

# Questionnaire EUFJE Conference 2010 – Enforcement of European Biodiversity Law at national level

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I. Natural habitats and their fauna and flora

A. Habitat protection

## ***Introduction***

**Habitat-directive (92/43/EEC) - Special areas of conservation.** According to art. 4 of the directive, a list of sites selected as sites of Community importance was adopted by the European Commission<sup>1</sup>. Once a site of community importance has been adopted, the Member State concerned designates that site as a special area of conservation, as soon as possible and within six years of designation by the Commission at the latest.

According art. 6.2. of the directive Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of the directive. Moreover, according to art. 6.3. of the directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

**Birds-directive (79/409/EEC) – Special protection areas.** According to art. 4.1 of the directive, the Member States shall classify as special protection areas the most suitable territories for the conservation of *Annex I – bird species*, in order to ensure their survival and reproduction<sup>2</sup>. According to art. 4.2 of the directive, Member

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<sup>1</sup> See for the actual lists of SACs:

[http://ec.europa.eu/environment/nature/natura2000/sites\\_hab/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/sites_hab/index_en.htm)

See also: [http://ec.europa.eu/environment/nature/natura2000/db\\_gis/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/db_gis/index_en.htm)

<sup>2</sup> See for the actual list of SPAs:

[http://ec.europa.eu/environment/nature/natura2000/sites\\_birds/sites\\_spa.htm](http://ec.europa.eu/environment/nature/natura2000/sites_birds/sites_spa.htm)

States shall take similar measures for regularly occurring *migratory species not listed in Annex A*. To this end, they shall pay particular attention to the protection of wetlands, particularly wetlands of international importance.

**Ecocrime-directive (2008/99/EC).** Art. 3 (h) of the Ecocrime-directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence (...) "*h*) any conduct which causes the significant deterioration of **a habitat within a protected site** ; (...)". A 'habitat within a protected site' is any natural habitat or habitat of species for which a site is designated as a special area of conservation under the Habitat-directive or any habitat of species for which an area is classified as a special protection area under the Birds-directive.

## Questions

I.A.1. Are there general habitat protection measures, applicable to all special areas of conservation and special protection areas in your country, or are they site specific, or is there a combination of general and site specific measures?

I.A.2. Who supervises habitat protection measures in your country? Are there (also) specialized inspectorates supervising them?

I.A.3. If habitat protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

I.A.4. What type of sanctions can be applied if a plan or project as referred to in art. 6.3. of the Habitat-directive is carried out without an appropriate assessment? Makes it a difference if not only an appropriate assessment is lacking, but also a permit for the project or an approval of the plan?

I.A.5. Conduct falling under article 3(h) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

**Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.**

## B. Species protection

### *Introduction*

**Habitat-directive (92/43/EEC) – Animal and plant species.** According to art. 12 of the directive Member States shall take the requisite measures to establish a system of strict protection for the *animal species listed in Annex IV (a)* in their natural range, prohibiting: (a) all forms of deliberate capture or killing of specimens of these species in the wild; (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration; (c) deliberate destruction or taking of eggs from the wild; (d) deterioration or destruction of breeding sites or resting places. Member States shall also prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before the directive is implemented. The protection shall apply to all stages of life of the animals. According art. 13 of the directive, Member States shall take the requisite measures to establish a system of strict protection for the *plant species listed in Annex IV (b)*, prohibiting: (a) the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild; (b) the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before the directive is implemented. The prohibitions shall apply to all stages of the biological cycle of the plants.

**Birds-directive (79/409/EEC).** Similar provisions apply to birds. Pursuant to art. 5 of the directive, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in art. 1 of the directive, being *“all species of naturally occurring birds in the wild state in the European territory of the Member States”*, Greenland excepted. They will be prohibiting in particular: (a) deliberate killing or capture by any method; (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests; (c) taking their eggs in the wild and keeping these eggs even if empty; (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of the directive; (e) keeping birds of species the hunting and capture of which is prohibited.

Without prejudice to the provisions of art. 6.2 and art. 6.3 of the directive, which allow for some exceptions, Member States shall also prohibit for all those bird species the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognizable parts or derivatives of such birds (art. 6.1 directive). Regarding the hunting, capture or killing of the birds, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, and in particular the use of those listed in Annex IV (a). Moreover, Member States shall prohibit any hunting from the modes of transport and under the conditions mentioned in Annex IV (b) (art. 8 directive).

**Ecocrime-directive (2008/99/EC).** Art. 3 (f) of the directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence: *“f) the killing, destruction, possession or taking of specimens of **protected wild fauna or flora** species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species”*. For the purpose of this article, ‘protected wild fauna and flora’ are, under the Habitat-directive, the Annex IV animals and plants, and under the Birds-directive, the Annex I bird species and regularly occurring migratory bird species not listed in Annex I.

## **Questions**

I.B.1. Are the fauna (including birds) and flora protection measures organized within one coherent legislative framework, or through a patchwork of legislations, or is there a combination of general and specific measures?

I.B.2. Who supervises fauna and flora protection measures in your country? Are there (also) specialized inspectorates supervising them?

I.B.3. Do the enforcement efforts concentrate on a few types of fauna, birds or flora? Are there some topics that gather all attention, all enforcement efforts? Is there an evolution through time in the focus of enforcement efforts?

I.B.4. If fauna and flora protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

I.B.5. Conduct falling under article 3(f) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

**Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.**

## **II. International trade**

### **Introduction**

**CITES-regulation (336/97/EC).** The CITES-regulation<sup>3</sup> aims to protect species of wild fauna and flora which are threatened by trade, or likely to be so threatened, by regulating trade therein. 'Trade' encompasses "the introduction into the Community, including introduction from the sea, and the export and re-export therefrom, as well as the use, movement and transfer of possession within the Community, including within a Member State, of specimens subject to the provisions of the regulation". The protected species are subdivided into 4 categories of conservation status, listed in the annexes A to D. Annex A lists in essence species threatened with extinction or so rare that any level of trade would imperil the survival of the species. Annex D contains the species which are not listed in the Annexes A to C and are imported into the Community in such numbers as to

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<sup>3</sup> See also: [http://ec.europa.eu/environment/cites/legis\\_wildlife\\_en.htm](http://ec.europa.eu/environment/cites/legis_wildlife_en.htm)

warrant monitoring. The *introduction into the Community* of specimens of the species listed in the Annexes A and B is subject to the completion of checks at the border customs office of the point of introduction and of an import permit issued by a management authority of the Member State of destination. The introduction into the Community of specimens of the species in the annexes C and D is also subject to the completion of checks at the border customs office of the point of introduction and also requires an import notification. The *export or re-export from the Community* of specimens of the species listed in the Annexes A, B and C is subject to the completion of checks at the customs office at which the export formalities are completed and requires an export permit or re-export certificate issued by the management authority of the Member States in which the specimens are located. Member States had to designate customs offices for the introduction and export and re-export of the protected species. In principle, *within the Community* all *commercial activities* concerning specimens of species listed in the annexes A and B are prohibited. Any *movement within the Community of a life specimen* of a species listed in Annex A requires a prior authorization of the Member State in which the specimen is located.

The CITES-regulation also contains *enforcement provisions*. The competent authorities of the Member States shall *monitor compliance* with the provisions of the regulation. If, at any time, the competent authorities have reason to believe that these provisions are being infringed, they shall *take the appropriate steps to ensure compliance or to instigate legal action*. Member States shall inform the Commission and, in the case of species listed in the Appendices to the CITES-Convention, the Convention Secretariat, of any steps taken by the competent authorities in relation to significant infringements of the regulation, including seizures and confiscations. (art. 14.1 regulation) Art. 16 of the regulation, titled 'sanctions', states:

**"1. Member States shall take appropriate measures to ensure the imposition of sanctions for at least the following infringements of this Regulation:**

- (a) introduction into, or export or re-export from, the Community of specimens without the appropriate permit or certificate or with a false, falsified or invalid permit or certificate or one altered without authorization by the issuing authority;
- (b) failure to comply with the stipulations specified on a permit or certificate issued in accordance with this Regulation;
- (c) making a false declaration or knowingly providing false information in order to obtain a permit or certificate;
- (d) using a false, falsified or invalid permit or certificate or one altered without authorization as a basis for obtaining a Community permit or certificate or for any other official purpose in connection with this Regulation;
- (e) making no import notification or a false import notification;
- (f) shipment of live specimens not properly prepared so as to minimize the risk of injury, damage to health or cruel treatment;
- (g) use of specimens of species listed in Annex A other than in accordance with the authorization given at the time of issuance of the import permit or subsequently;
- (h) trade in artificially propagated plants contrary to the provisions laid down in accordance with Article 7(1)(b);
- (i) shipment of specimens into or out of or in transit through the territory of the Community without the appropriate permit or certificate issued in accordance with this Regulation and, in the case of export or re-export from a third country party to the Convention, in accordance therewith, or without satisfactory proof of the existence of such permit or certificate;
- (j) purchase, offer to purchase, acquisition for commercial purposes, use for commercial gain, display to the public for commercial purposes, sale, keeping for sale, offering for sale or transporting for sale of specimens in contravention of Article 8;
- (k) use of a permit or certificate for any specimen other than one for which it was issued;
- (l) falsification or alteration of any permit or certificate issued in accordance with this Regulation;
- (m) failure to disclose rejection of an application for a Community import, export or re-export permit or certificate, in accordance with Article 6 (3).

**2. The measures referred to in paragraph 1 shall be appropriate to the nature and gravity of the infringement and shall include provisions relating to the seizure and, where appropriate, confiscation of specimens.**

**3. Where a specimen is confiscated, it shall be entrusted to a competent authority of the Member State of confiscation which:**

- (a) following consultation with a scientific authority of that Member State, shall place or otherwise dispose of the specimen under conditions which it deems to be appropriate and consistent with the purposes and provisions of the Convention and this Regulation; and
- (b) in the case of a live specimen which has been introduced into the Community, may, after consultation with the State of export, return the specimen to that State at the expense of the convicted person.

**4. Where a live specimen of a species listed in Annex B or C arrives at a point of introduction into the Community without the appropriate valid permit or certificate, the specimen must be seized and may be confiscated or, if the consignee refuses to acknowledge the specimen, the competent authorities of the Member State responsible for the point of introduction may, if appropriate, refuse to accept the shipment and require the carrier to return the specimen to its place of departure."**

**Ecocrime-directive (2008/99/EC).** Art. 3 (g) of the directive prescribes that Member States shall ensure that the following conduct constitutes a **criminal offence**, when unlawful and committed intentionally or with at least serious negligence: *“(g) trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species”*. For the purpose of this article, ‘protected wild fauna and flora’ are those listed in Annex A or B of the CITES-regulation.

## **Questions**

II.1. Who supervises compliance with the CITES-regulation in your country? Do the monitoring efforts concern as well the import into and export and re-export from the Community as the commercial activities and movements of life specimens within the Community, your country<sup>4</sup>?

II.2. If protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? Do they include the possibility of seizure and confiscation of specimens? What is the level of fines and prison sentences? Are the sanctions often applied and considered to be effective? Can the sanctions be applied on legal persons?

II.3. Conduct falling under article 3(g) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

**Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.**

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<sup>4</sup> See point II.(g) of the Commission Recommendation C(2007)2551 of 13 June 2007 identifying a set of actions for the enforcement of Council Regulation (EC) n° 338/97 on the protection of species of wild fauna and flora by regulating trade therein (Pb. L. 2007/159).