

Interpretation and Implementation of the Convention

IMPLEMENTATION OF THE CONVENTION WITHIN THE EUROPEAN UNION

1. Introduction

Resolution Conf. 8.2 requests the Secretariat to submit a report on the implementation of the Convention in the European Economic Community (EEC), now known as the European Union (EU). A study of this subject has now been undertaken, based on the information available to the Secretariat and on a report prepared by TRAFFIC Europe.

This document provides a summary of the problems that have been identified. It is strictly limited to CITES implementation; consequently, it does not discuss the way in which Member States apply the more stringent measures adopted at the national or community levels (particularly with regard to decisions on import restrictions or internal trade restrictions), unless such measures have a direct bearing on the implementation of the Convention. This document also discusses problems peculiar to the EU (those affecting all Parties are listed in document Doc. 9.22). It was decided that this document should focus on the most important points in an effort to improve the usefulness of discussions at the meeting of the Conference of the Parties.

The Secretariat wishes to extend very sincere thanks to all Member States party to CITES, as well as to the Commission of the European Community, for their valuable help, and would like to stress that most Member States and the Commission agreed to co-operate in a constructive manner.

The Secretariat wishes to stress that there are many positive aspects regarding the implementation of CITES in the EU, particularly with respect to community legislation, and that this report strives above all to be constructive. The points raised should be taken as an analysis of one region in the world, and certainly not construed as denoting a region where CITES implementation is the most problematic. Furthermore, the Secretariat would like to be able to undertake similar studies in other regions.

For many years Member States have been studying a draft of a new regulation. Since a few problems still need to be resolved before the draft can be adopted, it has not been taken into account in this document. The Secretariat hopes that the analysis and recommendations herein at the meeting will be useful in advancing the adoption of the new legislation or the modification of existing regulations.

The Secretariat has prepared a detailed report on the implementation of CITES in the EU but would like to submit the report to Member States before disseminating it. The report will be available to interested Parties requesting it, but not until early 1995.

2. The European Union

Currently, the European Union comprises 12 Member States (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, the United Kingdom). If ratified, membership will extend to four other States (Austria, Finland, Norway and Sweden) on 1 January 1995. The functions of the EU are summarized in the Annex.

All Member States are party to CITES, **with the exception of Ireland**. Some territories are covered by the Convention but are not included in the EU (Greenland with regard to Denmark, Overseas

Territories¹ and Territorial Collectivities² as regards France³, the Isle of Man and the Channel Islands as regards the United Kingdom⁴).

3. European Union Legislation Regarding The Implementation Of Cites

The legislative base consists of two regulations, namely, Council Regulation No. 3626/82 of 3 December 1982 and Commission Regulation No. 3418/83 of 28 November 1983.

Regulation 3626/82 includes the text of the Convention in the legislation of the European Union and, in accordance with Article XIV, paragraph 1, of the Convention, contains numerous stricter measures⁵. The main provisions of this Regulation are as follows:

- Stricter import measures:
 - the import of all CITES specimens (including those bred in captivity or artificially propagated or pre-Convention specimens) into the EU is subject to the presentation of either an import permit (issued by the Management Authority) or an import certificate (endorsed at the border by the Customs office or, in practice, by a specially designated authority). In practice, all Member States issue import permits only (with some exceptions, which vary from State to State), except Spain and Germany.
 - the import of some species (listed in Annex C2 to Regulation 3626/82) is subject to special conditions and may even be prohibited or limited from certain countries.
 - Certain species (listed in Annex C1 to the Regulation) are treated as if they were listed in Appendix I of the Convention.
 - Internal trade in specimens of species listed in Appendix I (and Annex C1 to the Regulation) is illegal (with some exceptions). Specimens of other CITES species may only be held for sale or commercial purposes if they have been imported in accordance with regulations.
 - Various other restrictions (possible controls during transit, limited points of entry and exit, transport conditions for live animals, etc.).
 - Member States must recognize the validity of the decisions made and documents issued by other Member States.
 - Each Member State may decide to adopt stricter measures in certain cases (most Member States have already adopted such measures, Germany,

¹ *New Caledonia and French Polynesia*

² *Mayotte and St Pierre and Miquelon*

³ *Other territories, such as the French Southern and Antarctic Territories, the Iles Eparses, etc. are likewise excluded*

⁴ *All overseas territories are likewise excluded. Gibraltar has special status*

⁵ *This regulation partially entered into force on 1 January 1983 and totally entered into force on 1 January 1984 (on 1 January 1987 as regards Spain and Portugal, and 3 October 1989 as regards eastern Germany)*

France and Italy being among those States with the most).

- Lastly, the Regulation describes the establishment of a CITES Committee, consisting of representatives of the Member States, which is consulted about common implementation measures. The Committee is assisted by a scientific working group.

Regulation 3418/83 lays down provisions for the uniform issue and use of documents¹. There are two types of document:

- The permit/certificate (where the original is white in colour with a grey guilloche pattern background, and copy No. 1 is blue). The document may serve five functions:
 - CITES import permit (for specimens of Appendix-I species)
 - EU import permit
 - CITES export permit
 - CITES re-export certificate
 - EU import certificate
- The EU certificate (blue in colour) which can be used to attest that, from the EU standpoint, the specimen has been legally obtained (i.e. has been imported in accordance with the Regulation, bred in captivity or artificially propagated, imported prior to the Regulation, etc.). This document may only be used within the EU and may not be used to (re-)export specimens to third countries.

From 1 January 1993, the control of goods at borders between Member States was abolished.

4. National Legislation

All Member States have implemented the CITES legislation through two broad categories of laws; on the one hand, laws with direct application to CITES, which are introduced to regulate trade in species listed in the CITES appendices; and, on the other hand, laws such as hunting laws, fishing laws and laws on the protection of indigenous species, which are not directly related to CITES but which nonetheless contain provisions concerning some of the species listed in the CITES appendices. The latter category includes, in particular, provisions concerning the protection of the natural environment and applies generally to indigenous species, whether they are listed in the CITES appendices or not.

Further to these provisions, and since the subject concerns international trade, Customs laws are also

applicable. (In some cases, such as in Belgium and France, penalties are harsher.)

There is too much disparity between the contents of national legislations. Some Member States have adopted stricter measures than those described in Community Regulations, whereas others have not. The stricter measures relate either to the application of one or several exemptions contained in Article VII of the CITES, or to specimens covered by national legislation.

Expressed from a different standpoint, the laws are not uniform with regard to the specimens they cover, and it sometimes happens that the multiplicity of texts adopted by a single State only complicates legal analysis, particularly when such texts deviate too far from the appendices of the Convention.

The Member States of the European Union alone have the authority to decide what penalties should be applied for violations committed within their territory. Penalties have now been determined, but their nature and severity varies from State to State. It is essential that such penalties be harmonized in order to prevent smugglers from taking advantage of States with less rigorous provisions.

In Greece, there is no penalty for possession or internal trade; these infractions are only punishable by fine and imprisonment under the Customs code, and only in the case of smuggled goods. In Spain, CITES legislation makes no mention of penalties either for international trade or for domestic trade. The only recourse in Spain is the Customs law, which includes penalties for smuggling.

5. Authorities Responsible for Issuing Documents

Each Member State has designated one or more Management Authorities as competent for issuing CITES documents or EU documents. The number and degree of authority of these Management Authorities vary from one Member State to another (Belgium-2; Denmark-2; France-1; Germany-1 plus 18 regional authorities for plants; Greece-1 plus 2 regional authorities; Italy-2 plus 23 regional authorities; Luxembourg-2; the Netherlands: 1 plus 31 regional authorities for plants; Portugal-1 plus 2 regional authorities; Spain-1 plus 9 regional authorities; the United Kingdom-1 plus one regional authority). Ireland, the only Member State not party to the Convention, has not designated a competent authority in accordance with Resolution Conf. 8.8.

The number of permits/certificates issued annually can be summarized as follows:

| Number | Import | Export | Re-export |
|------------------------------|--|------------------------------|---------------------------------------|
| < 200 | Greece, Luxembourg | Greece, Luxembourg, Portugal | Belgium, Greece, Luxembourg, Portugal |
| >200 and < 1000 | Belgium, Denmark, Portugal | Germany, Belgium | Denmark*, Netherlands |
| > 1000 and < 5000 | Germany, Spain, France, United Kingdom, Italy, Netherlands | | Spain*, United Kingdom |
| > 5000 | | United Kingdom | France*, Italy* |
| * total exports + re-exports | | | |

¹ The Netherlands and the United Kingdom use a different form because they issue their documents by computer

Authorities competent to issue permits/certificates are also competent to issue EU certificates. Yet Germany has designated over 200 regional or local authorities as competent to issue these documents. The number of EU

certificates issued annually varies from one Member State to another¹ (Belgium-2000; Denmark-500; France-2400; Germany-over 200 000; Italy-6000; the Netherlands-9000²; Portugal-250; Spain-1700; the United Kingdom-4000).

6. Problems Concerning The Implementation Of CITES In The European Union

In addition to the problems associated with CITES implementation that are common to all Parties - such as insufficient legislation, the lack of border controls, the issue or acceptance of fake or invalid CITES documents, etc. (see document Doc. 9.22) - a number of problems are peculiar to the EU. **The main reason for this is that the EU implements CITES as if it were a single State, yet its Management Authorities are virtually independent and procedures vary enormously from one Member State to another. Furthermore, because internal border controls have been abolished and the degree of CITES implementation varies considerably from one Member State to another, in reality the degree of CITES implementation in the EU is that of the State with the lowest implementation level.**

The problems that arise for CITES can be divided into three broad categories:

- the issue of re-export certificates for specimens that have not been imported into the EU in accordance with the Convention;
- the import of specimens contrary to the provisions of the Convention and the Resolutions of the Conference of the Parties, with no or insufficient control;
- the issue of export permits for illegally obtained specimens.

The main reasons for these problems can be grouped into five categories:

- insufficient Community legislation;
- no or insufficient co-ordination between Member States;
- abuse or fraudulent use of the No. 1 copies of the EU import permits or EU certificates;
- inadequate national legislation for implementing the Convention or EU legislation;
- non-implementation or inadequate implementation of EU legislation.

6.1 Analysis of the problems

6.1.1 The issue of re-export certificates for specimens not imported into the EU in accordance with the Convention

The Secretariat is in possession of a large collection of re-export certificates issued by Member States (mostly France, Germany, Italy and the United Kingdom) where the specified country of origin, export permit number and date of issue of the export permit either do not correspond to an existing document or appear to be entirely based on fantasy. Typical examples of such cases are:

- the correct country of origin is specified, but the specified permit number pertains to the re-export certificate of the country of last re-export;

- the country of origin is correct but the export permit number corresponds to the EU import permit number (United Kingdom);
- the country of origin specified is actually the country of last re-export;
- the species does not exist in the wild in the specified country of origin (in the case of wild-caught specimens);
- the specified export permit number of the country of origin does not correspond to any existing document;
- the date specified does not correspond to the date of issue on the export permit (France).

These errors are primarily due to the fact that, before issuing the re-export certificate, the Management Authority concerned fails to verify whether the information is correct or whether it pertains to an import that actually took place (in particular, whether the original EU import permit with its relevant Customs entry made at the time of import, and the original export document used for import purposes, have been returned to the Management Authority). Although some Member States (Italy) do take the time to verify the information contained in the documents submitted for the purpose of obtaining re-export certificates, they are far too few. In some Member States the applicant himself fills out the form and, either because he is insufficiently familiar with CITES procedures or because he wishes to conceal the illegal origin of specimens, provides erroneous information which is not verified by the Management Authority.

Another reason is that the re-export certificate is issued on the basis of erroneous information contained in copy No. 1 of the EU import permit or an EU certificate (see paragraph 6.2.3). In some cases, France has issued re-export certificates (usually with Switzerland as the destination) based purely on information provided by the trader about an EU certificate, without actually seeing a copy of the certificate concerned.

Lastly, it can happen that re-export certificates containing erroneous information are accepted during the import process (as in the case of France regarding re-export certificates issued by the United States), and the same information is reproduced on the re-export certificate issued by the Member State.

The Secretariat has intervened with the Member States concerned on numerous occasions and, as a consequence, the situation has improved greatly (though it remains worrying in France and Germany).

Resolution Conf. 8.5 requires that re-export certificates contain information on the origin and last re-export of specimens (country, document number, date of issue), or justification as to why some of the information is missing. Yet, very often information about the last re-export is not included, and the dates of issue of the original export permit or the last re-export certificate are missing without any explanation why. It should be pointed out, however, that over the last few years Italy has made laudable efforts to rectify this situation.

¹ Approximate figures based on 1992 and 1993 reports

² Including some 3000 for *Cyclamen*, *Sternbergia* and *Galanthus*

Resolution Conf. 8.5 states that, in the case of pre-Convention specimens, the date of acquisition must be indicated. Numerous re-export certificates issued by Member States either do not show this date, or show a date that does not comply with the definition contained in Resolution Conf. 5.11. This applies to Germany in particular.

Abusive use of copy No. 1 of import permits/certificates or EU certificates for the purpose of re-exporting specimens different from those imported, or for re-exporting quantities larger than those imported

In cases where specimens are not marked, the No. 1 copies of import permits/certificates or EU certificates can be used easily to obtain re-export certificates in any Member State with a view to re-exporting specimens different from those imported. In some cases where specimens are marked (e.g. crocodilian skins), the numbers of the marks are seldom indicated on the relevant import permit/certificate or the EU certificate. Consequently, the Management Authority issuing the re-export certificate (particularly if it did not issue the import permit/certificate) has no means of verifying that the specimens to be re-exported are the same as those imported.

Generally speaking, Management Authorities do not verify the physical existence of specimens and base their judgements entirely on documentation. Thus, Management Authorities issue re-export certificates for specimens that have not (or have not yet) been imported into their State (there is no obligation for a specimen to be imported into the State where the import application was made). It is even possible to possess specimens in Member State A, to obtain a re-export certificate in Member State B, and to re-export the specimens from State A. In such a case, the Management Authority in State A would never be aware that the re-export of the specimens had occurred.

Since EU certificates can be obtained for larger quantities of specimens than those imported (see paragraph 6.2.2), it is possible to re-export larger quantities of specimens than those imported, particularly if the quantities imported are not specified on the EU import permit (see paragraph 6.2.3).

- 6.1.2 Importing specimens contrary to the provisions of the Convention and the Resolutions of the Conference of the Parties, either with no controls or with insufficient controls

Acceptance of irregular documents for the issue of import permits or certificates

The Secretariat has been made aware of numerous cases where irregular documents have been accepted by Member States. Some of these States have occasionally sought the Secretariat's advice on the validity of foreign export documents, and others (France and Italy) have done so very regularly. Consequently the acceptance of numerous invalid documents has been avoided, and many violations have been uncovered. Most frequently, however, re-export certificates issued by a non-EU country are accepted without verification as to whether the original permit is valid.

The most crucial outstanding problem is the acceptance of documents by authorities other than the Management Authority, particularly in cases where import certificates are used. Verification of the validity of documents is undertaken at the border by officials who may have received insufficient training or, more importantly, may not have received the information on the latest restrictions sent in a Notification to the Parties or decided on by the EU.

In cases where an invalid document is accepted, most of the Member States assert that the import document can be invalidated and the specimens confiscated. In reality, however, it seems this seldom happens and is even impossible once copy No. 1 of the import document has been used to obtain an EU certificate.

Inadequate border controls

In several Member States, verification of correlation between the consignment and the accompanying documents is quite insufficient, to the extent that numerous CITES specimens enter the EU without being checked. This problem is particularly serious in cases where import takes place at a point of entry located in a Member State that is not the final destination of the consignment (see paragraph 6.2.1).

Following the removal of internal EU borders, on 1 January 1993, the effectiveness of the enforcement of trade controls clearly depends on the efficient and harmonization of the implementation of the provisions of the EU Regulation. However, it seems not to be harmonized. The following problems exist:

- different procedures for the issuance of import documents for species not listed in Annex C2;
- different levels of control and expertise at the external borders;
- lack of communication between the Management Authorities of the Member States;
- the removal of internal border controls has not been compensated by increased internal controls;
- lack of harmonized Customs procedures and import requirements at the external borders.

- 6.1.3 Issue of export permits for specimens of illegal origin or contrary to the provisions of the Convention and the Resolutions of the Conference of the Parties

This point relates almost exclusively to the export of live animals that are declared as captive-bred but are of illegal origin.

Mention should be made of one problem in particular. Within the EU there are numerous breeding operations involving Appendix-I species, which have not been registered with the Secretariat, notably for birds of prey and Psittaciformes. Some of these breeding establishments export specimens contrary to the provisions contained in Resolution Conf. 8.15. The United Kingdom, for example, authorizes the export of these animals supposedly in accordance with Article III of the

Convention. Germany refuses to issue permits to export to non-EU countries of specimens derived from non-registered breeding operations but does issue EU certificates for these specimens. Once in possession of an EU certificate, it is possible to obtain an export permit from the Management Authority of another Member State, because that State will not be aware that the specimen derives from a commercial breeding operation. It seems that this method has been used to export to countries in the Middle East several Appendix-I birds of prey derived from a German breeding operation not registered with the Secretariat. Similarly, the said breeding operation is alleged to have sold specimens to Saudi Arabian nationals. Since the sale took place in Germany and the specimen was accompanied by an EU certificate, there was no violation of German law or of EU or CITES regulations. The specimen was then exported illegally, but the perpetrator of the violation is a foreigner who has since left the territory, and the seller can not incur any responsibility for a violation committed by another.

6.2 Analysis of the causes

6.2.1 Insufficient EU legislation

On the whole, EU legislation is excellent and contains very useful provisions for the implementation of CITES. However, in some respects the legislation is inadequate, particularly since the abolition of border controls between Member States.

Indecision regarding responsibility for import controls

The Member States are still undecided as to whether responsibility for import controls rests with the Member State of destination or the first Member State the consignment enters. Consequently, numerous imports enter without any controls, since the Member State at the point of entry leaves this responsibility to the Member State of destination, which in turn assumes controls have been undertaken by the Member State at the point of entry. This scenario is becoming a particularly serious problem and, over the last few months, the Secretariat has observed a significant increase in imports into the EU through Member States other than the destination (e.g. through Belgium for destinations in Germany, the Netherlands, France or the United Kingdom; through Germany and France for destinations in Italy; through Spain and the Netherlands for destinations in a number of Member States, etc.). Furthermore, it appears that, in order to avoid too rigorous document checks by some countries' Management Authorities, traders choose to import CITES specimens through countries that use import certificates. The abusive use of the intra-community transit document (known as T1) is a problem that raises many worrying questions. In the majority of Member States, controls in the final country of destination are either perfunctory or non-existent.

The lack of adequate and harmonized controls at the external borders of the EU is for the Secretariat a matter of great concern. **A solution has still not been found** even though it was already known before 1 January 1993

that the control on the internal borders would be abolished and the issue has been on the agenda of probably every meeting of the CITES Committee of the EU.

Obligation of Member States to accept documents issued by other Member States

Because each Member State is obliged to recognize the validity of documents other than pre-Convention certificates issued by the other Member States, practically (and legally) speaking States have no right to contest the validity of the information contained in an EU document issued by such other States.

Absence of standardized penalties for violations

As stressed in section IV above, the absence of harmonized penalties for violations of the Convention constitutes a serious problem because it provides smugglers with the opportunity to choose the country with the most lenient penalties.

No expiry date on EU certificates

EU certificates bear no expiry date. Moreover, copy No. 1 of the import permit has no limit on its period of validity for internal trade. **(At the very least there are 200 000 No. 1 copies of import permits and 1.2 million No. 1 copies of EU certificates in existence.)** Therefore, even if a Member State improves the quality of information contained in the EU documents it issues (as several Member States have done), the old documents can still be used.

Absence of common definitions concerning the implementation of the Convention and Resolutions

Member States have no common position regarding the way in which they should implement the Convention and Resolutions. Some States apply Resolutions rigorously, others less stringently, and still others fail to implement them at all. The problem is particularly worrying with regard to Resolution Conf. 2.12, which concerns the definition of "bred in captivity", and with regard to the use of exemptions for personal effects.

6.2.2 Absence of or insufficient co-ordination between Member States

Co-ordination between Member States is very inadequate. In addition, although the Commission should play a pivotal role in this co-ordination, in practice it does not have the necessary resources to do so.

6.2.3 Abusive use of No. 1 copies of EU import permits or EU certificates and other problems relating to EU certificates

The No. 1 copies of EU import permits or EU certificates are not CITES documents. **Nonetheless, these documents can be used in any Member State to obtain an export permit or a re-export certificate.** The conditions under which these documents are

issued and used within the CITES framework are a source of very serious concern for the Secretariat.

Multiple use of EU certificates or the No. 1 copy of import permits or certificates

Based on the No. 1 copy of an import permit or an EU certificate, the holder can obtain one or more EU certificates (for a quantity of specimens not exceeding the number imported) in any Member State. As regards the issuance of EU certificates, Member States keep or invalidate the No. 1 copy of the import permit in return for the EU certificates issued for all imported specimens (not all States do this!). However, when certificates only cover some of the specimens imported, the bearer must retain his No. 1 copy. **There is no regulation how to proceed in this situation.** Consequently, each Management Authority follows a different procedure. Some Management Authorities make a note on the front of copy No. 1, others on the back, and still others return the copy to the holder with no annotation at all. Some Management Authorities even issue EU certificates on the basis of a photocopy of the No. 1 copy of the import permit/certificate.

Thus, by approaching a number of Management Authorities in different countries, it is a simple process for an unscrupulous trader to obtain EU certificates for a quantity of specimens exceeding the quantity imported. Before the removal of border controls, in an effort to avoid this type of fraud some Member States made a note on the No. 1 copies of import permits or EU certificates when specimens were moved into their State from another Member State. However, since 1 January 1993 this procedure has been abandoned.

The absence of a centralized administration for the issue for EU certificates makes this type of fraud virtually undetectable, particularly when taking into account specimens re-exported on the basis of import permits, for it is unlikely that the number of re-exported specimens would exceed the number imported as part of the consignment would have been sold in the EU.

Issue of EU certificates for specimens declared as bred in captivity and which do not comply with the definition contained in Resolution Conf. 2.12

No Community regulation contains the definition of bred in captivity included in Resolution Conf. 2.12. To the Secretariat's knowledge, Italy is the only Member State to have included such a definition in its national regulations. The United Kingdom considers an animal to be captive bred if it is merely born in captivity, and takes no account of the criteria pertaining to second generation. In very many cases, EU certificates are issued with the statement that the specimen is captive bred, but without any verification of compliance with the criteria laid out in Resolution Conf. 2.12. In some cases, a mere declaration by the owner is considered to be sufficient. Spain and Italy, for example, have issued several EU certificates for chimpanzees and gorillas (Appendix I), declaring the animals to be Captive bred but without any proof that captive reproduction had actually occurred.

Abusive use of EU certificates for specimens imported contrary to the provisions of the Convention

The prohibition of trade in (or, in some Member States, of the possession of) specimens whose legal origins can not be proved obliges holders of specimens of illegal origin to obtain a document enabling them to assert the origins are legal. This is generally done using the No. 1 copy of an EU import permit or an EU certificate. The Secretariat has noted that the three methods described below are used for this purpose:

- an EU certificate is obtained from a competent authority on the basis of fake documents or documents that do not pertain to the specimens concerned (see paragraph above);
- a valid document is purchased from someone no longer needing it (specimens have been sold or destroyed, or have died), or from someone who has already used it to obtain other EU certificates, etc. Trade in CITES documents is becoming an extremely serious problem in the EU;
- fake EU certificates are used. This is somewhat unusual but cases have been known to occur in France, Germany and Spain.

Use of EU certificates or of the No. 1 copy of import permits to evade the strict controls implemented by some Management Authorities or the stricter domestic measures

Some Member States undertake strict verification of the export documents presented to them, with the result that some traders choose to import CITES specimens through another Member State whose verification procedures are less stringent. The traders then import the specimens into their country of residence by using the No. 1 copy of the import permit/certificate or an EU certificate obtained on the basis of it. The same procedure is used by traders to evade the stricter domestic measures adopted by some Member States.

Use of EU certificates for the transportation and marketing of illegal specimens in the EU

When a Management Authority ascertains after an import has taken place that an EU import permit has been issued on the basis of an invalid export permit or re-export certificate, it is generally possible for the Management Authority to confiscate the specimen. But if copy No. 1 of the import permit/certificate has been used (either in the Member State in question or in another Member State) to obtain an EU certificate, it is seldom possible to recover and so confiscate the specimen because it is not known in which State it is located. Since, with few exceptions, Member States do not inform each other of the existence of irregular documents issued by them, the result is that an EU document, recognized as invalid by the Member State that issued it, can be accepted by another Member State for the issuance of an export permit or a re-export certificate. In addition, specimens may be located in a Member State without the Management Authority of that state being informed that they are covered by an invalid document. Thus it

was possible for parrots imported illegally from Curaçao into Belgium to be sold in France by means of an EU certificate, and for Asian elephants imported illegally from Myanmar to the Netherlands to be sold in France accompanied by an EU certificate. (The French Management Authority discovered these irregularities quite by chance more than a year after the event.) This problem becomes even more complex in the case of Member States that do not have the legal possibility to invalidate EU certificates issued by them.

Use of EU certificates outside the EU

Although EU certificates are only valid for use within the EU, they have been used (or attempts have been made to use them) for export to destinations outside the EU. **The certificates should bear a clear reference to the effect that they are only valid within the EU.**

Issue of EU certificates for pre-Convention specimens

The absence of a specified date of acquisition on EU certificates, or improperly specified dates, constitute a serious problem. A box for the date of acquisition exists on the form, but it seems there are no instructions regarding its completion. Consequently, when completing this box Member States provide very diverse information, such as:

- the date of acquisition of the specimen as defined in Resolution Conf. 5.11;
- date of entry into the EU;
- date of import into the Member State;
- date of purchase by current owner.

6.2.4 Inadequate national legislation for the implementation of the Convention, or inadequate EU legislation

Several Member States have inadequate legislation for the implementation of the Convention (and of the EU Regulations). Some States do not even have in their legislation penalties for violations (see document Doc. 9.24).

6.2.5 Non-implementation or inadequate implementation of EU legislation

Return to the Management Authority of original export permits issued by countries of origin or re-export certificates issued by countries of last re-export and import certificates or permits improperly completed with regard to the quantity of specimens imported

EU Commission Regulation No. 3418/83 states that the original EU import permit, accompanied by the original (re-)export document and the pink copy No. 2 of re-export certificates must be returned by the Customs office once the import or re-export has taken place. This is the only way in which a Management Authority can ascertain whether an EU import permit or a re-export certificate has been used. The percentage of documents actually returned to the Management Authorities varies enormously

from one Member State to another. Very few documents are returned in some Member States.

During the import process, the Customs office must specify on the EU import permit or certificate the number of specimens actually being imported. This does not always happen and, very often, the Customs office fails to specify the number of specimens actually imported and merely enters the number of specimens for which the re-export permit/certificate was issued. If the number of specimens imported is less than the number authorized, the trader can subsequently re-export more specimens than the number imported.

6.3 Miscellaneous problems

6.3.1 Controls of trade in specimens of Appendix-III species

Procedures for the import of specimens of Appendix-III species are not uniformly applied in the EU, and some Member States do not undertake any controls at all. In some cases, irregular certificates are accepted by Member States.

6.3.2 Transit controls

The quality of controls to verify that consignments in transit are accompanied by CITES export documents varies greatly from one Member State to another, both with regard to transit within the EU and with regard to transit to destinations outside the EU.

6.3.3 Circus controls

As pointed out in the report on alleged infractions (document Doc. 9.22), circus controls are quite inadequate in the EU. The numerous circuses entering the EU from Eastern European countries are often covered by temporary admission procedures (using ATA carnets), and CITES documents are not checked at the time of import or re-export. Very often, no EU import permit has been issued and, even in cases where it has, it is not intended for import *per se*, since the circus in question declares its destination to be another Member State. Since there are no border controls between Member States, the circus is then free to circulate in all Member States with no controls.

It has often happened that a Member State issued an EU import permit for specimens, but no re-export certificate was issued by this or any other Member State even though the circus left the EU.

6.3.4 Control of trade in birds of prey

There is still a considerable amount of illicit trade in Falconiformes in the EU. The Member States principally concerned are Germany, Spain and the United Kingdom and, to a lesser extent, France and Italy. There is very little of this illegal activity in Portugal, Belgium or Denmark, and there are no known cases in Greece, the Netherlands or Luxembourg.

Some of the trade in birds of prey concerns zoological parks (aviaries), but most of it

involves the practice of falconry. Three major problems have emerged:

- illegal capture;
- the smuggling of birds, most of which have been taken from the wild and are legalized by certificates of captive breeding after being imported, or the importing of birds accompanied by certificates of captive breeding ;
- the export (and also re-import) of birds not accompanied by the CITES documents required by the Convention. This problem is particularly worrisome in Germany, in that falconers go to neighbouring countries (such as Austria and the Czech Republic) for weekend hunting trips without going through the necessary formalities. It also appears that falconers from the Middle East rent residences in the EU, bringing their birds of prey with them for hunting purposes, without ever presenting any import or export documents (these birds are usually re-exported).

6.3.5 Controls on conditions of transport

The standard permit forms annexed to EU Regulation No. 3418/83 have not been updated to contain the statement concerning conditions of transport that is contained in the Annex to Resolution Conf. 8.5, and numerous Member States either do not implement this provision¹ or do so incorrectly (e.g. the United Kingdom).

As a general rule, the Management Authorities of Member States, with the exception of the United Kingdom, have not greatly concerned themselves with the question of transport conditions because the necessary controls are generally undertaken by border veterinarians. Community Regulations in this domain are experiencing serious implementation problems. Over the last few months, however, several Member States' Management Authorities have taken stringent measures and the situation seems to be improving. This applies in particular to Belgium, France, Italy and Spain, and other Member States may have adopted measures without informing the Secretariat.

6.3.6 Problems relating to certificates of artificial propagation (including phytosanitary certificates)

Problems relating to the use of phytosanitary certificates as certificates of artificial propagation do not solely apply to the EU. But out of the eight countries that currently use the phytosanitary certificate as a certificate of artificial propagation in accordance with Resolution Conf. 4.16, six (Belgium, Denmark, Germany, Italy, Luxembourg and the Netherlands - the other two are Switzerland and Sweden) are EU Member States. In particular Germany, Denmark and the Netherlands have a very large production and export of artificially

propagated plants. The phytosanitary certificate may be used as a CITES certificate for artificially propagated specimens of species included in Appendix II (including Appendix-I hybrids) on the condition that it contains a reference to the fact that specimens concerned are artificially propagated as defined by CITES. These certificates are validated by plant health inspectors. Unfortunately these people do not always check whether the plants are actually artificially propagated or whether the identity of the specimens in the consignment conforms with the information on the certificate. The Secretariat is aware of a number of cases where wild-collected plants have been exported from the EU covered by a phytosanitary certificate. In addition, artificially propagated Appendix-I specimens, sometimes under false names, are exported with phytosanitary certificates.

6.3.7 Format used for permits/certificates

Article VI and Appendix IV of the Convention, as well as Resolution Conf. 8.5 and its Annex, provide a minimum list of information that must be contained in permits/certificates issued under the terms of the Convention. However, the format used in EU Regulations does not allow for the inclusion of all the information required, in particular: the date of issue of the export permit of the country of origin, information relating to the country of last re-export (country, number and date of issue of the re-export certificate), date of acquisition of pre-Convention specimens, and the statement concerning transport conditions for live animals. Many Member States use box No. 19 on the EU permit ("Special conditions") for the inclusion of the required information, but very often the information is not provided at all. Some Member States, notably Germany and Italy, fill out their permits in a language other than a working language of the Convention.

Resolution Conf. 8.5 recommends the use of codes to indicate the source of the specimen, and it is regrettable that the standard EU form has not been updated to contain these codes (and that Member States do not use them). Furthermore, the codes defined by the EU Regulations concerning the source of specimens include the code "P" for pre-Convention specimens, which does not indicate a source. As only one code is used, this creates a problem because, when "P" is indicated, the source is not known.

6.3.8 The Gaborone amendment

The second extraordinary meeting of the Conference of the Parties (Gaborone, 1983) adopted an amendment to Article XXI of the Convention. Before it can enter into force, the amendment must be accepted by 54 States party at the time of the adoption of the amendment. To date, only 32 Parties have accepted the amendment, which has still not entered into force. (Furthermore, Greece has yet to accept it.) Resolution Conf. 8.2 urges Parties that have not already done so to accept the amendment.

Since the EU is not a Party, the Commission is able to argue that it has no responsibility towards other Parties with regard to the question of implementation. Further, although

¹ Belgium, France, Germany, Italy and the Netherlands do include this statement, which is either inserted by means of a typewriter or a stamp. This recent addition is the result of the Secretariat's recommendation to several importing countries to refuse consignments of live animals if the accompanying permit/certificate does not contain the statement on transport conditions.

the Commission is entitled to initiate procedures before the Court of Justice against a Member State that fails to respect Community Regulations, it seldom does so. Even in cases where it does, procedures are lengthy, primarily because of the Commission's lack of human resources and sometimes because of the lack of political will.

7. Conclusions and Recommendations

At the sixth meeting of the Conference of the Parties (Ottawa, 1987), the representatives 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 (Gaborone, 1983), and confirmed at the sixth meeting, 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 Convention operations worldwide, it is also abused by numerous 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 for the CITES specimens 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 export permit 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;
- numbers of specimens already re-exported from the EU, based on the document used for importing 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.

Doc. 9.23 Annex

Three treaties govern the functions of the European Union, namely: the Treaty of Rome (25 March 1957); the Single Act signed in February 1986 (entry into force 1 July 1987) which, *inter alia*, abolished on 1 January 1993 controls on goods at borders between Member States; and the Treaty of Maastricht (entry into force 1 November 1993).

The principal decision-making organs of the European Union are:

- The Council of Ministers (referred to as "the Council"), which consists of the ministers of all Member States. Until 1 January 1993, it was the EU's only legislative body. Since that date, however, the co-operation procedure has applied and the legislative function is shared, by means of a complicated process, between the Council and the European Parliament.
- The European Parliament (referred to as "the Parliament"), which consists of parliamentarians directly elected in their Member States. Before 1 January 1993, the Parliament only played a consultative role with regard to the EU's legislative proposals but, since then, it has participated in the co-operation procedure.

- The Commission of the European Community (referred to as "the Commission"), which consists of commissioners appointed by common accord by the Member States, and is the EU's executive body.
- The Court of Justice, which may, *inter alia*, sentence a Member State that fails to respect European legislation.

Many types of documents bear legislative or regulatory weight in the EU, but the two principal types of legal instrument are Directives and Regulations. Only Regulations are directly concerned with the implementation of CITES within the EU. They are directly applicable within all Member States, and concern all citizens without the need for inclusion within the national legislation of each Member State. Council Regulations and Commission Regulations, the latter generally being adopted for the application of Council Regulations. **Penalties in case of violations of the Regulations are the responsibility of each Member State.**

Interpretation and Implementation of the Convention

NATIONAL LAWS FOR IMPLEMENTATION OF THE CONVENTION

1. Background

Article VIII, paragraph 1, of the Convention states "The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof." These measures shall include provision of penalties for the trade in, or possession of specimens traded in violation of the Convention and provision for their confiscation or return to the State of origin. Resolution Conf. 8.4, adopted at the eighth meeting of the Conference of the Parties (Kyoto, 1992), directed the Secretariat, within available resources:

"to identify those Parties whose domestic measures do not provide them with the authority to: i) designate at least one Management Authority and one Scientific Authority; ii) prohibit trade in specimens in violation of the Convention; iii) penalize such trade; or iv) confiscate specimens illegally traded or possessed".

Thanks to a contribution by the United States of America of USD 20,000, in December 1992, the Secretariat contracted the IUCN Environmental Law Centre (the ELC) and TRAFFIC USA (which was acting for the TRAFFIC network) to carry out analyses of national legislation to implement CITES. The amount of work and the costs to complete analyses for all the Parties required that the project be divided into two phases, the first of which has involved 81 Parties with high levels of trade in specimens of CITES-listed species. Separate analyses have also been completed for: French Guiana, an overseas department of France; Hong Kong, a dependent territory of the United Kingdom; the United States of America Commonwealth and Territories; and legislation that applies to the European Union.

Notification to the Parties No. 715 urged the Management Authorities of the Parties to co-operate fully, and as rapidly as possible, to provide any information on national legislation that was requested by either the ELC or TRAFFIC concerning the analyses. The Parties were also requested to provide copies of national legislation that concerned:

- a) the import, export and transit of CITES specimens;
- b) the internal trade in and possession of CITES specimens; and
- c) penalties (including confiscation) for violations of the provisions of such legislation.

The following procedure was used to develop each analysis to its final stage:

- a) The first draft of each analysis was reviewed by the Secretariat.
- b) An amended draft, in which the comments of the Secretariat were considered, was prepared and then sent by the Secretariat to the Management Authority of the Party concerned for its comments. Reminders were sent by the Secretariat to any Management Authority that did not comment on the draft.
- c) A third draft, taking into account the comments (if any) of the Management Authority of the Party concerned, was prepared and then sent to the Management Authority by the Secretariat. Assuming this was the final report, the Secretariat did not request further comments from the Management

Authority. However, if further comments were received by 1 October 1994, they were also considered and the text was amended accordingly.

The Secretariat thanks the ELC and the TRAFFIC network, particularly TRAFFIC USA, for their efforts to ensure that the analyses are as accurate and as complete as possible. The Secretariat also thanks the many Parties that actively participated in this phase of the project. However, the Management Authorities of the following 20 Parties did not provide to the Secretariat their comments on the draft analyses sent to them, although this information was requested by the Secretariat at least twice: the Congo, Estonia, Greece, Guatemala, India, Italy, Malawi, Malaysia (Sabah only), Mexico, Namibia, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Rwanda, Sri Lanka, the Sudan, Zaire and Zimbabwe.

After the completion of the analyses, the legislation of each Party or other entity was classified according to the extent to which its national legislation provides for the implementation of the Convention, as follows.

- a) Category 1: Legislation is believed generally to meet the requirements for the implementation of CITES.
- b) Category 2: Legislation is believed not to meet the requirements for the implementation of CITES.
- c) Category 3: Legislation is believed generally not to meet the requirements for the implementation of CITES.

The analysis and the classification for each Party are based only on the information that has been provided to, or obtained by, the ELC, TRAFFIC USA or the Secretariat. The Secretariat is fully aware that certain analyses and classifications for Parties may not be accurate because of a mis-interpretation of the legislation that has been reviewed, and that changes may be necessary. The same is true where sufficient information on national legislation was not provided by the Management Authorities and could not be obtained from other sources, and it was not possible to accurately determine the level to which national legislation allows for the implementation of CITES. Therefore, the Secretariat has recommended that new information received by 15 January 1995 from a Management Authority that supports the need for amendments to the analyses or to the classifications should be fully considered.

2. Results

Analyses of national legislation for CITES implementation were completed for the Parties and other entities listed in Annex 1. The following 15 Parties are believed to have national legislation that generally meets all requirements for CITES implementation: Australia, Belgium, Canada, Denmark, France (including French Guiana and other overseas departments), Germany, Italy, Malta, the Netherlands, New Zealand, Norway, Portugal, Switzerland, the United Kingdom and the United States of America (including Commonwealth and Territories).

The legislation of the European Union is also included in this category. However, whether a Member State of the Union is placed in this category depends on the

existence of national legislation to implement fully the legislation of the Union, in particular whether there are penalties for violating its provisions.

Twenty-seven Parties and a territory of another Party are believed to have national legislation that generally does not meet the requirements for implementation of CITES. The remaining Parties and one dependent territory are believed to have legislation that does not meet all the requirements for CITES implementation, while needing additional legislation.

The analyses have focused only on whether national legislation for CITES implementation exists in a particular Party, and not on whether such legislation is implemented properly.

3. Recommendations of the Secretariat to further implement Resolution Conf. 8.4, paragraph b), and the other directives of the Resolution

The Secretariat has recommended that the second phase, for the development of analyses for the remaining Parties, should begin in 1995. The costs to the ELC and to TRAFFIC USA to complete the analyses for the first phase have been much greater than the funding provided by the contracts. As a result, these two organizations used funds from their own budgets to complete their obligations under the contracts. Therefore, the funding provided for the completion of the analyses for the remaining Parties will be increased to more realistically reflect the costs of the work.

Resolution Conf. 8.4, paragraph b), also directs the Secretariat to seek from Parties that lack legislation for CITES implementation information about the actions needed in order to establish the measures necessary to properly enforce the provisions of the Convention and about the procedures and time frames for doing so. The Secretariat asks that the Parties consider for approval the draft decisions of the Conference of the Parties presented in Annex 2, in furtherance of this and other directives of Resolution Conf. 8.4.

4. Assistance to the Parties

Resolution Conf. 8.4 directs the Secretariat to seek external funding to enable it to provide technical assistance to Parties in the development of measures to implement the Convention. As a result of the completion of a joint project between the ELC and the Secretariat, the Secretariat has provided to each Party a copy of the book "*Guidelines for Legislation to Implement CITES*", written by Cyrille de Klemm. The Parties are urged to use this publication when they are developing CITES implementation legislation. Technical assistance to the Parties would also include the assignment by the Secretariat of a consultant to a Party requiring assistance in developing national legislation. The consultant would review the Party's current national legislation for the protection of wild fauna and flora. In co-operation with the officials of the Management Authority and with lawyers of the government concerned, the consultant would then develop draft legislation for implementation of the Convention. Several persons with experience in drafting environmental legislation have indicated to the Secretariat their willingness to act as consultants to Parties in need of technical assistance.

The Secretariat would be pleased to receive the names of other qualified and experienced persons who would be available for such work.

The Secretariat has received contributions from the World Wide Fund for Nature (WWF) and the United Kingdom for a pilot programme in this area of technical assistance. As a result, the Secretariat has hired a consultant to develop national legislation for CITES implementation in Guyana, a Party that has requested such assistance in the past. The Secretariat has recommended that, in the future, Parties whose national legislation generally does not meet the requirements for CITES implementation (category 3) should be considered the highest priority to receive such assistance.

The Secretariat has also proposed that at least a part of the funding for technical assistance to the Parties should not depend on external sources, but should be included in the budget of the Trust Fund for 1996-1997.

5. Uses of the analyses for purposes other than those indicated in Resolution Conf. 8.4

Except where little or no information on national legislation is available, the analyses will be useful to Parties seeking knowledge about the provisions of national laws in other countries to regulate trade in specimens of CITES-listed species. Importing Parties can refer to the analyses when seeking information about the legality of exports from other Parties. Some Parties have national legislation that includes penalties for violations of foreign law by their citizens. Enforcement authorities of these Parties can refer to the analyses for information about laws in other countries that might apply to their investigations. The Parties are urged to use the analyses for these purposes. When necessary, copies of legislation can then be obtained from the Management Authorities of the Parties concerned, or from the ELC or TRAFFIC USA.

Article VIII, paragraph 7(b), of the Convention states that each Party shall transmit to the Secretariat a biennial report on legislative, regulatory, and administrative measures taken to enforce the provisions of the present Convention. Because this requirement has not, for the most part, been implemented by the Parties, it has often been difficult for the Secretariat to obtain current information on national legislation for implementation of the Convention. The Secretariat intends to stress again to the Parties, as it did in Notification to the Parties No. 716 of 21 December 1992, the importance of this obligation, and to request that all Parties submit their biennial reports, which should contain information on any recent changes in legislation concerning the implementation of CITES.

The Secretariat will not distribute copies of all the analyses to all Parties. To do so would be of questionable usefulness and would be expensive in the costs of paper, copying and postage. Furthermore, each analysis is written only in the language of the Convention most appropriate for the Party concerned. However, specific analyses will be made available to the Parties upon request, once they are finalized. The Secretariat will be providing further information in this regard in a forthcoming Notification.

Provisional Classifications of the National Legislation for Implementation of the Convention
in 81 Parties to the Convention and the European Union

| Country | Analysis by | Country | Analysis by |
|------------------------------|-------------|-----------------------------------|-------------|
| Argentina (2) | TRAFFIC | Malta (1) | ELC |
| Australia (1) | TRAFFIC | Mauritius (2) | ELC |
| Bangladesh (2) | TRAFFIC | Mexico** (3) | TRAFFIC |
| Belgium (1) | ELC | Namibia*/** (2) | ELC |
| Bolivia (3) | TRAFFIC | Nepal (3) | TRAFFIC |
| Botswana (2) | ELC | Netherlands (1) | ELC |
| Brazil (2) | TRAFFIC | New Zealand (1) | TRAFFIC |
| Cameroon (2) | ELC | Nicaragua (3) | TRAFFIC |
| Canada (1) | TRAFFIC | Nigeria (2) | ELC |
| Central African Republic (3) | ELC | Norway (1) | ELC |
| Chile (2) | TRAFFIC | Pakistan** (3) | TRAFFIC |
| China (2) | TRAFFIC | Panama** (3) | TRAFFIC |
| Colombia (2) | TRAFFIC | Papua New Guinea** (2) | TRAFFIC |
| Congo** (2) | ELC | Paraguay** (2) | TRAFFIC |
| Cuba (2) | TRAFFIC | Peru** (2) | TRAFFIC |
| Czech Republic (2) | ELC | Philippines (3) | TRAFFIC |
| Denmark (1) | ELC | Poland (3) | ELC |
| Dominican Republic (3) | TRAFFIC | Portugal (1) | ELC |
| European Union*** (1) | ELC | Russian Federation (2) | ELC |
| Egypt* (3) | ELC | Rwanda** (3) | ELC |
| El Salvador (3) | TRAFFIC | Senegal (3) | ELC |
| Equatorial Guinea (2) | ELC | Seychelles (3) | ELC |
| Estonia*/** (2) | ELC | Singapore (2) | TRAFFIC |
| France (1) | ELC | Slovakia* (3) | ELC |
| France - French Guiana (1) | ELC | South Africa (2) | ELC |
| Gabon (3) | ELC | Spain (2) | ELC |
| Germany (1) | ELC | Sri Lanka** (3) | TRAFFIC |
| Ghana (3) | ELC | Sudan*/** (2) | ELC |
| Greece*/** (3) | ELC | Suriname (2) | TRAFFIC |
| Guatemala** (3) | TRAFFIC | Switzerland (1) | ELC |
| Guyana (3) | TRAFFIC | Tanzania, United Republic of (2) | ELC |
| Honduras (3) | TRAFFIC | Thailand (2) | TRAFFIC |
| Hungary (2) | ELC | Togo (2) | ELC |
| India** (2) | TRAFFIC | Uganda (3) | ELC |
| Indonesia (3) | TRAFFIC | United Arab Emirates (3) | TRAFFIC |
| Israel (2) | TRAFFIC | United Kingdom (1) | ELC |
| Italy** (1) | ELC | United Kingdom - Hong Kong (2) | TRAFFIC |
| Japan (2) | TRAFFIC | United States of America (US) (1) | TRAFFIC |
| Kenya (2) | ELC | US - Commonwealth and Terr. (1) | TRAFFIC |
| Madagascar (2) | ELC | Venezuela (2) | TRAFFIC |
| Malawi** (2) | ELC | Zaire** (3) | ELC |
| Malaysia - Peninsular (2) | TRAFFIC | Zambia (2) | ELC |
| Malaysia - Sabah** (3) | TRAFFIC | Zimbabwe** (2) | ELC |
| Malaysia - Sarawak (2) | TRAFFIC | | |

- (1) Legislation is believed generally to meet the requirements for the implementation of CITES.
(2) Legislation is believed not to meet all the requirements for the implementation of CITES.
(3) Legislation is believed generally not to meet the requirements for the implementation of CITES.

* Insufficient information available to complete an accurate analysis.

** No comments received from the Management Authority.

*** Not a Party.

Proposed Decisions of the Conference of the Parties Regarding Steps to be Taken by the Parties
and by the Secretariat to Further Implement Resolution Conf. 8.4

THE CONFERENCE OF THE PARTIES TO THE
CONVENTION

1. RECOMMENDS that the following actions be taken by each Party named in Annex 1 of document Doc. 9.24 (Rev.), followed by a "(3)"; that is, a Party whose national legislation is believed generally not to meet the requirements for the implementation of CITES.
 - a) The Party concerned should:
 - i) take all necessary measures to develop national legislation for implementation of CITES and to ensure that this legislation will be in effect by the tenth meeting of the Conference of the Parties; and
 - ii) report to the Secretariat any progress made in this regard no later than six months before that meeting.
 - b) If the Party concerned believes that the Secretariat's current analysis of legislation is not accurate, it should, by 15 January 1995, provide to the Secretariat:
 - i) copies of all relevant legislation not referred to in the analysis and, where applicable, a translation of this legislation into one of the three languages of the Convention; and
 - ii) its comments as to how such legislation applies to the implementation of CITES.
 - c) Notwithstanding the new information provided by the Party, paragraph 1.a) should apply until the Party receives different advice from the Secretariat.
2. DECIDES that, with respect to Parties that have not taken positive steps to implement these recommendations, the Conference of the Parties at its tenth meeting shall consider appropriate measures, which may include restrictions on the commercial trade in specimens of CITES-listed species to or from such Parties.
3. RECOMMENDS that the following actions be taken by any Party named in Annex 1 of document Doc. 9.24 (Rev.), followed by a "(2)"; that is, a Party whose national legislation is believed not to meet all requirements for implementation of CITES, while needing additional legislation.
 - a) The Party concerned should:
 - i) take steps to improve its national legislation for implementation of CITES in the areas of weakness indicated in the analysis; and
 - ii) report to the Secretariat any progress made in this regard no later than six months before the tenth meeting of the Conference of the Parties.
 - b) If the Party concerned believes that the Secretariat's analysis of legislation is not accurate, it should, by 15 January 1995, provide to the Secretariat:
 - i) copies of all relevant legislation not referred to in the analysis and, where applicable, a translation of this legislation into one of the three languages of the Convention; and
 - ii) its comments as to how such legislation applies to the implementation of CITES.
 - c) Notwithstanding the new information provided by the Party, paragraph 3.a) should apply unless the Party is advised by the Secretariat that its legislation is believed to generally meet requirements for CITES implementation (category 1).
4. DECIDES that the Parties should make greater efforts to provide to the Secretariat the biennial reports required under Article VIII, paragraph 7 (b), of the Convention, NOTING in particular the importance of information on changes that have occurred with regard to national legislation for implementation of CITES.
5. DIRECTS the Secretariat to:
 - a) consider any new information on legislation for implementation of CITES received by 15 January 1995 from the Parties indicated in Annex 1 of document Doc. 9.24 (Rev.) and, in consultation with the ELC and with TRAFFIC USA, to amend the analyses of legislation and the ratings accordingly;
 - b) advise the Parties concerned of any amendments to the analyses of their legislation and to their ratings and, as a result, of any changes regarding actions that they should take concerning the recommendations in paragraphs 1.a) and 3.a) of document Doc. 9.24 (Rev.) Annex 2;
 - c) provide technical assistance to Parties requesting assistance in the development of their national legislation for CITES implementation, giving priority to those Parties identified in Annex 1 of document Doc. 9.24 (Rev.) believed to have national legislation that generally does not meet the requirements for implementation of CITES (category 3);
 - d) develop, in 1995, analyses of legislation of the Parties to the Convention not named in Annex 1 of document Doc. 9.24 (Rev.);
 - e) keep current analyses of legislation, using the information from biennial reports required under Article VIII, paragraph 7(b), of the Convention and other relevant information that becomes available;
 - f) report to the tenth meeting of the Conference of the Parties:
 - i) the measures taken by the Parties concerned to implement the recommendations in paragraphs 1 and 3 of document Doc. 9.24 (Rev.) Annex 2, and any recommendations for Parties that have not taken positive steps in this regard;
 - ii) the progress concerning technical assistance provided to the Parties in the development of their national legislation for implementation of CITES; and
 - iii) the conclusions of the analyses of legislation begun in 1995 for Parties not named in Annex 1 of document Doc. 9.24 (Rev.); and
 - g) implement as far as possible directives a), c), d) and e), using funds from the budget of the Trust Fund, as follows:
 - i) in 1995, from line item 2103, Species in Legislation (document Doc. 8.9); and
 - ii) in 1996 and 1997, from line item 2103, CITES Implementation Legislation (document Doc. 9.10).

Interpretation and Implementation of the Convention

ENFORCEMENT OF THE CONVENTION

This document is submitted by the United Kingdom of Great Britain and Northern Ireland.

1. The Standing Committee, at its 31st meeting, in March 1994, endorsed a recommendation from the Secretariat that the Parties do not proceed with the establishment of a Law Enforcement Network as proposed in Notification to the Parties No. 776 of 23 November 1993. The Secretariat reported mixed reactions from the Parties to establishment of a new, separate mechanism within CITES dealing with enforcement matters, and the Standing Committee recognized that the exploitation of existing intergovernmental enforcement mechanisms offered a more productive way forward.
2. The Standing Committee acknowledged the work already undertaken by the Secretariat through liaison with enforcement bodies but concluded that enforcement issues should be discussed further at the ninth meeting of the Conference of the Parties. The Committee endorsed a proposal from the United Kingdom that:
 - a) a representative of the Customs Co-operation Council should be invited to the meeting;
 - b) where possible, Parties should include enforcement experts in their delegations; and

- c) a working group should be established at the start of the meeting, under the auspices of Committee II, to prepare recommendations for consideration by the Parties before the end of the meeting for an inexpensive and effective means of improving enforcement of the Convention.

3. With the assistance of other Parties and the Secretariat, the United Kingdom has prepared the attached draft resolution to serve as both a framework for the working group's discussions and the basis of a resolution to be drafted by the group containing specific proposals for implementing the objectives set out after the preamble.

Note from the Secretariat

The Secretariat fully recognizing the importance of enforcement activities, is actively involved to some degree in many of the activities that are covered by the attached draft resolution and those noted in document Doc. 9.25.1. The Secretariat welcomes the submission by the Parties of any further initiatives that might assist in enforcement of the Convention, providing that, where necessary, adequate funds are made available for their implementation. The Secretariat is prepared to participate in any discussion on this subject. Please refer also to Secretariat's notes on document Doc. 9.25.1.

Doc. 9.25 Annex

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Enforcement of the Convention

RECALLING that Article VIII, paragraph 1, of the Convention provides that the Parties shall take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof;

MINDFUL that many of the threats to diminishing species stem from difficulties in achieving adequate enforcement of CITES provisions;

CONSCIOUS of the need to make recommendations for improving the effectiveness of the Convention as specified in Article XI, paragraph 3(e);

RECALLING Resolution Conf. 3.10, adopted at the third meeting of the Conference of the Parties (New Delhi, 1981), which recommended that Parties should include information on seizures of specimens in their annual reports under Article VIII, paragraph 7, of the Convention;

RECALLING Resolution Conf. 6.3 on the Implementation of CITES, adopted at the sixth meeting of the Conference of the Parties (Ottawa, 1987), which recognized the problems faced by producer countries in implementing controls when application of CITES requirements by importing countries was variable;

RECALLING also Resolution Conf. 7.5, adopted at the seventh meeting of the Conference of the Parties (Lausanne, 1989), on Enforcement of the Convention;

RECALLING that, in Resolution Conf. 8.4, adopted at the eighth meeting of the Conference of the Parties (Kyoto, 1992), the Parties urged the adoption of appropriate domestic measures to implement the Convention fully, and directed the Secretariat to report on such measures to the ninth meeting of the Conference of the Parties;

RECOGNIZING that the Secretariat's Notification to the Parties No. 776 of 23 November 1993, on the establishment of a Law Enforcement Network, received mixed reactions from the Parties;

OBSERVING, nonetheless, that the proposal led to the adoption of a new resolution on law enforcement co-operation at an Asian Regional Meeting (Jerusalem, March 1994), and to the submission of a paper (Doc. SC.31.13.1) suggesting an Alternative Approach to Enforcement Issues at the 31st meeting of the Standing Committee (Geneva, March 1994);

WELCOMING the progress of inter-governmental negotiations on the draft Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna;

CONSCIOUS of the enforcement role provided for the Secretariat by Article XIII of the Convention, and of the measures that the Secretariat has taken with Interpol and the Customs Co-operation Council to facilitate the exchange of information between enforcement bodies and for training purposes;

CONSIDERING that Management Authorities and the Secretariat should make the maximum use of existing inter-governmental enforcement mechanisms and resources;

THE CONFERENCE OF THE PARTIES TO THE
CONVENTION

AGREES on the need for further measures to improve the enforcement of the Convention;

RECOMMENDS that the Parties take action to:

- a) ensure, at national level, closer co-ordination between responsible agencies including Customs and Police, other enforcement agencies, and Management Authorities by, for example, arranging training activities and joint meetings, distributing information, and forming wildlife teams;
- b) exploit reliable non-state sources of information for enforcement purposes, particularly the TRAFFIC network, while maintaining standards or obligations for confidentiality;
- c) pursue closer international liaison between the Convention's institutions, national enforcement agencies, and existing intergovernmental enforcement bodies, particularly the Customs Co-operation Council (CCC) and Interpol; and
- d) address and support the need for regional enforcement agreements, such as the draft Lusaka Agreement, and regional enforcement meetings;

DIRECTS the Secretariat to:

- a) encourage existing intergovernmental bodies to take more responsibility to assist Parties to enforce the Convention;
- b) promote an action-oriented approach for responding internationally to major problems, such as illegal trade in ivory, rhinoceros horn or tiger specimens through information gathering and analysis, advice to the Parties, and liaison with national and international enforcement bodies; and
- c) address the enforcement needs of producer and consumer countries through advice to the Parties and by assisting in activities such as co-operation with the CCC and Interpol, training programmes, and organization of regional enforcement meetings; and

URGES the Parties and the Secretariat, where necessary, to seek additional financial support towards enforcement of the Convention from existing or new, national or international sources.

Interpretation and Implementation of the Convention

Enforcement of the Convention

LAW ENFORCEMENT CONSULTATIVE GROUP

The attached draft resolution has been prepared and submitted by Ghana.

Notes of the Secretariat

1. The Secretariat has to date not supported the formation of a Law Enforcement Group. However, please refer to the note on document Doc. 9.25.
2. The reference in the eighth paragraph of the preamble of the draft resolution to Resolution Conf. 6.10 does not

appear relevant to the text of the paragraph. Moreover the Plants Committee has not in fact discussed trade in rhinoceros horn.

3. Resolution Conf. 6.1 resolves that when working groups are established, they should have specific terms of reference and a defined lifespan. The draft resolution does not provide either.

Doc. 9.25.1 Annex

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Law Enforcement Consultative Group

RECALLING that Article VIII requires all Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof;

RECALLING Resolution Conf. 7.5, adopted at the seventh meeting of the Conference of the Parties (Lausanne, 1989), which express the Parties' conviction that enforcement of the Convention must be a constant concern to the Parties if the objectives of the Convention are to be fulfilled;

RECOGNIZING that all wildlife management requires effective enforcement of restrictions to ensure its success and also requires controls on trade in species listed in the appendices of CITES to be strictly enforced;

NOTING that the treaty is seriously undermined by a lack of implementation and enforcement of its provisions in many countries;

ACKNOWLEDGING that despite measures taken under CITES, some species have continued to decline in the wild due to lack of enforcement of CITES provisions and recommendations, primarily in wildlife consuming nations;

NOTING that consuming countries often have greater resources for enforcement and should be responsible for curtailing the demand for illegal trade that they create;

RECOGNIZING that increasingly border controls are being relaxed due to trade agreements in many regions, which will considerably reduce the ability to police wildlife traffic at borders;

RECALLING Resolution Conf. 6.10, adopted at the sixth meeting of the Conference of the Parties (Ottawa, 1987), which called upon Parties to take domestic measures to assist on implementation of the treaty and that the Standing Committee, Animals Committee and Plants Committee have further pursued these issues;

NOTING that some progress has been made as a result of these efforts;

RECOGNIZING that the Animals and Plants Committees at their ninth and fourth meetings, respectively, both endorsed a resolution to form a Law Enforcement Consultative Group to assist the Parties on matters regarding enforcement;

BELIEVING that a substantial number of Parties have not taken the appropriate measures to enforce the Convention;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

URGES that all Parties

- a) review the adequacy of their domestic legislation for enforcing the requirements of the treaty in a practical manner, considering such areas as domestic sales of Appendix-I species and amend domestic legislation, where necessary, to achieve the goals of the treaty;
- b) review the adequacy of current penalties for deterring wildlife trade violations;
- c) review the adequacy of resources and training of enforcement agents to deal with the complexities of international wildlife crime;
- d) consider the formation of specialized units to enforce wildlife legislation;
- e) take measures to remedy problems identified in these reviews; and
- f) fully participate in international co-operative enforcement efforts; and

DECIDES that a Law Enforcement Consultative Group shall be formed under the Standing Committee, as proposed by the Animals and Plants Committees, to be funded from external sources.