Threats (EMPACT) and establish it as the EU flagship instrument to fight organised and serious international crime through a set of actions and a legislative proposal (2023);
- Step up negotiations on cooperation between **Europol and third countries**;
- Significantly reinforce funding for EMPACT through the Internal Security Fund for the period 2021-2027;
- Reinforce, jointly with the European External Action Service, **international cooperation with third countries and international organisations.**



EU protection of the environment (V)

Main project-related suggested actions:

- Europol and CEPOL should work with Member States to define and periodically update a **“Training Competencies Framework”**. On this basis, the Commission should support the development of training materials, via the and support the delivery of training at national level via available instruments. **European Cybercrime Training and Education Group (ECTEG)**.
- CEPOL and the European Judicial Training Network (EJTN) should regularly assess training needs and prioritise training delivery accordingly, also with a view to further developing the general digital competence of law enforcement and judicial authorities. Based on the Training Competencies Framework, CEPOL should also work closely with practitioners and Member States to create certification/accreditation schemes for digital investigation experts.



EU Action Plan against Wildlife Trafficking (IV)

- Following initiatives at the international level, the Commission adopted, in 2016, an **action plan on wildlife trafficking 2016 to 2020**, which was based on three priorities:
 1. preventing wildlife trafficking and addressing its root causes;
 2. implementing and enforcing existing rules and combating organized wildlife crime more effectively;
 3. strengthening the global partnership of source, consumer, and transit countries against wildlife trafficking.
- The plan mainly addressed international trade-related problems but avoided discussing in detail issues and problems of wildlife within the EU that are not trade-related.
- The plan contained **11 objectives and 32 specific actions** to be undertaken, including a timeline for their implementation.



EU Action Plan against Wildlife Trafficking (IV)

- Several of the actions suggested in the plan, such as “**better enforcement**,” “**adoption of resolutions under the CITES Convention**,” and “**strengthen the involvement of rural communities in wildlife conservation**,” were of rather general nature.
- In December 2018, the Commission reported on progress with the implementation of the action plan Overall, arguing that it had *generated political attention and support at both EU and Member State level* and that good progress had been made in implementing most of the different actions.
- The Commission underlined that, in spite of that, wildlife trafficking remained an issue of concern and that the implementation of the plan would continue.





EU Action Plan against Wildlife Trafficking (IV)

In June 2022, **joint TRAFFIC-WWF recommendations** for a stronger EU Action Plan against Wildlife Trafficking have been released.

After having evaluated the level of success of the actions provided for in the 2016-2020 Action Plan, **15 main recommendations** supplemented by additional measures have called attention to push towards a better and stronger implementation of the Plan, calling for more resources both at National and EU level.

Key topics, such as financial investigations and asset recovery procedures, nationally protected species illegally traded in the EU, have been mentioned to ensure that they are taken into due consideration

The document is available at the following link:

<https://www.wwf.eu/?6859466/Joint-TRAFFIC-WWF-recommendations-for-a-strong-EU-Action-Plan-against-Wildlife-Trafficking>

□ **A new Action Plan is expected to be adopted soon (October/November 2022).**



5. International initiatives fighting wildlife crimes



Traffic (II)

- Is a **leading non-governmental organisation working globally on trade in wild animals and plants** in the context of both biodiversity conservation and sustainable development.
- The organization carry out research, investigations and analysis to compile the evidence we use to catalyze action by governments, businesses and individuals, in collaboration with a wide range of partners, to help ensure that wildlife trade is not a threat to the conservation of nature.
- It works in and connects across some of the world's most critical wildlife trade hotspots to identify and help address both biodiversity conservation and sustainable development challenges and opportunities linked to trade in wild species.

TRAFFIC



IFAW (III)

- The **International Fund for Animal Welfare (IFAW)** is a global non-profit helping animals and people thrive together.
- The organization delivers immediate and lasting impact for animals, people and the place we call home. Each is based in science, rooted in local communities, globally-scalable, economically-viable, and always for the long-term.
- It works with local communities and park rangers to stop poaching at its source and secure wildlife, providing training, mentorship, equipment and infrastructure to wildlife authorities, police and border agents.
- It helps local communities to develop protocols for properly handling living wildlife during seizures and confiscations. It gathers and analyze information about criminal networks and support the planning of law enforcement operations by government officials.



ICCWC (IV)

- The **International Consortium on Combating Wildlife Crime (ICCWC)** is the collaborative effort of five inter-governmental organizations working to bring coordinated support to the national wildlife law enforcement agencies and to the sub-regional and regional networks that, on a daily basis, act in defense of natural resources.
- The partner agencies to ICCWC are the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat, INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the World Bank and the World Customs Organization (WCO).





Birdlife International (V)

- Is a global partnership of non-governmental organizations that strives to conserve birds and their habitats. Its priorities include **preventing extinction of bird species**, identifying and safeguarding important sites for birds, maintaining and restoring key bird habitats, and empowering conservationists worldwide.
- BirdLife International has identified 13,000 Important Bird and Biodiversity Areas and is the official International Union for Conservation of Nature's Red List authority for birds. As of 2015, BirdLife International has established that 1,375 bird species (13% of the total) are threatened with extinction (critically endangered, endangered or vulnerable)





Influence reported by international initiatives (VI)

- According to the decision of the Court of Justice in case *C-3/96, Comm'n v. Netherlands, 1998*, environmental initiatives and organizations are seen and accepted as a provider of information
- They inform on the practical application of the law, on environmental impairment in specific cases, of general data, and of deficiencies in local, regional, or national wildlife governance.
- Concerning wildlife protection, the Commission would be unaware of numerous shortfalls, lack of implementation, arbitrary derogations if it were not informed by environmental organizations.
- However, the European Commission discourages complaints by individuals or environmental organizations on environmental (wildlife) impairment, by reducing the role and the rights of complainants and keeping the procedure largely confidential.

SWiPE

Successful
Wildlife Crime
Prosecution
in Europe.



The international and EU legislative framework

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