



# THE IMPLEMENTATION AND ENFORCEMENT OF CITES IN THE EUROPEAN UNION



A TRAFFIC EUROPE DISCUSSION PAPER

## TRAFFIC EUROPE

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**THE IMPLEMENTATION AND  
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**A TRAFFIC Europe Discussion Paper**

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## 1. BACKGROUND

While it is widely acknowledged that many, if not most, Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) have problems in implementing and enforcing the provisions of the Convention, the application of CITES in the European Union (EU)<sup>1</sup> generally, and of certain EU Member States specifically, have been of particular concern to the international community for more than a decade. As one of the three largest legal wildlife markets for CITES-listed species of animals and plants in the world, along with the U.S. and Japan, the European Community trades on a large scale in a variety of species.

The EU represents a special case for the problems of implementation of CITES (Favre, 1989). It is a unique political and economic structure, where a group of sovereign states have delegated a part of their power to another entity. The primary purpose of the EU is to achieve advancement in the world economy by creating an economically and politically integrated community in which the national barriers of trade are removed and the free movement of goods, persons, services and capital are allowed between the member countries (Favre, 1989).

Gradually, a series of legislative and administrative changes have entered into force in the Community over the years, to prepare for the completion of the Single Market. Two of these changes have significantly affected the control of wildlife trade in the EU. First, Regulation 3626/82 entered into force in 1984 to apply CITES in all EU Member States. The Regulation imposed stricter provisions than those of the Convention, and largely removed requirements for monitoring trade across borders shared by the Member States. Secondly, the realization of the Single Market in 1993 further reduced opportunities to monitor wildlife trade on these internal borders. With the formal establishment of the Single Market, the EU is faced with the twin challenges of ensuring barrier-free trade throughout the Community and safeguarding that trade in wild animal and plant species is carefully controlled.

It must be kept in mind that the control of wildlife trade in the EU is an extremely complex subject which deserves to be explored in depth on numerous levels. Separate reports and studies have been and others should be devoted to many of its aspects. This report has intended to provide a general overview of the implementation and enforcement of CITES and EU wildlife trade regulations at this time, in the hope that a better understanding on the part of the public, non-government organizations, CITES Parties, and representatives of Community institutions will help ensure the adoption of improved regulations and their subsequent implementation.

## 2. METHODOLOGY

In 1993, TRAFFIC Europe and WWF UK initiated a project within the WWF European Programme to assess the implementation and enforcement of wildlife trade regulations in the EU, and to work for necessary improvements. To enable an objective analysis to be made of the situation, information was collected from a variety of sources on wildlife trade in particular Member States, in the EU market as a whole, and on the regulation and enforcement of this trade at the Member State and Community levels. TRAFFIC Europe reviewed information amassed from the TRAFFIC Network, from TRAFFIC projects in Italy, Greece, Spain, the Netherlands, Germany, and France, and from TRAFFIC databases on infractions in the European Union. Information was also gathered through the use of questionnaires and discussions with EU Management Authorities, and Directorates General XI (Environment) and XXI (Customs) of the European Commission and of the Customs Co-operation Council.

*1. The EEC (European Economic Community) has evolved into the EC (European Community). The Community is the part of the EU (European Union) which has competence over its regulations. The EU extends beyond the Community on a number of matters, including those related to territory and foreign policy. For the purposes of this paper, the "Community" will be used in relation to the regulations and the "EU" used elsewhere, as appropriate. In some instances, the terms may be used interchangeably.*

### 3. HISTORY OF WILDLIFE TRADE REGULATION IN THE EU

2. Council Regulation (EEC) No. 3626/82 of 3

December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora.

3. Commission Regulation (EEC) No. 3418/83, of 28 November 1983

laying down provisions for the uniform issue and use of the documents required for the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora.

4. Under Article 189, paragraph 2, of the Treaty of Rome, "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States."

A brief review of some of the developments in the regulation of wildlife trade globally and in the Community provides the background and the context from which the current situation has evolved.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was concluded on 3 March 1973 in Washington, D.C. to regulate international trade in specimens of certain species of wild fauna and flora believed to be threatened, or potentially threatened, by international trade. CITES entered into force on 1 July 1975. As of December 1994, 128 Parties (of which 11 are EU Member States) have acceded to the Convention.

The Community envisioned that its contribution to the implementation of the Convention would be much improved if its provisions were enforced by the remaining EEC Member States which were not Parties to CITES (Wijnstekers, 1993). In the early 1980's, the EEC expressed the desire to become a Party to CITES (Favre, 1989), however, Article XXI of the Convention limited the accession to the Convention to sovereign states. During this period, in 1982 and 1983, the Council and the Commission of the EEC adopted two Community Regulations to apply CITES in all the EEC Member States. The EEC's desire to join CITES was considered during the second extraordinary meeting of the Conference of the Parties to CITES held in 1983 in Gaborone, Botswana. Since the EEC was not a sovereign state, the Parties adopted language to amend Article XXI of the Convention to allow accession to the Convention of "regional economic integration organizations constituted by sovereign States," such as the EEC. However, this amendment to the text of the Convention was not ratified by the required majority, 54 of the 81 Parties which attended that meeting, and the Community still cannot join CITES as a Party.

EEC Regulations 3626/82<sup>2</sup> and 3418/83<sup>3</sup> entered into force on 1 January 1984 to apply CITES directly in all EU Member States (numbering 10 at the time)<sup>4</sup>. Since the EEC could not become a contracting Party to the Convention, it had found another means of regulating trade in wildlife, especially since some of its Member States were not CITES Parties. However, the fact that Member States which were Parties to the Convention required CITES import, export and re-export documents for animals, plants and products thereof crossing their borders was in contravention with the aims of the Treaty of Rome with regard to the free movement of goods, and could have led to distortions of competition within the Community (Wijnstekers, 1993). The entry into force of these Regulations prompted Belgium, Luxembourg and the Netherlands to join CITES in 1984, and Spain to join CITES in 1986 when it was admitted to the EEC. The Regulations became applicable in Portugal, a CITES Party since 1981, upon admission to the EEC in 1986 (see Table 1). The Community legislation detailed a number of stricter requirements and protective measures than those provided for by the Convention. The Regulations established the framework for Community-wide implementation of CITES, while the Member States remained responsible for its application.

TABLE 1

The entry into force of CITES in EU Member States

Pre-EEC Regulations		Post-EEC Regulations	
20 June 1976	<i>Germany</i>	01 January 1984	<i>Belgium</i>
31 October 1976	<i>United Kingdom</i>	12 March 1984	<i>Luxembourg</i>
24 October 1977	<i>Denmark</i>	18 July 1984	<i>Netherlands</i>
09 August 1978	<i>France</i>	16 May 1986	<i>Spain</i>
31 December 1979	<i>Italy</i>	06 January 1993	<i>Greece</i>
11 March 1981	<i>Portugal</i>	non-Party	<i>Ireland</i>

During the sixth meeting of the Conference of the Parties in Ottawa, Canada in 1987, Parties adopted Resolution Conf. 6.5, *Application of CITES in the European Economic Community*. The Resolution requested that the EEC, in view of its abolition of internal border controls, urgently establish full means of Community supervision of its legislation by means of an adequately staffed Community inspectorate; recommended that the EEC monitor the movement of CITES specimens within and between Member States in accordance with the mechanisms foreseen in EEC Council Regulation 3626/82 and by use of existing forms available under Community legislation; and urged the Parties to consider accepting the Gaborone amendment to Article XXI of the Convention.

Following the recommendations of an independent study for the Commission on CITES implementation in the Community (Anon., 1988), the Commission acknowledged the need to replace Community Regulation 3626/82, and in 1991 tabled a proposal for a Council Regulation (EEC) laying down provisions with regard to possession of and trade in specimens of wild fauna and flora, titled *Com (91)488 final - SYN 370*. The explanatory memorandum introducing the proposal identified three main shortcomings in Community Regulation 3626/82 which the new legislation aimed at correcting:

- i. only those provisions of the Convention which have been amended in order to be applied within the Community have been incorporated into Regulation 3626/82;
- ii. only those species which were included in the CITES appendices were listed in the annexes of Regulation 3626/82; and
- iii. the difficulties of changing the status of a species by transferring it from one annex to another.

Although CITES still formed the basis, the proposed regulation contained additional and stricter provisions than Regulation 3626/82 to enable more uniform application in the Single Market (the original draft had even set minimum penalties to be applied in all Member States; this provision, however, was deleted before the proposal was tabled). The Commission had envisioned that the new Regulation would enter into force on 1 January 1993 to coincide with the completion of the internal market. Unfortunately, the Member States were unable to reach consensus on a number of elements in the draft legislation by that time.

During the eighth meeting of the Conference of the Parties in Kyoto, Japan in 1992, CITES Parties recognized that wildlife trade controls were often inadequate in the EU by endorsing Resolution Conf. 8.2, *Implementation of the Convention in the European Economic Community*. The Resolution urged the EU (then EEC) Member States to improve their implementation of CITES by completing the development of appropriate legislation to implement the Convention, increasing the allocation of resources required to enforce the Convention, and encouraged the timely accession to the Convention of EU Member States which were not yet Parties to CITES (at the time, Greece and Ireland). The Resolution requested the CITES Secretariat to evaluate the efficiency of EU CITES implementation and report the findings at the next (ninth) meeting, recommended that Parties which had not yet done so ratify the Gaborone Amendment, and recommended that Parties check with the Management Authority of the country of origin or with the CITES Secretariat before accepting a re-export document covering live animals, or reptile skins or derivatives issued by an EU Member State.

Internal Community border controls were virtually eliminated when the Member States of the EU became consolidated into a formally unified market on 1 January 1993. Although the exact number is not known, several thousand Customs officers were transferred, by 1 January, from internal border posts.<sup>5</sup> The Single Market was established.

After a number of amendments submitted by the European Parliament were incorporated into the proposal by the Commission, the proposed regulation was tabled in January 1994, titled *Com (93)599 final-COD 370*. At present the Member States have yet to finalize and accept the proposed regulation. At this time, a number of the Parties' concerns remain unresolved, many of the legislative shortcomings and asso-

5. The number of Customs officers removed from internal EU borders was left up to the discretion of the Member States. Gradual reductions had begun before 1 January 1993, and a large number of individuals was removed on or around that date. In some Member States, further reductions have continued since. By the end of January, 1993, Belgium had removed approximately 1700 (27% of the its total), the Netherlands 1400, Portugal 800, and Spain 300 Customs personnel from internal EU borders. In many cases, personnel were transferred either to external border or to other governmental posts. Some were retired. (Commission/Customs Policy Unit estimate)

ciated implementation and enforcement problems noted in the 1988 report (Anon., 1988) remain applicable, owing primarily to the lack of a new regulation (Wijnstekers, pers. comm., 1994), and the Community has not become a contracting Party to CITES.

During the ninth meeting of the Conference of the Parties to CITES in Fort Lauderdale, USA in 1994, the CITES Secretariat presented a report titled *Implementation of the Convention within the European Union* (Doc. 9.23) (the conclusions and recommendations of the report are re-printed in Annex 1).

On behalf of the EU Member States, the delegation of Germany asked that the first two paragraphs of Resolution Conf. 8.2 (that third countries verify the validity of re-export certificates for live animals and reptile skins issued by EU Member States, and that the CITES Secretariat evaluate the effectiveness of wildlife trade controls in the EU) be deleted, believing that these discriminated against one region, the EU. The Conference of the Parties agreed to amend Resolution Conf. 8.2 by deleting the first two paragraphs, and directed the CITES Secretariat to write to the Parties which have not yet accepted the amendment to the text of the Convention adopted in Gaborone in 1983 requesting them to do so as soon as possible. These agreements were recorded in a decision titled *Interpretation and Implementation of the Convention in the European Union* (Com. 9.29).

During the discussion on the EU, the German delegation stated that the Community is committed to carrying out the the following actions:

- i. adopting a revised EU CITES Regulation during the forthcoming French presidency of the Council;
- ii. remedying the problems raised in the Secretariat's report; and
- iii. establishing a working group on CITES enforcement in the EU.

#### 4. APPLICATION OF CITES IN THE SINGLE MARKET

##### 4.1. Legislation

Through their accession to the Convention, Parties have consented to meet the following basic requirements:

- to prohibit international commercial trade in species threatened with extinction which are or may be affected by trade (species listed in CITES Appendix I<sup>6</sup>);
- to control trade in certain species which might otherwise become threatened by unregulated trade (listed in Appendices II and III<sup>7</sup>) through a system of regulation and licensing;
- to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in violation of these provisions;
- to designate Management and Scientific Authorities<sup>8</sup>; and
- to contribute to the annual budget of the CITES Secretariat.

The text of CITES provides the regulatory framework for its Parties to work from, but responsibility for translating the provisions of the Convention into effective action rests with the contracting parties. To this end, Parties must enact national implementing legislation.

##### *Community Regulations*

EU Member States are required by the Community Regulations to implement the provisions of the Convention, as well as the stricter provisions of the Regulations (Anon., 1988). Briefly, the stricter provisions entail that:

6. International trade for Appendix I species may be authorized for a few exceptional cases: for scientific and educational purposes, personal effects, pre-Convention specimens (acquired before they were listed in Appendix I), and captive-bred specimens.

7. Appendix II species are not necessarily threatened by international trade but might become so if their trade is not well regulated. Appendix III species, while not considered threatened throughout their ranges, are listed by particular range states in which certain populations may be of concern.

8. Management Authorities issue permits or certificates and maintain trade records. Scientific Authorities provide technical advice to Management Authorities.



- imports of species from all three Appendices (I, II, and III) require an import permit (not just Appendix I species) or import certificate (*Article 5, paragraph 1*);
- some Appendix II and III species have enhanced protection: those listed under Annex C1 are treated as Appendix I species (*Article 3, paragraph 1*) and those under Annex C2 can be subject to stricter import measures than those provided for by their CITES status (*Article 10, paragraph 1*);
- the display to the public for commercial purposes, the sale, keeping for sale, offering for sale, or transporting for sale of Appendix I and Annex C1 species are prohibited within the EU in the absence of exemption certificates (*Article 6, paragraph 1*);
- Member States may require presentation of CITES export documentation, or satisfactory proof of its existence for CITES-listed specimens in transit and temporary storage (*Article 5, paragraph 4*);
- a transport authorization must be issued for Appendix II/Annex C1 live animals prior to their movement within the EU (*Article 13, paragraph 2*).

Although Community Regulations are directly applicable in all EU Member States, Regulation 3626/82 is not an entirely self-executing legal instrument: since it does not set sanctions and penalties and provide for confiscation, national legislation must be adopted for these purposes.

#### BOX 1

##### Legal trade recorded for some CITES-listed taxa by the EU: 1988-1991

(figures from CITES annual report data: Corrigan, 1994)

- **Primates:** The EU was the second largest importer after the USA of live primates, importing 45,981 of the 178,026 traded, or 26% of the total number recorded in trade.
- **Cats:** After the USA, the EU was the second-largest importer of live cats, importing 22% of the specimens recorded (1,009 of 4,662 specimens) in trade during 1988-1991. Second only to Canada, the EU was a net exporter of 16% of all live cats in trade. The EU was the second-largest importer after Japan, importing 105,640 of the 407,605 cat skins traded worldwide, or 36% of the world market.
- **Parrots:** The EU was the number one world importer of live parrots, lorries and cockatoos in trade. In 1988-1991 the EU imported 975,093 live specimens (39% of the world market). World trade in parrots fell during this period, but the percentage of parrots imported into the EU increased from 34% to 44.5% of the total trade.
- **Tortoises:** The EU was the top importer of live tortoises in trade during this period, importing 73,686 of the 268,504 live tortoises recorded in trade (27% of the world market).
- **Crocodylians:** The major market for alligator, caiman, and crocodile skins during this period, the EU imported 974,873 whole skins (42% of world trade) and 657,133 sides (47% of world trade); the EU imported 63% of all Alligator *Alligator mississippiensis* skins in trade. The total number of skins in global trade fell during 1988-1991, however, the percentage of skins imported into the EU increased from 36% in 1988 to 58% of the total trade in 1991.
- **Monitor Lizards:** The EU was the major importer of monitor lizard skins in world trade, importing 3,864,001 skins between 1988-1991, or 28% of the total traded. The EU imported 70% of all Nile Monitor skins *Varanus niloticus* in trade. The EU also imported 33,404 live specimens, or 23% of this trade.
- **Chameleons:** Second to the USA, the EU was a major importer of live chameleons, accounting for 20% of the total trade with 29,519 live specimens.
- **Boas and Pythons:** The EU was a major importer of live boas and pythons and their skins, importing 20% of all live specimens and 24% of skins in world trade.

- **Poison Arrow Frogs:** The EU was a major importer of live poison arrow frogs, importing 3,114 specimens, or 36% of the poison arrow frogs in trade.
- **Corals:** The EU imported 654,670 live/raw stony corals between 1988 and 1991.
- **Plants (Appendix I):** The EU was the top world importer and exporter of live CITES Appendix I-listed plant species between 1988 and 1991. The EU was a net importer of Appendix I plant seeds and a net exporter of live Appendix I plants.
- **Snowdrop, Winter Daffodil and Cyclamen bulbs:** The EU was also the major importer of live Snowdrop, Winter Daffodil and Cyclamen bulbs in trade, importing 61,582,883 specimens, many of which were subsequently re-exported.

#### **4.2. Shortcomings in the Community Regulations and Legislative Imbalances Among Member States**

In 1988, the report issued for the European Commission (Anon., 1988) pinpointed a number of problems inherent in the Community Regulations, which have been expressed in the form of inadequate implementation by the Member States. Regulation 3626/82 has a "dual" role: setting common rules for the implementation of certain provisions of CITES, and making CITES itself applicable throughout the Community through the legislation which Member States are required to enact under the Regulation (Anon., 1988). Problematic application results because Regulation 3626/82 fails to specify certain aspects of implementation and enforcement essential to EU-wide application, leaving room for individual interpretation. Because of the deficiencies in 3626/82, Member States have taken a range of national measures, some of which are incompatible with the functioning of the common market (Wijnstekers, 1993). Some have inadequate national legislation to implement CITES and the Community Regulations (see Box 2).

#### **BOX 2**

##### **OVERVIEW OF CITES-IMPLEMENTING LEGISLATION IN EU COUNTRIES**

- **Belgium:** Belgium has adequate legislation to implement CITES, but the Community Regulations are not completely addressed by the implementing legislation. The most important shortcoming is the lack of a provision to allow for the control and confiscation of Appendix II and III-listed specimens imported illegally into the country. Customs legislation, however, allows for the penalization of possession and trade of such specimens in the absence of evidence they were legally imported (Anon., 1994a).
- **Denmark:** CITES-implementing legislation in Denmark enables comprehensive enforcement of the provisions of CITES and the Community Regulations. Efficient implementation of amendments to the CITES Appendices or of Resolutions of the Conference of the Parties is facilitated by the use of government circulars to communicate with dealers and others affected by legislative or administrative changes (Anon., 1994a).
- **France:** A March 1993 Ministerial Order addresses all areas of CITES implementation in France. Several aspects of the legislation are difficult to enforce, especially the regulation of non-commercial transport of Appendix II specimens (Anon., 1994a).
- **Germany:** Germany has comprehensive and detailed legislation which allows for the full implementation of CITES and the Regulations. In many respects the legislation goes beyond CITES, particularly with regard to the range of species covered and the extent of the permit requirements (Anon., 1994a).

- **Greece:** Greece has not adopted any legislation to allow adequate implementation of CITES or the Community Regulations. Current legislation fails to prohibit and provide penalties for a number of important contraventions of Regulation 3626/82, notably the introduction into the Community of CITES-listed specimens without valid import documentation; the display for commercial purposes and offering for sale of Appendix I/Annex C1 specimens without valid Community trade exemption certificates; the offering for sale of Appendix II and III specimens imported in violation to the Regulations; and infractions of intra-Community trade procedures. In addition, there are no provisions to control domestic trade of CITES specimens, and no measures to authorize confiscation of illegally traded specimens (Anon., 1988; De Meulenaer and Gray, 1992).
- **Ireland:** No information was available for this paper.
- **Italy:** Italian CITES implementing legislation amended in 1992 and integrated in 1993 is comprehensive and detailed, allowing for the full implementation of CITES, its Resolutions and the Community Regulations (Anon., 1994a).
- **Luxembourg:** No information was available for this paper.
- **Netherlands:** The Netherlands has comprehensive legislation to implement CITES, but the provisions of Regulation 3626/82 are not fully addressed. The most important shortcoming is the problem of regulating internal trade of illegally imported Appendix II and III specimens, as at present authorities must prove that the specimens in question have entered the Community in contravention of the Regulation (Anon., 1994a).
- **Portugal:** Portugal has comprehensive implementing legislation for CITES and the Community Regulations in the form of a specific CITES law and several decrees (Anon., 1994a).
- **Spain:** Spain does not have specific legislation to implement CITES or the Regulations, using instead Customs contraband legislation which does not make reference to CITES, which creates obstacles for enforcement and prosecution of CITES infractions. However, an amendment to the existing legislation has been drafted which would allow the enactment of decrees to better address the implementation of CITES (Anon., 1994a).
- **United Kingdom:** The legislation for the implementation of CITES in the UK is comprehensive and strong. The enforcement of CITES is facilitated by the powers of compulsory forfeiture of all restricted specimens for which the person in possession of control cannot prove lawful import or intended import (Anon., 1994a).

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Specifically, the limitations of the text of Community Regulation 3626/82 are as follows:

- The text is not clear enough with respect to the obligations of Member States towards aspects of the Convention that it does not specifically address (Anon., 1988). These obligations have been subject to varied application by the Member States. For example, a CITES requirement regards the issuance of an import permit for Appendix I specimens before the export permit; the requirement is not articulated in the Regulation, but is nonetheless a requirement. Although, Regulation 3418/83 lays down slightly different conditions for the issuance of these permits, national legislation seldom clarifies these and other procedures in Member States (Anon., 1988).
- The text does not define powers of enforcement or set applicable penalties for the punishment of offenders to CITES and the Regulations. The does not require Member States to set penalties for breaches of the provisions of the Regulation. Member States have jurisdiction to establish penalties for offenses committed on their territory. Penalties vary from one Member State to another. National legislation in some Member States fails to set penalties for infractions to Community CITES Regulations. In other countries, penalties seem inadequate to deter illegal trading.

- By virtue of the Convention, Member States are required to confiscate CITES specimens traded in contravention to the Regulations. Provisions for confiscation vary among Member States, and deficiencies in national legislation in some Member States renders them unable to confiscate all CITES specimens which have been illegally imported into the EU.
- The regulation lacks a specific provision to allow sufficient implementation of CITES Resolutions adopted at the biennial CITES meetings (for example, Resolution Conf. 8.9 on trade in wild-caught specimens). This has led to differences among Member States in the interpretation of the Convention (Broad and De Meulenaer, 1992). Since the adoption of the present Regulation 3626/82, Parties have adopted over 100 Resolutions (H. Vonhoff, *in litt.*, 1993).
- The regulation lacks the flexibility to incorporate changes to the lists of species in the CITES Appendices. This prevents appropriate measures from being taken quickly should new threats arise due to shifts in trade. Council approval, a lengthy process, is required to modify the Regulation's annexes and cannot be achieved through a Commission regulation.
- The regulation limits the areas in which the Commission can take additional measures to ensure implementation of the Regulations (for example, to the design and modelling of documents, marks, seals and stamps, and the validity and use of documents) (Wijnstekers, 1993). The Regulation fails to allocate specific responsibility to the Commission for coordinating enforcement and implementation of CITES by the Member States.
- The text provides for the control of CITES specimens in transit (Article 5), but some Member States are unable to seize illegally traded specimens discovered in transit or apply penalties for such breaches (for example, Greece).
- The text provides for the control of internal trade in species listed in the Annexes of the Regulation (Article 6), however, the legislation is not sufficiently clear and leads to disparate application by the Member States (H. Vonhoff, *in litt.*, 1993). Some EU countries are unable to control internal trade adequately or at all (for example, Greece, Spain, and the Netherlands).

As a result of the limitations of the Regulation, the Member States apply disparate legislative and administrative controls for wildlife traded within the Single Market. The gamut runs from comprehensive legislation allowing the full range of implementation of CITES and the Regulations to inadequate legislation limiting or preventing the application of a number of CITES and/or Community Regulation provisions in some Member States (Anon., 1988; 1994a).

#### **4.3. Amended Proposal for a New Regulation: Com (93)599 final - COD 370**

Following the incorporation of a number of amendments submitted to the Commission by the European Parliament, the proposed legislation (Com (93)599 final - COD 370) aims to:

- regulate possession of, in addition to trade in, species listed in the annexes of the Regulation;
- regulate trade and possession for a wider range of species than that included in the CITES Appendices;
- provide for the updating of species listed in the CITES appendices;
- require Member States to implement CITES Resolutions;
- require Member States to enforce the provisions of the Regulation, and to enact penalties for breaches of specified provisions; and
- allow the European Commission to take measures necessary for implementing the Regulation.

At the time of writing, the amended proposal for a new Regulation is under discussion in the Council. The draft legislation has been under consideration, with varying levels of progress, during several rotating presidencies of the European Council (Netherlands, Portugal, United Kingdom, Denmark, Belgium, Greece

and Germany). Progress in taking it forward has been hampered by the fact that Member States have been unable to reach agreement on a number of issues. The major points of contention involve the following:

- i. *the scope of the annexes*: Whether or not, and to what extent the annexes of the proposed regulation should incorporate additional species to those included in the CITES appendices;
- ii. *the control of possession*: Whether or not, and to what extent the possession of CITES-listed specimens should be regulated by the new legislation (increasingly, some Member States would prefer that the option to apply possession controls be left up to the Member States themselves);
- iii. *the legal basis for the regulation*: The Commission has based the proposed regulation on Article 100a of the Treaty of Rome (as amended by the Single European Act), which aims at harmonization in the internal market, while a number of Member States prefer that it be based on Article 130s of the Treaty of Rome (as amended by the Single European Act), which allows for Member States to adopt stricter measures (the controversy over possession controls is directly linked to the this).

Until the Member States are able to finalize the proposed legislation, 3626/82 will remain the vehicle through which CITES is implemented in the Community. Clearly, in between now and the time when this legislation is replaced, the problems associated with it, first identified in 1988, will perpetuate.

#### 4.4. Enforcement

By virtue of the fact that the EU presently comprises 12 sovereign countries, the application of CITES in the Community is necessarily more complex than it is for a single state. All CITES Parties are responsible for turning the text of the Convention into effective action. However, in the EU, 11 Member States are directly responsible for applying CITES and Community CITES provisions, one non-Party Member State remains accountable to the provisions of the Regulations (and *inter-alia*, the CITES provisions), and the Community's own institutions share responsibility for those aspects of implementation related to the Single Market. At the same time, the Member States and Community institutions have been assigned different areas of competence for implementing and enforcing Community legislation. Since the Community as such is not a Party to CITES, its institutions are not obligated to monitor CITES implementation by Member States. However, the Commission is responsible for monitoring implementation and enforcement of Regulation 3626/82.

The Community Regulations require that Member States take appropriate measures to enforce the provisions of the Convention and the EU Regulations, and allocate sufficient resources for this purpose. Appropriate measures include designating departments and agents responsible for the enforcement of the Regulations, setting penalties for infractions to the Regulations, and providing for the confiscation of specimens traded in contravention to the Regulations. By virtue of the fact that the Convention has direct application in the Community, EU Member States are under obligation to introduce sanctions in cases of violation (Kramer, 1993).

Article 5 of the Treaty of Rome assigns competence for enforcement of Community instruments, such as Regulation 3626/82, primarily to the Member States, which "shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the Institutions of the Community," such as Regulation 3626/82.

As the "Guardian of the Treaties," the Commission has the obligation to monitor the application of Community law in and by the Member States<sup>9</sup>, and confirm that Member States comply with all the obligations imposed upon them by Regulations, including for example, adopting the legislation needed to incorporate Community law in national legislation, and enforcing this legislation. The Commission also has the obligation to take action to ensure that Community law is actually being implemented by the Member States (Kramer, 1992).

9. Article 155 of the Treaty of Rome states that the European Commission shall "ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied."

Therefore, the Treaty of Rome intended that responsibility for monitoring and enforcement of Community environmental legislation is to be carried on one level by Member States and on another by Community institutions (Kramer, 1992).

#### **4.4.1 Enforcement Instruments**

There are a variety of enforcement instruments presently available (and the potential for more to become available in the future) to ensure compliance with the provisions of CITES and the Regulations.

##### *...at the Member State level*

In any CITES Party, comprehensive CITES implementing legislation is an effective and essential enforcement tool. In EU Member States, national legislation specifically prohibiting infractions of the provisions of CITES and the Regulations, providing for penalties for such infractions (including criminal sanctions and fines at levels sufficient to deter illegal trading, and confiscation of CITES specimens), and designating the departments responsible for the enforcement of wildlife trade regulations are essential to allow effective enforcement of these regulations (de Klemm, 1993). As long as these measures are in place, authorities, citizens and non-government organizations can institute proceedings before the courts in Member States for the purpose of enforcing the national and Community wildlife trade regulations (Kramer, 1992).

In the EU, Member States impose a wide range of penalties for infractions to CITES and the Regulations. While some countries apply relatively strict penalties, others are unable to penalize offenders for a number of infractions to the wildlife trade regulations. In other countries, Customs contraband legislation is used to enforce the regulations, a purpose for which it can be ineffective. Within this system, it is likely that unscrupulous traders could choose to operate from an EU Member State in which there would be less threat of prosecution (H. Vonhoff, *in litt.*, 1993). Enforcement efforts in the Single Market would clearly benefit from uniform application of penalties applied throughout the Community.

In Greece, the lack of specific legislation to implement CITES and the Community Regulations has resulted in an unnecessarily complicated, practically *ad hoc*, process for confiscating illegally imported CITES specimens detected inside the country. By cross-referencing several pieces of Customs and other legislation, authorities succeeded in confiscating live CITES specimens in 1992 and 1993, but only through an exceptionally arduous process which set a precedent for similar cases in the future. At present, the Management Authority is not aware of the dispositions of any of these cases (Y. Petamides, pers. comm., 1994). In the absence of CITES implementing legislation in Greece, it is unlikely that the offenders will receive further penalties for their actions (De Meulenaer and Gray, 1992; Fleming, 1994). Clearly, a number of Member States could ease the enforcement of the Regulations in their countries by improving their domestic legislation.

In cases in which authorities seize specimens imported or traded unlawfully, several EU Management Authorities consider that subsequent intransparencies, and the long duration involved in judicial processes between filing a complaint in court and the resulting trial (if there is a resulting trial) are disincentives to enforcement authorities (Anon., 1994a). In Belgium, for example, there is often no feedback from courts on lawsuits for CITES infractions, and enforcement and Management Authority personnel are often unaware of whether their actions were taken further by the judicial process. According to the Belgian Management Authority, less than five percent of the seizure cases result in court proceedings. A similar situation was described for the Netherlands (Jaeger, 1992).

*...at the Community level*

Effective CITES implementing legislation at the Community level is necessary for harmonizing the activities of the Member States. Article 22 of Regulation 3626/82 states "each Member State shall notify the Commission of the provisions which it adopts for the implementation of this Regulation," and the 1988 study conducted on behalf of the Commission (Anon., 1988) provided examples of numerous deficiencies in national legislation. To respond to the problems identified with the legislation, and implementation thereof, in the Member States, the Commission has focused most of its efforts in the last few years on improving the Community wildlife trade legislation (W. Wijnstekers, pers. comm., 1994; L. Cashman, pers. comm., 1994).

In addition to making the legislation a better legal instrument, there are two main avenues available to the Commission for encouraging compliance by the Member States with the Community CITES Regulations. First, on the management level, the Commission organizes and chairs three to four EC CITES Committee meetings per year which are attended by Management Authorities from the Member States. During these meetings, technical and legal questions regarding implementation and enforcement of the Community Regulations are discussed. Problems of implementation brought to the attention of the group, by the Commission or by the Member States, are analyzed, and the Commission, as well as the other Member States, can offer recommendations for improvement. Alongside meetings with representatives, the Commission can carry out its own investigations into the execution and application of Community Regulations and assess its findings. In this context, there can be numerous contacts between Commission departments and the national authorities responsible for applying the provisions (Kramer, 1992).

Second, there is a formal infringement procedure available to the Commission provided for by Article 169 of the Treaty of Rome. The Article states that "if the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations," and that "if the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice."

Article 155 of the Treaty of Rome prescribes that the Commission is duty bound to monitor the application of Community law. In the event of a failure to implement Community law of a State, or of compliance of national law with only part of the relevant provisions of Community law, or of deficient application of Community law, the Commission can institute proceedings against the Member State concerned in respect of such breach (Kramer, 1992). The infringement procedure under Article 169 is the ultimate measure available to the Commission to obtain compliance with Community law (Kramer, 1992).

Citizens and non-government organizations also have a legal remedy available in order to secure conservation of species in accordance with Community law, through the formal complaints procedure (Kramer, 1992). Persons can make formal complaints on infractions to the Community CITES Regulations observed in Member States by submitting their observations in writing to the Commission. To ease this process, the Commission has developed a standardized form which may be used. The form specifically states that under the Treaties the Commission of the European Communities is responsible for ensuring that the provisions of the Treaties themselves and the other measures taken by the Community institutions are correctly applied, and that any person may file a complaint with the Commission in respect of a practice or measure which he or she considers to be in contravention of Community law. Upon receipt, complaints are entered into a database, and a Commission official will investigate the case and decide whether it should be closed or if proceedings should be initiated under Article 169 against the Member State concerned (Kramer, 1992; L. Cashman, pers. comm., 1994). In addition, citizens and non-government organizations can request that representative Members of European Parliament submit written questions to the

Commission concerning infractions of the Regulations. The Commission is required to respond, and the questions and answers are published in the *Official Journal of the European Communities*. Members of Parliament can scrutinize the follow-up investigations of the Commission (L. Cashman, pers. comm., 1994). Many complaints from members of the public and written questions from Members of European Parliament have been received by the Commission on specific cases in which the provisions of the Regulations have not been complied with by Member States (L. Cashman, pers. comm., 1994; A. Balodimos, pers. comm., 1994).

Between January 1984, when the Community CITES Regulations entered into force, and October 1994, there has been only one judgement issued by the European Court for a breach of Regulation 3626/82 by a Member State (W. Wijnstekers, pers. comm., 1994); in 1990, the Court ruled in favour of the Commission which had instituted proceedings against France for allowing the import of 6,000 spotted cat skins in violation of 3626/82 (see Box 3). The Article 169 procedure could be used to stimulate states to improve their legislation, as long as systematic flouting of the Regulations has been documented (L. Cashman, pers. comm., 1994). It cannot, however, be relied upon to repair incorrect decisions under 3626/82, as it is lengthy and cumbersome (Kramer, 1992); fifty-two months elapsed between the opening of the formal proceedings under Article 169 and the judgement for the spotted cat skins case (Kramer, 1993).

#### *...at the international level*

In the case of conventions to which the Community has acceded, the Community undertakes no controls of its own for implementation at the Community level (Kramer, 1993). For example, if the Community were to accede to CITES, the Member States would still have their own Management Authorities rather than the Community establishing a centralized Management Authority, and a Scientific Authority would operate at Community-level (the proposed Regulation would establish a Community Scientific Authority) (W. Wijnstekers, pers. comm., 1994). The Community would, however, be accountable under international law to the other Parties and to the Convention institutions for the effective implementation in the Member States, so there would be more direct responsibility for the implementation of CITES by the Community than there is now (L. Cashman, pers. comm., 1994; W. Wijnstekers, pers. comm., 1994).

Currently, the 11 Member States which are CITES Parties are accountable to the other Parties and to the Convention itself. Two recent actions by the CITES Standing Committee demonstrate how Member States can be made to comply with CITES provisions (see Box 4). The Standing Committee considers recommendations by the CITES Secretariat and the various technical committees regarding enforcement and implementation. The Standing Committee then issues its own recommendations to the Parties. The process by which the Standing Committee issues its recommendations to the Parties is the strongest means through which compliance by the Parties with the provisions of the Convention is enforced (Nash, 1994).

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### **BOX 3**

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#### **EUROPEAN COMMISSION VS. FRANCE: 1990**

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During the fifth meeting of the Conference of the Parties in 1985, CITES Parties discussed illegal wildlife trade problems in Bolivia, including that a large number of false export and re-export permits issued in Bolivia for wildlife specimens of illegal origin. In response, the Parties adopted Resolution Conf. 6.4, which recommended that Parties no longer accept shipments of CITES specimens accompanied by Bolivian documents. The Commission reiterated this recommendation in a telex message to EU Management Authorities.



Later in the year, the CITES Standing Committee stated that the measures subsequently adopted by the Bolivian Government were significant, and requested the Secretariat to recommend that the Parties which had imposed an import ban on specimens from Bolivia should consider suspending it. Shortly afterwards, the EC CITES Management Committee was of the opinion that Bolivia would no longer issue export permits for the Appendix II wildlife species concerned until scientific and trade data necessary for establishing quotas were available.

On 6 February 1986, the French Management Authority issued import permits for over 6,000 skins of Geoffroy's Cat *Felis geoffroyi* and Margay *Felis weidii* (both CITES Appendix II/Annex C2 at the time - now in Appendix I) originating in and exported from Bolivia. The skins were imported into France, and subsequently re-exported to Germany where they were seized by authorities.

On 25 May 1989, the European Commission brought an action against France in the European Court of Justice for failing to fulfil its obligations under Article 10(1)(b) of Council Regulation 3626/82 which states "the import permit... shall be issued only where it is clear, or where the applicant presents trustworthy evidence, that the capture or collection of the specimen in the wild will not have a harmful effect on the conservation of species".

On October 1990, the European Court ruled in favour of the Commission, and ordered France to pay the costs.

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#### BOX 4

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##### CITES STANDING COMMITTEE DECISIONS

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##### Italy: 1992

Since 1989, the CITES Secretariat had discussed chronic problems of implementation of the Convention in Italy with the Italian Management Authority. In particular, the Secretariat urged Italian authorities to improve national implementing legislation and controls for CITES shipments and documentation. In September 1991, the Secretariat documented the lack of progress toward resolving these problems, and submitted a report to the Standing Committee. In June 1992, the Standing Committee considered progress to be inadequate, and recommended that Parties suspend CITES trade with Italy, and refuse Italian permits. In February 1993, the Secretariat reported that Italy had taken substantial measures to address the problems, and the Standing Committee withdrew their recommendation to suspend trade. In March 1994, the Standing Committee again reviewed progress taken by Italy, and maintained suspension of their recommendation.

##### Greece: 1994

In July 1992, TRAFFIC Europe reported on the general inadequacies in controlling CITES-listed wildlife trade in Greece (De Meulenaer and Gray, 1992). Greece was not a Party to CITES at the time, but was obliged to implement the EU Regulations. Greece acceded to CITES in 1992, but failed to report information on the designation of Management and Scientific Authorities to the CITES Secretariat, as required by the Convention. The CITES Secretariat sent a number of requests for this information to various authorities in the Greek Government, however, the requests went unanswered. The matter was addressed by the Standing Committee in March 1994, and Greece provided the information on its authorities immediately afterwards.

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#### 4.4.2 Resources

Member States and the Commission must have adequate resources available to enable efficient enforcement of the provisions of the Regulations.

##### *...of the Member States*

Information provided by EU Management Authorities on resources allocated in their countries for certain aspects of CITES administration and enforcement indicate great disparities in these, although certain aspects are difficult to quantify for all countries (Anon., 1994a; 1994b). EU Management Authority operations in Belgium, Germany, Greece, Ireland, Luxembourg, and Spain are budgeted from other departments, and it was not possible to obtain estimated figures for these countries for this paper. Available information for the remaining countries is listed in Table 2. It must be kept in mind that countries with very low CITES trade volumes (for example, Ireland and Luxembourg) do not allocate resources comparable to those of countries like Italy and Germany which trade in much greater levels of wildlife. On the other hand, all of this trade enters and leaves one internal market, and each Member State should have the capacity to provide uniform protection for the external border (for example, the Customs area in the Luxembourg City airport).

The number of persons working in EU Management Authority offices, and their time spent on CITES matters, vary among Member States. In a number of Member States (Belgium, Luxembourg, Ireland and Greece), there is no management-level administrator working full time in the Management Authority (the latter three countries have relatively lower trade volumes than those of the remaining Member States). The time spent on CITES matters in these countries is a fraction of the time allocated for many concurrent responsibilities. In Belgium, which receives a large volume of trade in transit to third countries, the Management Authority explained that CITES is not a priority for decision-makers in the country. The observation was echoed by the Management Authority of Portugal, which stated that additional staff are urgently needed.

Likewise, in some Member States, the Scientific Authorities lack the composite expertise necessary for advising Management Authorities on biology and conservation. In Ireland and Greece, separate Management Authorities have not been appointed. An internal survey showed there are two main types of structures for Scientific Authorities in the EU: committees of volunteers which meet on an *ad hoc* basis, and a more permanent body of professional scientists. It has been found that the latter type is preferable to the first, however, few Member States employ professional scientists to advise Management Authorities on CITES matters (Anon., 1994a).

Most Management Authorities expressed that there is a necessity for additional resources to implement CITES in their countries (Anon., 1994a; 1994b). The Management Authority of Denmark reported that resources allocated for CITES activities were sufficient, however, when asked if it was deemed useful to establish a CITES enforcement team in each of the Member States, Denmark responded that limited resources would prevent it to do so. The Netherlands was the exception, where the Management Authority considers the level of resources allocated for CITES implementation to be "almost an ideal situation with no need for more personnel." However, when EU Management Authorities were asked to participate in a Community-wide survey on ivory seizures, the Netherlands was the only EU country which could not contribute "due to time constraints and limited staffing."

Expertise available and training of enforcement authorities also differ among Member States, and even within Member States. In Germany, the levels of resources, manpower, and expertise vary among the Länders, where local authorities are responsible for enforcing the Regulations (Anon., 1988; U. Grimm., pers. comm., 1994). In every country except for Germany and Italy, Management Authorities were unable to estimate the resources budgeted for CITES enforcement training courses in their countries. In Germany, approximately 10 seminars are held annually, each one costing approximately 65,074 ECUs. All Customs

officers are reported to receive regular training from the appropriate Management and Scientific Authorities. Customs officers stationed at ports designated for the importation and exportation/re-exportation of CITES specimens are required to attend three seminars on CITES implementation. In 1994, however, at least two training courses in Germany were cancelled (U. Grimm, pers. comm., 1994). In Italy, the Forest Corps has a budget of 42,100 ECUs for enforcement training courses.

In Belgium, training seminars for enforcement officials used to be held, but shortages of funds and manpower in the Management Authority have interrupted training for the past three years. The French Management Authority holds four training courses per year for Customs authorities. Italy holds two to three seminars per year for Forest Corps officers, and in 1994 conducted its first joint training session with Forest Corps and Customs personnel. In the UK, courses are reported to be on-going and supplemented by locally-organized seminars. In Greece, the Management Authority held the last training seminar four years ago, and has had no personal contact with Customs officials since. In Spain and Portugal, commerce inspectors and Customs officials, trained by the Management Authorities, conduct their own annual training seminars. The Portuguese Management Authority holds one training session per year for the police. In Denmark, training seminars were held in the past for Customs. Today, a travelling educational CITES exhibition circulates to all regional Customs offices.

In the majority of Member States, lack of manpower, financial resources, computer capabilities, training, manuals, and other enforcement aids were mentioned as factors contributing to impaired enforcement abilities.

#### *...of the Commission*

Within the Directorate General on Environment there are two administrators who work full time on Community CITES matters. The administrators have access to the other services of the Commission and may contract consultants to work on specific projects. For example, the Legal Department of DG XI has been consulted throughout the development of the new Regulation. It also reviews complaints and infringements related to the Regulation. A consultant maintains a database on the species listed in Annex C2 of the Regulation on behalf of the Commission and another assisted in drafting the proposal for a new Regulation. At present, the department administering the implementation of 3626/82 in the Commission is able to manage the current workload but is severely understaffed to take on additional responsibilities.

**TABLE 2**

<b>Annual expenditure (in ECUs) in some EU Member States for Management and Scientific Authorities</b>		
(excluding staff wages unless otherwise indicated)		
Country	Management Authority	Scientific Authority
<i>Denmark</i>	24,709	travel expenses
<i>France</i>	37,992	1,430
<i>Ireland</i>	62,999*	-
<i>Italy</i>	1,050,000	131,570
<i>Netherlands</i>	404,910	30,540
<i>Portugal</i>	29,133	expenses
<i>United Kingdom</i>	392,913	70,866

\* (estimate for 2 staff including wages and expenses); no separate budget

#### 4.5. Implementation of Regulations in the Single Market

EU Management Authorities report that the removal of internal border personnel as of January 1993 has greatly altered the way in which Member States control their internal wildlife trade. In some cases, the result has reportedly been a decrease in their capacity to do so (Anon., 1994a; 1994b). First, there are thousands fewer Customs officers in position on internal borders to detect, detain and respond to illegal trade. Second, the prior availability of Customs personnel allowed for more numerous random checks in cases of suspicion. Now, Customs officers are no longer as visible and may not be as readily available if needed (U. Grimm, pers. comm., 1994). Apparently, other agencies responsible for CITES enforcement in some Member States (for example, SOIVRE in Spain, AID in the Netherlands, and the Forest Corps in Italy) have not thoroughly compensated for the shift.

Member States have responded to the change in various ways. Most Member States report that a number of Customs officers were relocated to strengthen external borders (for example, German Customs officers have been concentrated on the borders with East European countries). Some Member States, for example France and the UK, have maintained a discreet Customs presence on internal borders, while a number of countries have continued reducing numbers of Customs personnel after 1993 (R. Condon, pers. comm., 1994).

All Management Authorities report that regular CITES checks have ceased to be performed on their intra-Community borders since 1993. Countries are much less likely than before to inspect wildlife shipments sent between EU countries, although they can still carry out checks if alerted in advance of an intra-Community transaction requiring their attention. Before 1993, Italy had been carrying out frequent inspections on internal borders; after 1993, the country has carried out spot checks, relying mostly on intelligence. Belgium still does spot checks on its Community borders, but the Management Authority reports this system is less efficient than the one in place before 1993. In Luxembourg and Greece, pre-1993 internal border checks were sporadic and now there are none. In the Netherlands, shipments crossing its borders, especially for trade with Germany and Belgium, were likely to be physically inspected; intra-Community trade has since been largely uncontrolled (H. Vonhoff, *in litt.*, 1993).

Inside some Member States (for example, in France, Germany and Spain), mobile Customs or other enforcement units act primarily on intelligence, and may occasionally employ random checks for CITES matters. Some countries (for example, the Netherlands and Portugal) report performing routine inspections of importers' premises, while Greece, for the most part, does not control internal trade in CITES specimens. In Italy, the Management Authority requests regular importers to inform their services of shipments arriving from other Member States in order to check documentation and shipments once in the country.

Overall, Customs related enforcement in the Community is not considered to be necessarily more difficult since 1993, but different (P. Faucherand, pers. comm., 1994). For the purposes of implementing Community CITES Regulations, EU Member States will have to continue adjusting their approaches to monitoring internal wildlife trade in the Single Market.

The removal of enforcement capacity on internal borders could be compensated by improved controls on external borders and expanded efforts directed at internal monitoring throughout the EU. Although several Member States have enacted legislation to apply trade controls to non-CITES species, or to extend the regulation of possession for CITES specimens, the establishment of the Single Market essentially undermines the effectiveness of stricter measures by individual Member States (Broad and De Meulenaer, 1992). This is especially so for stricter import conditions in the absence of internal border controls (Wijnstekers, pers. comm., 1994). In order to work in the internal market, the application of stricter measures must be harmonized and applied consistently throughout the Community (Broad and De Meulenaer, 1992).

The following are examples of enforcement problems which relate to application of Community Regulation 3626/82, CITES and the Single Market.

### *Specimens in transit*

Since 1 January 1993, there have been signs of confusion over Customs procedures in the Community (W. Wijnstekers, *in litt.*, 1994). Shipments entering the Community to transit to another Member State pose particular problems, and have been the subject of extensive discussion during several EC CITES Committee meetings in 1993 and 1994 in which a representative of the Customs Directorate General of the Commission participated (H. Vonhoff, *in litt.*, 1993; D. Ulrich, *in litt.*, 1994; W. Wijnstekers, pers. comm., 1994; G. Evrard, pers. comm., 1994). Traders have been able to circumvent official inspection of shipments by importing specimens into another Member State instead of importing them directly into the country of destination. It has become difficult, and in some cases impossible, for Management Authorities to document whether CITES shipments have been physically inspected at the point of entry, and to locate their accompanying CITES documentation. The implications are that undocumented numbers and species of CITES specimens have entered into trade in the Community.

Regulation 3626/82 requires that all specimens listed in the annexes of the Regulation must be accompanied by an export permit and an import permit (or certificate) upon introduction to the Community. However, Article 5, paragraph 4, of 3626/82 exempts from these permitting requirements CITES specimens which are brought into the Community and placed in either a Customs transit procedure or a temporary storage procedure. In these cases, Member States may require presentation of the CITES export documentation or proof of its existence. Regulation 3418/83 states that copies of the import documentation are necessary to document importation into the Community. In the EU, imported goods must be declared to Customs authorities upon their introduction into free circulation (which may be either at the point of entry into the Community or in the Member State of destination). Community law entitles importers to choose in which country to declare the goods (R. Condon, pers. comm., 1994). Customs formalities for CITES shipments in transit entail, at a minimum, the presentation of documentation only.

Border personnel are required to control the documents<sup>10</sup>, and veterinary officers are required to examine live animals upon entrance of the specimens into the Community. Some Management Authorities have pointed out that under the current system, traders are in a position to use the original export and copies of import documentation on multiple occasions to accompany more than one shipment. When original import documentation is not present in the point of entry, there is no guarantee that it exists; in cases in which it does not, the same export permit could be used more than once. To prevent this possibility, the Belgian Management Authority suggested that external border personnel should control and stamp the original documentation. Authorities in the first point of entry, however, often do not have access to the original import documentation since this usually remains in the Member State of destination. Without original import documents, permits in particular, effective CITES controls cannot be carried out.

External border personnel may opt not to inspect CITES shipments prior to their transit to another Member State, in expectation that this will be performed at the final destination<sup>11</sup>. Again, the original import documentation is needed to complete Customs formalities but may not be available at the first point of entry. Community law requires that control of documents for and physical inspections of live animals (and plants) be performed at the initial point of entry, however, veterinary (and phytosanitary) legislation do not include provisions for the inspection of live specimens for CITES purposes. Since 1 January 1994, external border posts are required to inform the final countries of destination of impending imports of live animals. In Belgium and some other Member States veterinary inspectors are trained to examine CITES specimens, however, in France, the Netherlands, Greece and others, veterinary and CITES controls are carried out by different services which work independently of one another. The majority of CITES speci-

10. Article 29 of Regulation 3418/83 requires that, for the purpose of internal Community trade in specimens covered by Regulation 3626/82, proof that the conditions prescribed in the Regulations have been complied with shall be furnished by the production of a copy of the import permit or certificate.

11. Importers usually complete Customs formalities in Member States in which they are registered for tax purposes (Customs declarations include paying the Value Added Tax for commercial goods imported).

mens traded by the EU, therefore, are not affected by these requirements. Even when live animals have been imported, problems have not been avoided.

For example, on 30 January 1993, a large charter shipment of wild Appendix II parrots and reptiles arrived in the Netherlands from Guyana. Part of the shipment was destined for the Netherlands, while other segments were destined for Belgium, Germany, Portugal, Spain and the United Kingdom. Dutch Customs authorities checked the birds in the shipment thoroughly and the reptiles randomly for all segments except for that destined for the UK. For the part destined for traders in the Netherlands, several parrots, which lacked a valid CITES export permit, and tortoises, shipped in violation of the IATA Live Animals Regulation, were seized. Valid export documents accompanied the shipments for Belgium, Germany, Portugal and Spain, which were collected in the Netherlands to be transported by road to their final destinations. The shipment for the UK could not be checked at all, due to the fact that it had to be loaded immediately onto a connecting flight.

Customs formalities were carried out at the port of entry in the EU, the Netherlands, for the part of the shipment destined for the Netherlands because Dutch traders were able to produce the original import permits. However, these formalities could not be carried out for the shipments destined for Belgium, Germany, Portugal and Spain as original import permits were not available.

Upon arrival, the shipment destined for the UK was physically inspected, and the documentation controlled. As a result, 20 Black-necked aracaris *Pteroglossus aracari* (Appendix II), which did not have Guyanese CITES export permits, were seized. TRAFFIC is not aware of whether or not Customs formalities were carried out for all the shipments in the other four countries (J. van Spaandonk, *in litt.*, 1993; H. Vonhoff, *in litt.*, 1993; J.P. Claxton, *in litt.*, 1994; D. Ulrich, *in litt.*, 1994).

If the importer requests that the formalities be carried out in the country of destination, an intra-Union transit document (T1) is issued for the shipment<sup>12</sup>. A problem identified by EU Management Authorities is that shipments sent on for transit are not always identified as such on the transit documentation. Therefore, even if shipments are stopped on route to the final destination, the documentation does not indicate that the contents are CITES specimens. Before 1993, Customs authorities on internal borders were required to stop all commercial consignments and examine the accompanying documentation. The thoroughness of these checks varied from country to country, but it was an additional opportunity for controlling consignments which is no longer present (R. Condon, pers. comm., 1994). The T1 transit procedure for moving the goods under seal from the point of arrival to the point of clearance is ineffective for controlling trade in live animals because such consignments cannot always be sealed and specimens can disappear between the points of entry and destination. These shipments are difficult to monitor by Management Authorities, and the procedure can be abused.

Once a CITES consignment in transit reaches its final destination in the EU, the importer may take the documents to any Customs office in the country to complete the formalities. In some cases, the goods are cleared on the basis of the documents only without any physical examination of the specimens (which may not even be present). It can then become impossible for Management Authorities to relate the consignment to the CITES documentation. For example, the Management Authority of the Netherlands has reported losing track of import documents issued for shipments which would have arrived in the country after transiting through other Member States (Anon., 1994a). It is known that on several occasions traders have imported consignments of live CITES specimens for transit within the Community without having the specimens inspected in either country. Shipments were subsequently cleared at a Customs declaration office in the country of destination on the basis of documents only. In this way, CITES shipments in transit have entered the EU unchecked.

Three hummingbird imports in transit to the Netherlands from Belgium illustrate the problem. In April 1994, two bird shipments involving 240 hummingbirds, arrived from Peru in Belgium, destined for a trader in the

12. T1 documents may be used within the Espace du Libre Exchange, which includes the countries of Scandinavia (in 1994, Sweden, Finland and Norway are not Member States of the EU).

Netherlands. One of the shipments was accompanied by an expired Peruvian export permit. The shipments were controlled by veterinary inspectors in Belgium, who did not realize the Peruvian permit had expired. The Belgian veterinary inspector trusted that a more thorough inspection of the shipment would be made in the Netherlands. Neither shipment, however, was inspected by officials in the Netherlands.

On 11 July 1994, a third shipment of hummingbirds, destined for the same Dutch trader, arrived in Belgium. The shipment was accompanied by a copy of a valid Peruvian export permit and an invoice. The Dutch trader presented three Dutch import permits to Belgian Customs officials who noticed discrepancies in the numbers and species of birds (all Appendix II) listed on the documents.<sup>13</sup> The Dutch permits made no reference to the number of the Peruvian export permit. In light of the two previous problematic hummingbird imports in April 1994, Belgian authorities informed Dutch authorities of this importation. Dutch authorities advised the Belgians to confiscate the birds, reasoning that the shipment was accompanied by a copy and not an original export permit (under Dutch legislation, a Dutch import permit is only considered valid when matched with an original valid export permit). Since the fact that the shipment was accompanied by a copy of a valid export permit did not constitute an infraction of EU CITES Regulations, Belgian Customs officials informed Dutch authorities that they were unable to confiscate the birds on these grounds. Also, in Belgium, the fact that the Dutch permits failed to list the number of the Peruvian export permit is considered an administrative error on the part of the Dutch Management Authority, and confiscating specimens for this reason would punish the trader and pose the problem of housing the animals.

For these reasons, Belgian and Dutch authorities agreed to an arrangement which would allow Dutch Customs officials to confiscate the birds in the Netherlands. The shipment was officially sealed, issued a T1 transit document, and sent to the Hazeldonk Customs post to be inspected by Dutch officials. By the time the hummingbirds arrived in Holland later that evening, however, the Dutch Customs official with whom the arrangements had been made had finished his shift, and the new attending official had not been informed of the impending arrival. When the shipment arrived, the Dutch trader collected the birds. The following day upon learning of the events, the General Inspection Service visited the trader's premises. The trader stated to the inspectors that all birds were dead on arrival, and that he had incinerated the bodies. Although they suspected that the trader had sold or otherwise distributed the birds in the Netherlands, without physical evidence, there was nothing further Dutch officials could do (G. Evrard, *in litt.*, 1994; W. Luijff, *in litt.*, 1994; E. Van Tilburgh, pers. comm., 1994).

This intra-Community transit procedure allows scope for fraud, particularly because physical checks of wildlife shipments can be bypassed with relative ease (H. Vonhoff, *in litt.*, 1993), and is considered a serious loophole for the application of CITES in the EU by a number of Management Authorities (Anon., 1994a). Although the Regulations lay down the procedures for importation, exportation and re-exportation of CITES specimens, in practice, there is no standardized procedure for the importation and inspection of CITES shipments in transit in the EU (H. Vonhoff, *in litt.*, 1993). A number of Management Authorities have advised that the only way to prevent illegal wildlife trade associated with shipments in Community transit procedures would be a legal requirement that CITES documents and consignments be controlled in the first point of entry. The German Management Authority suggested that even Customs clearance should be required (D. Ulrich, *in litt.*, 1994). It seems, however, that such requirements may contravene Community Customs legislation. On the other hand, stricter import requirements have already been introduced for certain commodities, and similar requirements might be applied to CITES specimens (R. Condon, pers. comm., 1994). There have been questions raised which still require clarification (for example, the length of time the importer has to declare the specimens, and whether or not the importer has to inform officials in the point of entry of the final destination). The Committee meeting discussions have not been able to resolve the problems, and the Commission and Member States continue to explore possible solutions (H. Vonhoff, *in litt.*, 1993; D. Ulrich, *in litt.*, 1994).

13. The export permit listed 130 birds: 40 *Amazilia Hummingbirds Amazilia amazilia*, 40 Peruvian Sheartails *Thaumastura cora*, and 50 Purple-collared Woodstars *Myrtis fanny*. The invoice listed 90 birds: 40 *Thaumastura cora* and 50 *Myrtis fanny*. The three import permits listed 120 birds: 80 *Myrtis fanny* and 40 *Thaumastura cora*.

### *Resolution Conf. 8.9*

A number of important Resolutions, most notably Resolution Conf. 8.9, *Trade in wild-caught animal specimens*, cannot be implemented adequately under the current Regulation (H. Vonhoff, *in litt.*, 1993). Since 1984, Regulation 3626/82 has acknowledged the Community's co-responsibility with range states for ensuring that international trade does not adversely affect the conservation status of species in trade. Article 10 of the Regulation allows for the Community to impose stricter import measures than those required by the Convention for certain CITES Appendix II and III species (listed in Annex C2 of the Regulation), which may result in import restrictions or bans for Annex C2 species in which the Community considers that the range states are failing to exercise adequate measures to prevent their over-exploitation by international trade.

In 1992, Resolution Conf. 8.9 was adopted during the eighth meeting of the Conference of the Parties to improve the implementation of Article IV of the Convention regulating trade in Appendix II species. A key feature of the Resolution is its emphasis on consultation between Parties regarding measures necessary to prevent detrimental trade. The Resolution provides for importing Parties to take measures against range states which do not or are unable to implement Article IV. Article IV, paragraph 3, states "when-ever a Scientific Authority determines that the export of specimens...should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs...the Scientific Authority shall advise the appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species." In cases in which exporting range state countries fail to take steps to prevent native fauna species from being traded at unsustainable levels, Resolution Conf. 8.9 provides a mechanism which may lead to importing countries banning the importation of these species from these range states. In some cases, importing countries may ban the importation of all CITES products from certain range states.

However, since the Resolution was adopted in 1992, the Community has been unable to apply the stricter import measures for Appendix II species not listed in Annex C2 of the Regulation: the Guanaco *Lama guanicoe* from Argentina, chameleons *Chamaeleonidae* from Madagascar, and the Asian Rat Snake *Ptyas mucosus* from Indonesia and China. Since Annex C2 of the Regulation was finalized in 1982, no species have been added whereas numerous species have been included subsequently in Appendix II of the Convention (H. Vonhoff, *in litt.*, 1993). In most cases, EU Member States would have to introduce administrative or legal modifications enabling them to refuse the import of an Appendix II species not included in Annex C2 for which a valid export permit has been issued. Ironically, Regulation 3626/82, which endorses the principal of co-responsibility, limits the abilities of the EU Member States to implement Resolution Conf. 8.9.

The amended proposal for a new regulation includes Appendix II species in an annex which would allow full implementation of Resolution Conf. 8.9 by the Community. Until the adoption of this regulation, the Member States will remain hampered in their capacity to carry out the responsibilities expected of CITES Parties.

### *Regulation of internal trade*

Since Regulation 3626/82 entered into force in 1984, a number of Member States have not been able to implement Article 6 regulating internal trade and commercial activities in the Community (H. Vonhoff, *in litt.*, 1993). Article 6, paragraph 1, prohibits "the display to the public and the sale, keeping for sale, offering for sale or transporting for sale of the specimens (listed in CITES Appendix I and Annex C1 of this Regulation)," unless exempted from these prohibitions by the Management Authority. Paragraph 2 of Article 6 states "the prohibitions referred to in paragraph 1 shall also apply to (Appendix II and III) specimens if they were introduced in violation of (the provisions of this Regulation)."

For example, until recently, the Netherlands has been unable to implement Article 6, paragraph 2. The applicable Dutch legislation does not prohibit making CITES specimens which were acquired contrary to



the legislation available for trade purposes, as the legislation does not provide for the imposition of sanctions in the absence of evidence that such specimens were acquired in accordance with 3626/82. Taking advantage of the prevailing situation, several German dealers have stationed parrots of illegal origin in the Netherlands where they could not be seized (Anon., 1994a). Until 1 January 1993, the deficiencies in the legislation of the Netherlands with respect to Article 6 did not pose a significant problem in the context of CITES enforcement because there were more opportunities for control on internal Community frontiers, and specimens which had entered the Netherlands or the Community in violation of Regulation 3626/82 stood a better chance of being intercepted by other Member States (H. Vonhoff, *in litt.*, 1993).

Since 1993, the UK has formally stopped inspecting CITES specimens to confirm whether they have been imported legally in accordance with Article 6, paragraph 2 (H. Vonhoff, *in litt.*, 1993). It is arguable that Regulation 3626/82, through its disparate application, has exacerbated enforcement problems in the Community and failed to act as a focus for coordination of attempts to halt wildlife smuggling (Broad and De Meulenaer, 1992).

Over the years, there has been confusion both in the Regulation itself and in its interpretation as to the purpose of, and procedures involved in, the issuance of EC certificates (Thomsen and Bräutigam, 1987). These certificates are meant to serve as an attestation that the specimens listed therein have been legally imported into the Community. However, EC certificates do not expire, and have been used to conceal the illegal origins of specimens imported in contravention to the Regulations (Anon., 1994a). A large number have been issued over the years (for example, Germany issued 241,603 EC certificates in 1992), and they are difficult to monitor. Several EU Management Authorities consider the EC certificate system to constitute a major internal enforcement problem.

### *Controls on external borders*

The individual countries control their external Customs controls, and uniformity of enforcement is not always present (R. Condon, pers. comm., 1993). Only between one and five percent of all consignments imported into the EU are controlled by Customs (P. Faucherand, pers. comm., 1994), and the percentage and the level of control vary enormously from country to country<sup>14</sup>. Questionnaire responses from EU Management Authorities indicated that Customs authorities, who are responsible for controlling external borders with regard to CITES in most EU countries, are not fully integrated in the CITES process in their Member States (Anon., 1994a; 1994b). The level of training and frequency of contact with Management Authorities differ from country to country.

Since 1993, some EU Management Authorities have discovered CITES-listed specimens in their countries which had entered the Community, unchecked on the external border in another Member State (Anon., 1994a). On several occasions, the discoveries were made when traders requested re-export certificates, to allow re-export to countries outside the Community. In the Netherlands, it was found in 1993 that the majority of CITES specimens destined for the Netherlands but introduced into the Community in other Member States had not been checked in either country. Subsequently, there have been several cases in which Dutch traders have applied for re-export documentation, while these goods appeared not to have been cleared for import (H. Vonhoff, *in litt.*, 1993).

Instances in which Member States have mistakenly authorized the importation into the Community of CITES specimens, in violation of CITES or Community Regulations, have been discovered afterwards in other Member States. For example Italy, which re-exports large quantities of manufactured reptile skin products from the Community, has established a procedure to confirm the validity of import permits prior to their issuing Italian re-export certificates, which has flagged several irregular import documents issued by other Member States. Problems were discovered on at least three recent occasions when reptile skin traders in Italy requested re-export certificates for Asian Rat Snake *Ptyas mucosus* (Appendix II) skin

14. For example, Portugal has a relatively high rate, inspecting between 20-30 percent of all shipments imported. In the port of Rotterdam, through which approximately three million shipments pass each year, sophisticated risk assessment mechanisms are used to target consignments requiring inspection (R. Condon, pers. comm., 1994).

products. Since the skins had been imported into the Community in contravention to the Regulations, Italian authorities denied the traders' requests to re-export the products from the Community. Italian authorities have since advised reptile skin traders in the country to exercise caution when purchasing skins in other EU countries (M. Pani, *in litt.*, 1994).

Cases in which CITES specimens have been imported into the Community, in violation of the Regulations (either through unchecked trade, mistaken licensing by Management Authorities or smuggling) continue to be discovered by other Member States. For example, in February 1993, Italian Forest Corps authorities inspected a shipment of 2,600 raw caiman *Caiman crocodilus fuscus* skins (Appendix II/Annex C2) accompanied by a French EC certificate. The skins had been imported into France from Colombia in 1993 accompanied by a Colombian export permit declaring their source as ranchered specimens. In Italy, upon inspection of the shipment and consultation of a 1992 CITES Secretariat Notification to the Parties, it was established that 531 skins were larger than that allowed for export by Colombian authorities, usually an indication that skins derive from wild-caught specimens. Italian authorities seized the entire shipment, which was discovered because the trader had made an administrative error. Following a judicial order, the skins were incinerated in November 1993 (A. Bonneau, *in litt.*, 1994; L. Testacecca, pers. comm., 1994).

By failing to take into account the information contained in the Notification to the Parties, France allowed the import into the EU of caiman skins of illegal origin, and issued an EC certificate permitting the shipment to travel throughout the EU. Although, since 1993, national authorities rarely inspect wildlife shipments coming from other EU states, the error was discovered by Italian authorities when the skins were transferred from France to Italy.

While this may demonstrate that opportunities to monitor internal trade after 1993 have shifted from those along internal borders to those applied by Management Authorities and enforcement personnel within their countries, many of these cases are discovered only when traders present their documentation to authorities. At the same time, it indicates that the EU's external border is not equally strong in all Member States and requires re-enforcement with respect to the importation of CITES specimens. Although, since 1993, there remain opportunities to control intra-Union trade in CITES specimens, effective enforcement of wildlife trade regulations in EU countries relies more than before on the harmonized application of controls at all external EU ports of entry, and regular cooperation among Member States.

#### **4.6. The impact of a delayed new Community Regulation**

In many ways, owing to the lack of a solid regulatory and enforcement infrastructure in the Single Market, the implementation and enforcement of wildlife trade regulations are in a state of flux. Opportunities for regular control of internal borders have been removed, however, Member States have not systematically reoriented their internal monitoring strategies to compensate for the change. There is confusion over Customs procedures and intra-Community transit of CITES-listed species. Questions remain as to how these problems should be addressed.

A regulatory void has been created by the anticipation that a new wildlife trade regulation will enter into force in the Community. The Commission and Member States report to have postponed initiating major changes to the current Community Regulation and national legislation in view of the fact that the new regulation will remedy some of the inherent problems. For example, the Commission has been reluctant to amend the Annex C2 of Regulation 3626/82 to include all Appendix II species (H. Vonhoff, *in litt.*, 1993). The proposal for a new regulation has included these species in an annex which would allow Community implementation of Resolution Conf. 8.9. To amend the annex of the current regulation would require Council approval, which is a lengthy process, and could undermine efforts to achieve adoption of the new

regulation (H. Vonhoff, *in litt.*, 1993). The Management Authorities of Belgium and Greece report to have refrained from improving their national legislation to await changes brought about by the new Community Regulation (Anon., 1994a).

Chronic wildlife trade problems in Italy were addressed by the CITES Standing Committee in 1992, but not the Commission. The Commission reasoned that the infringement procedure under Article 169 of the Treaty of Rome is long and difficult, and if the Commission were to initiate the procedure and the new regulation were to be adopted in the interim, the efforts would have proven futile (W. Wijnstekers, pers. comm., 1994).

#### **4.7. Intra-Community Cooperation**

The completion of the internal market has rendered the Community a single Customs area with one external border. In general, cooperation and collaboration among Customs authorities of the Member States and the Commission has been steadily improved in response to the new situation (P. Faucherand, pers. comm., 1994). A Community-wide Customs information system allows for rapid transfer of information among Member States and the Commission, and Customs training programmes have been concentrated on internal market procedures and specific enforcement activities. For some activities, such as drugs and weapons interdiction, Community-wide enforcement may have improved since 1993 because actions are coordinated and targeted (P. Faucherand, pers. comm., 1994).

Many of the most serious crimes relating to CITES are as complex as any international drug ring, and the powers and efforts of the Member States to enforce CITES will often have to be at the same level of effort and sophistication as those required to break open illegal international drug rings (Favre, 1989). However, the Commission and the Member States have not responded to the challenge of controlling wildlife trade with the same conviction they have for controlling narcotics. A number of Management Authorities stated that the lack of coordination among Member States is one of the weakest areas of CITES implementation in the EU (Anon., 1994a).

For example, since 1989, Nigerian citizens are known to have been smuggling Grey Parrots *Psittacus erithacus* (Appendix II/Annex C2) in baggage while in transit through several European airports, from Lagos to Istanbul. In each of several instances (Zurich in 1989, Rome - once in 1992 and twice 1993, Amsterdam in 1993, Sofia - twice in 1993) the smuggling was discovered case by case (M. Pani, *in litt.*, 1992; 1993; L. Profirov, *in litt.*, 1993; W. Luijff, *in litt.*, 1993). The authorities in each country acted individually and did not communicate the information to their counterparts in Europe.

Lack of manpower and resources in the Commission and the Member States have been repeatedly pointed out as impediments to effective wildlife trade enforcement. Resources allocated to enforcement activities, including developing the necessary expertise, vary among Member States, but in countries which do invest substantial amounts of time and money in controlling illegal trade within their own countries, intelligence is shared infrequently with counterparts in other Member States (Anon., 1994a). One reason cited is that some Member States have not identified or appointed CITES enforcement and investigation bodies. For example, the wildlife trade investigation unit in the Netherlands collaborates regularly with the equivalent units in Germany and Italy. The Netherlands, however, is hard pressed to make similar contacts in many other Member States (Anon., 1994a).

While the EU is a single Customs area, CITES-related legislation in EU countries confines its application to national boundaries, and CITES enforcement personnel in one EU country may not pursue traders and goods once they move into another EU Member State. Therefore, the application of intelligence based and coordinated efforts, and rapid exchange of information are needed among the Member States. Within individual countries which administer controls on the single external EU border, cooperation among the dif-

ferent departments responsible for implementing and enforcing wildlife trade regulations requires further development. The individuals charged with controlling the external border are often excluded from the CITES information and training networks. In some countries, Management Authorities, which harbour most CITES-related information, have little or no contact with Customs officials on external borders. In others, veterinary controllers on external borders, although physically and technically placed to detect illegal trade (at least in live animals), often work independently from officials charged with administering CITES checks.

Problems have not been avoided even when CITES authorities have cooperated to intercept CITES specimens traded in contravention of the Regulations. Enforcement efforts were thwarted in one of the Belgium-Netherlands hummingbird cases by poor coordination between officials within a single EU Member State (see *Specimens in Transit*, above). The trader in question used the Peru - Belgium - Netherlands route without successful official intervention on at least three recent occasions.

Management Authorities expressed general consensus in the desire for increased initiative and leadership from the Commission to further harmonize and streamline implementation and enforcement by the Member States of CITES and the Community Regulations. Several authorities stated the imminent expansion of the EU<sup>15</sup> will necessitate that the Commission assume a greater role in coordinating the actions of the Member States (Anon., 1994a).

15. Formal applications for accession to the EU have been received from Turkey, Austria, Cyprus, Malta, Sweden, Finland, Switzerland, Norway, Poland and Hungary, and many of the emerging democracies in Central and Eastern Europe have stated their wish to join in the future. On 1 January 1995, Austria, Finland and Sweden will join the EU, bringing the number of Member States to 15.

## 5. CONCLUSIONS AND RECOMMENDATIONS

Community Regulation 3626/82, despite its gaps, weaknesses and deficiencies, has been beneficial to the implementation of CITES. The Regulation set CITES into force in all Member States of the Community, which, taken together, represent a significant segment of the global wildlife market. The legislation has contributed to the development of conservation concepts and policies in Member States, all of which are oriented and progressively evolved by reference to the same set of principles. Ten years later, however, the Regulation is outdated, inflexible, and in need of amendment. This is mainly a result of the development of a Single Market in the European Union. Many CITES implementation and Customs practices have not caught up with the very concept of a Single Market.

A number of EU Member States have detailed CITES implementing legislation, and some have made great progress in the last few years in developing their capacity to investigate wildlife crime and enforce wildlife trade. In the Single Market, the progress made by some countries in controlling trade in wildlife are compromised by those which have not, and the norm is inevitably set at the lowest common denominator.

Recently, it has been widely acknowledged that the implementation of CITES could be improved through better enforcement. Poor enforcement of CITES is a global problem, and the importance and potential for improvement in this affluent and well-educated policy-making centre are great.

In view of the information presented in this paper, TRAFFIC recommends the following actions and steps be taken by the Community and its Member States, and CITES Parties (as relevant).

- **EU Member States must work swiftly to adopt an improved Community wildlife trade regulation.** The regulation must clarify the obligations of the Member States for its implementation, repair the gaps in implementation of the current regulation, and further harmonize the control of wildlife trade by the Member States.
- **EU Member States must ensure they have adequate implementing legislation to enforce the provisions of CITES and Community Regulations.** This must include the ability to prohibit trade in violation of

these provisions, and provide for sanctions and penalties at levels sufficient to deter illegal trade (including confiscation of specimens).

- **Ireland should be encouraged to accede the Convention.**
- **The Commission (DG XI) should expand its role in coordinating the implementation of CITES by the EU Member States.** Increased resources will have to be made available to support this.
- **The option to take States to the European Court (and other deterrents) needs to be encouraged.** Citizens and NGOs should utilise the official complaints procedure for reporting infractions of Community CITES regulations.
- **Member States must improve cooperation within their countries among the various agencies responsible for CITES enforcement (Management Authority, Customs, Police, border veterinarians and other officials, as appropriate).** Customs and other relevant authorities must be fully integrated into the CITES networks.
- **Member States should form an EU CITES enforcement task force.** Member States which have not yet done so must appoint Customs, Management Authority, Police and other relevant officials to coordinate wildlife trade enforcement and monitoring in their countries, and to liaise with counterparts in other Member States.
- **Member States and the Commission (DG XI) should coordinate activities more closely with existing enforcement mechanisms at the Community level.** For instance, the Customs Directorate (DG XXI) has a Community-wide information system which has been under-utilised for CITES enforcement in the EU.
- **Controls on external borders must be strengthened.** Every designated port of entry must have standardised quality of control and access to equivalent levels of technical expertise. Uniform procedures for the importation, exportation and re-exportation of CITES specimens must be clarified and applied consistently in each designated port. Intra-Union transit procedures must be clarified in their relation to Community CITES procedures. Import procedures for CITES specimens for transit within the EU must be harmonised. To prevent illegal trade associated with intra-Union transit of CITES specimens, it must be mandated that all shipments and their documentation are controlled in their first point of entry.
- **Member States must increase their allocation of resources for CITES implementation and enforcement.** This will mean ensuring that sufficient numbers of qualified administrative, technical and enforcement personnel are employed and trained.
- **Member States should increase in-country monitoring efforts to compensate for the decreased opportunities for monitoring wildlife trade in the Single market.** National legislation must allow the full implementation of internal trade and possession controls. The impact of the removal of Customs officers from internal borders could be reduced by increasing law enforcement cooperation with Member States and spot inspections.

Finally, it is imperative that the CITES regulations in the European Union be elevated to a higher political level. TRAFFIC believes that this will only happen if and when the Community becomes a Party to CITES in its own right.

- **The remaining CITES Parties which have not yet ratified the Gaborone Amendment should do so, allowing the European Community to become a full Party.**

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## ANNEX 1

*Implementation of the Convention within the European Union, Doc. 9.23, Ninth Meeting of the Conference of the Parties to CITES (Fort Lauderdale, United States, 7-18 November 1994)*

### Conclusions and Recommendations of the CITES Secretariat

"At the sixth meeting of the Conference of the Parties to CITES (Ottawa, July 1987), the representative of the EC announced that they had commissioned an independent study on the implementation of CITES in the European Economic Community. The text of the preamble of Resolution Conf. 6.5 congratulated the EC on this initiative. Volume 1 of this three-volume report (prepared by WCMC and ELC, and completed in September 1988) contained numerous recommendations regarding aspects of the implementation of CITES in the EU that needed improvement. Despite the fact that the Commission announced that it would take any action that the independent study showed to be necessary, and despite many announcements that a new EU Regulation was being prepared and would be implemented soon, to date, only one recommendation (concerning database on decisions) has been fully implemented.

An important phrase from the 1988 report still holds true six years later. "Action is needed at three levels: (a) in amending the Community instruments; (b) in harmonizing the application of those instruments; and (c) in ensuring the adequacy of national legislation, implementation and enforcement."

It appears that the commitment made by the Commission at the second extraordinary meeting of the Conference of the Parties at Botswana (April 1983), and confirmed at the sixth meeting of the Conference of the Parties, that adequate staff and funding would be made available, has not been met. Despite the increase in EU Member States since 1983, the number of staff at the Commission directly involved in the implementation of CITES in the EU has remained unchanged.

To these **general** recommendations, the Secretariat would like to add the crucial need for better co-ordination and improved exchange of information. In this respect, the most sensitive and most urgent sector is the common management of re-export certificates (and, by extension, of import permits and certificates). It seems absurd that within an economic territory with no internal border controls, each Member State continues to administer on a virtually independent basis the issue of permits and certificates, with almost no possibility to verify information as to the whereabouts of the specimens concerned or as to their origins. Apart from the fact that this situation seriously disrupts unscrupulous traders who are fully aware of the system's weaknesses.

The Secretariat would also like to add the following specific recommendations:

### Importation

Conditions for the use of import certificates should be standardized and limited. The quality of border controls needs to be improved. Limiting the number of entry points would be part of the solution, so long as all the officials at other entry points are informed that no specimen covered by the Convention can be imported there.

There is an urgent need for a decision on where responsibility lays for checks of documents and goods when CITES specimens are imported into a Member State other than the State of final destination. While it is aware of the technical problems involved, the Secretariat feels that the best solution would be an inspection at the first point of entry into the EU. If this solution is not adopted, then measures should be taken to ensure that specimens really do arrive at the declared final destination, and that no specimens are added or exchanged or removed on the way.

Further efforts should be made to verify the validity of re-export certificates issued by non-EU countries before EU import permits are issued.

Measures should be taken to ensure the return of original documents (whether used or unused) to the Management Authorities. Additionally, statements regarding the number of specimens actually imported should be verified more stringently at the time of import. In cases where marks are recorded on the export document, the numbers of the marks should be recorded on the import permit/certificate.

### **Re-exportation**

Before issuing a re-export certificate, Member States should take the necessary steps to ensure they have comprehensive information as regards:

- the validity of the country of origin;
- the return to a Management Authority of a Member State of the original import and export documents used for import of the specimens into the EU;
- as far as possible, the identity of the specimens, so as to ensure they are the same as those imported (particularly if they bear marks).

### **EU Certificates**

Because documents are not used internally, the Secretariat has no specific recommendations to make in this respect other than, when EU certificates are issued, that all possible measures should be taken to ensure the certificates do not cover specimens of illegal origin.

The Secretariat strongly recommends that EU certificates not be accepted automatically to obtain an export permit or a re-export certificate to a third country. Before issuing such documents, a Management Authority should request all documentary proof of the legal origin of the specimen and verify the validity of such documentation, even if other Member States are involved.

### **Circus controls**

It is essential that measures be taken to ensure that valid CITES documents are required of all circuses entering or leaving the EU. Further, Management Authorities should undertake thorough checks of the legal origin of specimens of Appendix-I species before import or issuing documents covering such specimens.

### **Controls on trade in birds of prey**

Member States should strengthen their controls on birds of prey held by zoological parks and falconry centres, as required by national legislation in most Member States. Such birds should all be marked (using closed rings or microchips) and an identification system should be set up so that marks can be verified as actually corresponding to the specimens on which they are found. Certificates of captive breeding should not be issued for specimens of Appendix-I species until such breeding has been confirmed by genetic fingerprinting.

Services responsible for combatting fraud should pay special attention to internal trade in birds of prey within borders of the EU, and should undertake regular inspections of exhibitions (including field trials) and breeding establishments.

### **National legislation**

Member States should take measures to:



- harmonize the type of penalty and the level of punitive measures;
- harmonize procedures for implementing the Convention and stricter measures;
- provide for the effective implementation of the Convention within their national legislation.

### **Controls on the conditions of transport of live specimens**

The EU should add the statement relating to transport conditions to its standard permit form (and in its import permits), and Management Authorities should check the transport conditions of live animals more carefully to ensure they comply with the Resolutions of the Conference of the Parties.

### **Format of permits/certificates**

The EU should adopt a format for permits and certificates that complies with the provisions laid out in Resolution Conf. 8.5.

### **The Gaborone amendment**

Approval of this amendment would enable the EU to become a Party and to take responsibility vis-à-vis other Parties. One undeniable advantage emanating from the entry into force of the amendment would be the elimination of all existing ambiguities. CITES consignments circulate freely within the borders of Member States, yet each Member State continues to assume its responsibilities as a Party in a quite autonomous fashion.

Clearly, not all problems would be resolved by approval of the amendment, particularly the Member States' differences in legislation (including penalties) and in procedures. Moreover, the necessary means required for improving co-ordination between Member States would not increase automatically. Nonetheless, the Secretariat considers that the entry into force of the amendment would pave the way for the identification of satisfactory solutions to the problems described in this report."





**IUCN**  
The World Conservation Union

The TRAFFIC Network is the world's largest wildlife trade monitoring programme with offices covering most parts of the world. TRAFFIC is a programme of WWF (World Wide Fund For Nature) and IUCN (the World Conservation Union) established to monitor trade in wild plants and animals. It works in close co-operation with the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

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