

RECOMMENDATIONS

COMMISSION

COMMISSION RECOMMENDATION

of 13 June 2007

identifying a set of actions for the enforcement of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein*(notified under document number C(2007) 2551)*

(2007/425/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

Whereas:

- (1) Illegal trade in specimens of species included in Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein ⁽¹⁾ implementing the Convention on International Trade in Endangered Species of Wild Flora and Fauna (hereinafter CITES) causes serious damage to wildlife resources, reduces the effectiveness of wildlife management programmes, undermines legal, sustainable trade and threatens sustainable development particularly in the developing economies of many producing countries.
- (2) Addressing the root causes of illegal wildlife trade is important in order to underpin enforcement efforts.
- (3) In accordance with Article 14 of Regulation (EC) No 338/97, the Member States shall take appropriate steps to ensure compliance with, and enforcement of Regulation (EC) No 338/97 and where necessary, to instigate legal action.
- (4) In accordance with Article 15 of Regulation (EC) No 338/97, the Member States and the Commission must ensure that the necessary steps are taken to make the public aware and inform it of the provisions regarding implementation of CITES and of the Regulation.
- (5) In accordance with Article 16 of Regulation (EC) No 338/97 Member States must ensure the imposition of sanctions for infringements thereof that are appropriate to their nature and gravity.
- (6) According to settled case law of the Court of Justice, it is the responsibility of the Member States to ensure that penalties for infringements of Community law are effective, dissuasive and proportionate.
- (7) In accordance with Article 10 of the EC Treaty, co-ordination and co-operation amongst Member States and their authorities is essential to ensure the effective enforcement of Regulation (EC) No 338/97.
- (8) Application of Regulation (EC) No 338/97 requires international co-operation, which is also fundamental to fulfilling the objectives of CITES.
- (9) The Commission Study on Enforcement of the EU Wildlife Trade Regulations in the EU-25, published in November 2006, recognises the need to identify priority areas for coordinated work and to develop a set of common guidelines to facilitate the application of Regulation (EC) No 338/97.
- (10) In its December 2006 conclusions on halting the loss of biodiversity ⁽²⁾, the Council calls upon the Member States to reinforce efforts to combat illegal trade in CITES listed species and calls upon Member States and the Commission to strengthen a coordinated response and actions for the enforcement of CITES.

⁽¹⁾ OJ L 61, 3.3.1997, p. 1. Regulation as last amended by Commission Regulation (EC) No 1332/2005 (OJ L 215, 19.8.2005, p. 1).

⁽²⁾ 2773rd Environment Council meeting on 18 December 2006.

(11) The set of actions set out in this Recommendation reflects discussions held in the context of the Enforcement Group set up under Article 14 of Regulation (EC) No 338/97 and of the Committee on Trade in Wild Fauna and Flora, established under Article 18 of the same Regulation,

HEREBY RECOMMENDS:

I. Actions identified by this Recommendation should be carried out by Member States in order to facilitate the enforcement of Regulation (EC) No 338/97.

II. In order to increase enforcement capacity, Member States should take the following actions:

- (a) adopting national action plans for coordination of enforcement; these should have clearly defined objectives and time frames, and should be harmonised and reviewed on a regular basis;
- (b) ensuring that all relevant enforcement agencies have adequate financial and personnel resources for the enforcement of Regulation (EC) No 338/97 and that they have access to specialized equipment and relevant expertise;
- (c) ensuring that penalties for infringements of Regulation (EC) No 338/97 act as a deterrent against wildlife trade crime, in accordance with settled case law of the Court of Justice, are consistent as to their application and, in particular, that they take into account inter alia the market value of the specimens, the conservation value of the species involved in the offence and the costs incurred;
- (d) for the purpose of point (c), carrying out training or awareness raising activities for enforcement agencies, prosecution services and the judiciary;
- (e) ensuring that all relevant enforcement agencies have access to adequate training on Regulation (EC) No 338/97 and on identification of species;
- (f) ensuring the provision of adequate information to the public and stakeholders with a view, in particular, to raising awareness about the negative impacts of illegal wildlife trade;

(g) in addition to the checks at border-crossing points required under Regulation (EC) No 338/97, ensuring in-country enforcement, in particular through regular checks on traders and holders such as pet shops, breeders and nurseries;

(h) using risk and intelligence assessments systematically in order to ensure thorough checks at border-crossing points as well as in-country;

(i) ensuring that facilities are available for the temporary care of seized or confiscated live specimens and mechanisms are in place for their long-term rehoming, where necessary.

III. In order to increase co-operation and information exchange, Member States should take the following actions:

- (a) establishing procedures for co-ordinating enforcement among all their relevant national authorities through, inter alia, the establishment of inter-agency committees as well as memoranda of understanding and other inter-institutional cooperation agreements;
- (b) facilitating access for relevant enforcement officers to existing resources, tools and channels of communication for the exchange of information relating to the enforcement of Regulation (EC) No 338/97 and CITES, so that all relevant information is made available to enforcement officers at all levels, including front line staff;
- (c) appointing national focal points for the exchange of wildlife trade information and intelligence;
- (d) sharing relevant information about significant trends, seizures and court cases at the regular meetings of the Enforcement Group as well as intersessionally;
- (e) co-operating with relevant enforcement agencies in other Member States on investigations of offences under Regulation (EC) No 338/97;
- (f) using the means of communication, coordination and know-how of the European Anti-fraud Office in co-ordinating investigations at Community level;
- (g) exchanging information on penalties for wildlife trade offences to ensure consistency in application;

- (h) assisting in capacity building for application of the Regulation (EC) No 338/97 in other Member States including through training programmes and by sharing training manuals and materials;
- (i) making available to other Member States, existing awareness-raising tools and materials aimed at the public and stakeholders;
- (j) assisting other Member States with the temporary care and long-term re-homing of seized or confiscated live specimens;
- (k) liaising closely with CITES Management Authorities and law enforcement agencies in source, transit and consumer countries outside of the Community as well as the CITES Secretariat, ICPO Interpol and the World Customs Organization to help detect, deter and prevent illegal trade in wildlife through the exchange of information and intelligence;
- (l) providing advice and support to CITES Management Authorities and law enforcement agencies in source, transit and consumer countries outside of the Community to facilitate legal and sustainable trade through correct application of procedures;
- (m) supporting capacity-building programmes in third countries in order to improve implementation and enforcement of CITES, inter alia, through Development Co-operation funds and in the framework of a future 'Aid for Trade Strategy' ⁽¹⁾;
- (n) fostering inter-regional collaboration to combat illegal wildlife trade inter alia by building links with other regional and sub-regional initiatives.
- IV. Information concerning the measures taken on the basis of this Recommendation should be transmitted to the Commission at the same time as the information referred to in Article 15(4)(c) of Regulation (EC) No 338/97.

Done at Brussels, 13 June 2007.

For the Commission
Stavros DIMAS
Member of the Commission

⁽¹⁾ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Towards an EU Aid for Trade strategy — the Commission's contribution (COM(2007) 163 final).