

Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

The Manual was published by Earthscan/Routledge from 2010 to 2012. It was designed as an on-line interactive reference work and annual printed versions were also produced.

This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
- The sections include links to external websites (e.g. to legal texts). These links continue to work as long as those links are not broken by those websites.
- The sections also include the original links that enabled interactivity within the published on-line version of the Manual. These links no longer work.

© Copyright IEEP 2014

The Manual should be cited as follows:

Farmer, A.M. (2012) (Editor). Manual of European Environmental Policy. 1043pp. Routledge, London.

Trade in endangered species (CITES)

Note: Regulation (EC) No 338/97 has been amended several times (see Table 1), and repealed the previous Regulation (EEC) No [3626/82](#) and a number of amending Regulations listed in Table 2. Regulation (EC) No [1808/2001](#) (OJ L 250 19.09.2001) repealed the previous implementing Regulation (EC) No [939/97](#) (OJ L140 30.05.1997) and a number of amending Regulations listed in Table 3. Regulation (EC) No 1808/2001 was then repealed and replaced by Regulation (EC) No [865/2006](#).

Formal references	
Regulation (EC) No 338/97 (OJ L61 3.3.1997)	Council Regulation on the protection of species of wild fauna and flora by regulating trade therein
Proposed 6.12.91 – COM(91)448	
Amended by	See Table 1 below
Legal base (current Regulation)	Article 192 TFEU (originally Article 130s EEC Treaty)
Implementing Regulation	
Regulation (EC) No 865/2006 (OJ L166 19.6.2006)	Commission Regulation laying down detailed rules
Amended by	
Regulation (EC) No 100/2008 (OJ L31 5.2.2008)	
Regulation (EU) No 828/2011 (OJ L211 , 18.08.2011)	Commission Implementing Regulation suspending the introduction into the Union of specimens of certain species of wild fauna and flora
Binding dates	
Regulation (EC) No 338/97	
Entered into force	1 June 1997

Purpose of the Regulation

The Regulation is primarily intended to ensure compliance within the EU of The Convention on International Trade in Endangered Species of Flora and Fauna (CITES). CITES, which was drawn up in March 1973, and aims to protect endangered species of fauna and flora through controls on international trade in those species. Although all EU Member States are parties to CITES and the EU is not, CITES is implemented at an EU level and not individually by each Member States for the following reasons:

- The Community's exclusive competence over external trade.
- The absence of systematic border controls within the EU as a result of the customs union.
- The Community policy on the environment and legislation on the protection and conservation of the Community's indigenous species.

All the requirements of CITES are included in the Regulation to ensure a consistent application throughout the EU. In addition, the Regulation contains obligations beyond those required by CITES, for example, it controls trade in certain species not listed by CITES.

Summary of Regulation

Regulation (EEC) No 3626/82 and its amending Regulations implemented the [CITES Convention](#) within the EU until June 1997 when it was repealed and replaced by Regulation (EC) No 338/97 (and supporting Regulations). The new Regulation was deemed necessary because of the continued evolution of The Convention, changes in national legislation within the expanding EU and the need to adapt to the reduced control of trade between Member States that resulted from the Single European Act.

The new Regulation (EC) No 338/97 implements The Convention by prohibiting commercial trade in the most endangered species threatened with extinction and by establishing a licensing system to be applied to trade in other species, which although not currently endangered, might become so without Regulation of trade. Permits and certificates for imports and exports are to be issued by competent authorities in each Member State, and the names of such authorities are to be communicated to the Commission.

Following the CITES model, the system of controls revolves around four Annexes. Annex A is equivalent to Appendix I of The Convention listing a number of species under threat of extinction which are, or may be, affected by trade. There is a presumption against trade in these species and only in very limited circumstances will it be permitted. The import of Annex A species requires an export certificate from the country of consignment issued in accordance with The Convention, an import permit issued by the management authority of the Member State of destination, and, in the case of live specimens, proof that the intended accommodation at the place of destination is adequate to conserve and care for the specimen.

Similarly Annex B relates to Appendix II of The Convention and lists species that may be threatened with extinction unless trade in them is subject to very strict control. Imports of these species to the EU need an export and import permit to confirm that no detrimental impact on the conservation status of the species or the extent of its territory will occur, as well as evidence of the adequacy of accommodation for any live specimen. Annex C lists species for which trade is regulated by domestic legislation in any Party to The Convention, and for which international cooperation in regulating trade is considered necessary. The import of Annex C species requires an export permit compliant with The Convention, as well as an import notification. Annex D is particular to the EU and lists species in which trade must be monitored in order to establish whether tighter restrictions on trade are required. The import of such species requires an import declaration issued by the border customs office.

The Annexes contain some species not included in CITES. This is one of the many innovations made by Regulation (EC) No 338/97. Others include: mandatory sanctions for those who break the law; the establishment of an Enforcement Group to answer technical questions concerning enforcement and to report to the main Committee on Trade in Wild Flora and Fauna; and the establishment of a Scientific Review Group to ensure better scientific coordination and preparation of measures under the Regulation.

The Regulation establishes derogations for specimens born and bred in captivity or artificially propagated, for specimens in transit and for specimens forming part of personal and household effects or destined for scientific institutions.

Development of the Regulation

Regulation (EEC) No 3626/82 came into force on 31 December 1982 (though Articles 1–17 only applied from 1 January 1984). Subsequently the Wildlife Trade Monitoring Unit of International Union for the Conservation of Nature (IUCN) produced a report in 1988 on the implementation of the Regulation in all Member States and, on the basis of this report, the Commission developed proposals to strengthen the Regulation.

In November 1991, the Commission proposed a replacement Regulation, (COM(91)448), to correct shortcomings in Regulation (EEC) No 3626/82 and adapt it to new circumstances, particularly the completion of the internal market. The proposed Regulation contained provisions both to extend the lists of species in which trade would be controlled and to tighten the controls. The draft Regulation was subsequently changed to take account of amendments proposed by the European Parliament and the Economic and Social Committee. Amongst other changes, the amended proposals, (COM(93)599) (21.1.94) and (COM(96)517) (30.10.96), revised criteria for species to be included in Annexes A and B, thereby reducing the number of species listed.

Two further Commission Regulations, (EC) No [938/97](#) and (EC) No 939/97 were adopted in conjunction with Regulation (EC) No 338/97. Regulation (EC) No 938/97 provided for the adoption of a list of species to be contained in Annex D. Regulation (EC) No 939/97 (now replaced – see below) laid down detailed rules providing for the implementation of Council Regulation (EC) No 338/97. The Regulations (EC) No 338/97 and (EC) No 939/97 together fully implemented The Convention and its provisions within the EU. Over time these Regulations have been supplemented by Commission implementation Regulations which update Regulation (EC) No 338/97 in response to the resolutions of the Conferences of Contracting Parties (see Table 1).

Table 1. Commission Regulations amending Regulation (EC) No 338/97

Regulation (EC) No 938/97 OJ L140 30.05.1997
Regulation (EC) No 2307/97 OJ L325 27.11.1997
Regulation (EC) No 2214/98 OJ L279 16.10.98
Regulation (EC) No 1476/1999 OJ L171 7.7.1999
Regulation (EC) No 2724/2000 OJ L320 18.12.2000
Regulation (EC) No 1579/2001 OJ L209 2.8.2001
Regulation (EC) No 2476/2001 OJ L334 18.12.2001
Regulation (EC) No 1497/2003 OJ L215 27.8.2003
Regulation (EC) No 834/2004 OJ L127 29.4.2004
Regulation (EC) No 1332/2005 OJ L 215 19.8.2005
Regulation (EC) No 318/2008 OJ L 95 8.4.2008
Regulation (EC) No 398/2009 OJ L 126 21.5.2009
Regulation (EC) No 407/2009 OJ L 123 19.5.2009
Regulation (EC) No 709/2010 OJ L 212 12.8.2010

Table 2. Regulations revoked and repealed by Regulation (EC) No 338/97

Council Regulation (EEC) No 3626/82
Council Regulation (EEC) No 3645/83
Council Regulation (EEC) No 1831/85
Commission Regulation (EEC) No 3418/83
Commission Regulation (EEC) No 3646/83
Commission Regulation (EEC) No 577/84
Commission Regulation (EEC) No 1451/84
Commission Regulation (EEC) No 1452/84
Commission Regulation (EEC) No 2384/85
Commission Regulation (EEC) No 2295/86
Council Regulation (EEC) No 1422/87
Commission Regulation (EEC) No 1540/87
Commission Regulation (EEC) No 3143/87 OJ L299 02.10.87
Commission Regulation (EEC) No 869/88
Commission Regulation (EEC) No 3188/88
Commission Regulation (EEC) No 610/89
Commission Regulation (EEC) No 197/90 OJ L29 31.01.90
Commission Regulation (EEC) No 3675/91
Commission Regulation (EEC) No 1970/92
Commission Regulation (EEC) No 1534/93
Commission Regulation (EC) No 558/95
<p>There were four Council Regulations and seventeen Commission Regulations that amended Regulation (EC) No 3626/97, all of which were revoked and repealed by Regulation (EC) No 338/97.</p>

Table 3. Commission Regulations revoked and repealed by Regulation (EC) No 1808/2001

Regulation (EC) No 767/98
Regulation (EC) No 1006/98
<p>There were two Commission Regulations that amended Regulation (EC) No 939/97, both were repealed and revoked by Regulation (EC) No 1808/2001.</p>

Table 4. Commission Regulations suspending the introduction into the Community of specimens of certain species of wild fauna and flora

Regulation (EC) No 2551/97
Regulation (EC) No 2473/98
Regulation (EC) No 1968/99 OJ L244 16.9.1999
Regulation (EC) No 1988/2000
Regulation (EC) No 191/2001

Regulation (EC) No 2087/2001
Regulation (EC) No 349/2003
Regulation (EC) No 776/2004
Regulation (EC) No 252/2005
Regulation (EC) No 811/2008
Regulation (EC) No 359/2009

Article 4(6) of Regulation (EC) No 338/97 requires quarterly revision of restrictions on the introduction into the Community of specimens of certain species of wild fauna and flora which are considered to be traded at unsustainable rates, are a threat to indigenous species, suffer excessive mortality during transport, or unlikely to survive in captivity. In practice, revisions take place only every 7/8 months (see Table 4). Species are added or removed from the list of those under import suspension on the basis of advice from the Scientific Review Group. These revised lists allow a faster response to changing conservation needs as the Council is no longer required to take the more technical decisions on the updating of the Regulation. After the accession of the ten new Member States, all pre-existing suspensions in respect of species originating from those Member States were deleted from the list (Regulation (EC) No [252/2005](#)).

Regulation (EC) No 1808/2001 laying down detailed rules on the implementation of Regulation (EC) No 338/97 was adopted by the Commission on 30 August 2001. It repealed and replaced the original Regulation (EC) No 939/97 laying down detailed rules. The new Regulation was adopted in the interests of clarity in order to present details from the original Regulation and any subsequent amendments in one consolidated text.

More recently, Regulation (EC) No 1808/2001 was repealed and replaced by Regulation (EC) No 865/2006, which similarly lays down detailed rules for the implementation of Regulation (EC) No 338/97 and addresses practical aspects of its implementation. It also implements the bulk of currently applicable recommendations of the Conference of the Parties on the interpretation and implementation of CITES provisions.

Regulation (EC) No 865/2006 has been amended by Regulation (EC) No 100/2008, which concerns sample collections and certain formalities relating to the trade in species of wild fauna and flora. Regulation (EC) No 709/2010 adopted in 2010 updates the species annexes in response to the changes made at the 15th session of the Conference of the Parties to The Convention, held in Doha, Qatar, in March 2010. Regulation (EU) [No 828/2011](#) of 17 August 2011 renews the list of species of wild fauna and flora whose introduction into the Union is suspended, introducing some new species and withdrawing the suspension of others, and replacing Regulation (EU) No 997/2010.

Implementation of the Regulation

The original CITES text was amended in 1983 to allow regional economic integration organizations such as the European Community to become parties to The Convention (Gaborone amendment). However, insufficient parties have ratified the amendment for it to enter into force. Accordingly, the Community position at CITES conferences is represented by the EU Member States acting jointly from a position established by the Council.

The effects of the original Regulation (EEC) No 3626/82 in some Member States were mostly of an administrative nature. The Regulation, for instance, empowered the Commission to prescribe the form of the various documents required by CITES and established a system whereby the EC rather than the Member States submit the annual reports to The Convention Secretariat. This was the cause of considerable criticism as it was no longer possible to gain information about trade between EC Member States.

Many of the obligations under Regulation (EC) No 338/97 are much tighter than those of Regulation (EEC) No 3626/82 and the annexes are larger and wider reaching. Member States are now not only required to provide the Commission with information on compliance with The Convention, but also on the provisions of the Regulation that fall outside the requirements of The Convention. The Commission continues to specify the format for presentation of information and submit reports on the EC's behalf to The Convention Secretariat.

Regulation (EC) No 338/97 further affected Member States practice by providing for Commission Regulations to implement the bulk of Resolutions of the Conference of Contracting Parties at EU level rather than requiring national governments to do so.

To support the wildlife trade Regulations Commission Recommendation to the Member States (Recommendation [2007/425/EC](#) identifying a set of actions for the enforcement of Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein) specifies further the measures that should be taken for the enforcement of the Wildlife Trade Regulations.

In general the prevailing view of the Regulations is that they provide a good framework for the implementation of CITES. But nevertheless, a 2007 study of the effectiveness of the trade regulations was initiated by the Commission to investigate some commonly held flaws¹. According to the study, these included the number of licenses required for specimens of species that are commonly in trade (and, in some cases, commonly captive-bred), the paper burden associated with one species over another (which is not always related to conservation priorities) and the complexity of the Regulations (which makes it difficult to decide how to treat non-routine cases), which is exacerbated by differences in interpretation of the Regulations amongst the Member States. It was also considered that this complexity could weaken the effectiveness of the Regulations in conservation terms.

The study therefore consulted with stakeholders on the Regulations and provided recommendations on the following issues that were identified as being of particular concern:

- The legitimacy of treating certain species more strictly in the Regulations than in the Appendices to The Convention (including species that are also protected under Community Directives).
- The appropriateness of the Regulations treating Appendix II species more strictly than is the case in The Convention – or, conversely, whether greater Regulation even of internal trade in such species is required.
- The appropriateness of the level of Regulation of internal trade of Annex A species (which correspond for the most part to Appendix I species).
- The appropriateness of the present regime governing personal and household effects.
- The appropriateness of the Regulations as a means of addressing the problem of invasive alien species.

The study was then followed up by a stakeholder meeting in September 2008, which further discussed the issues of concern and recommendations². The Commission noted that these would be taken into account in subsequent revisions of the regulations and development of guidance. In 2009, the European Commission and TRAFFIC Europe produced a reference guide to EU wildlife trade regulations³ (based on an original 1981 guide).

Further information relating to the implementation and enforcement of CITES and the EC Wildlife Trade Regulations, can be found on the European Commission's website⁴.

Enforcement and court cases

Enforcement of the Regulation has led to three ECJ cases, the rulings of which were as follows:

- [C-344/08](#) (Criminal proceedings against Tomasz Rubach). The Court ruled that Article 8(5) of Regulation (EC) No 338/97 ‘must be interpreted as meaning that, in the context of criminal proceedings brought against a person accused of having infringed that provision, any type of evidence accepted under the procedural law of the Member State concerned in similar proceedings is in principle admissible for the purpose of establishing whether specimens of animal species listed in Annex B to that Regulation were lawfully acquired. In the light also of the principle of the presumption of innocence, such a person may adduce any such evidence to prove that those specimens came lawfully into his possession in accordance with the conditions laid down in that provision’.
- [C-219/07](#) (Nationale Raad van Dierenkwekers en Liefhebbers VZW and Andibel VZW v Belgische Staat). The Court ruled that Articles 28 EC and 30 EC, read separately or in conjunction with Regulation (EC) No 338/97, ‘do not preclude national legislation [...] under which a prohibition on importing, holding or trading in mammals belonging to species other than those expressly referred to in that legislation applies to species of mammals which are not included in Annex A to that Regulation, if the protection of or compliance with the interests and requirements [...] of this judgment cannot be secured just as effectively by measures which obstruct intra-Community trade to a lesser extent. It is for the national court to determine:
 - whether the drawing up of the national list of species of mammals which may be held and subsequent amendments to that list are based on objective and non-discriminatory criteria;
 - whether a procedure enabling interested parties to have species of mammals included in that list is provided for, readily accessible and can be completed within a reasonable time, and whether, where there is a refusal to include a species, it being obligatory to state the reasons for that refusal, that refusal Decision is open to challenge before the courts;
 - whether applications to obtain the inclusion of a species of mammal in that list or to obtain individual derogations to hold specimens of species not included in that list may be refused by the competent administrative authorities only if the holding of specimens of the species concerned poses a genuine risk to the protection of the abovementioned interests and requirements; and
 - whether conditions for the holding of specimens of mammals not referred to in that list, such as those set out in Article 3b is(2)(3)(b) and (6) of the Law of 14 August 1986 concerning the protection and welfare of animals, as amended by the Law of 4 May 1995, are objectively justified and do not go beyond what is

necessary to achieve the objective pursued by the national legislation as a whole’.

- [C-154/02](#) (Criminal proceedings against Jan Nilsson). Articles 2(w) and 8(3)(b) of Regulation (EC) No 338/97, as amended by Regulation (EC) No 2307/97 ‘are to be interpreted as meaning that the animals referred to in Annex A to that Regulation but which have been stuffed fall within the definition of worked specimens for the purposes of those provisions’. Also Article 8(3)(b) ‘is to be interpreted as meaning that receiving specimens as a gift or inheriting them, and killing animals and then taking them into one's possession, makes them acquired within the meaning of that provision. It is not necessary that the person who acquired the specimen more than 50 years previously be the present owner’.

Related legislation

Within the EU the sale and trade of some species is regulated through the [Birds Directive](#) and [Habitats Directive](#). However, it should be noted that the treatment of some species in the Annexes to the Regulations no longer corresponds to their (stricter) treatment under the Birds and Habitats Directives. In all such cases the stricter legislation is the one which must apply.

The trade Regulations are also supported at an EU level by the Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) (see section on [Forestry](#), which sets out measures aimed at combating illegal logging. In particular, it outlines a system of voluntary partnership agreements with exporting countries, aimed at preventing the import of illegally harvested timber from those countries into the EU. While this Action Plan covers all timber that is illegally harvested, including non-CITES species, it should significantly improve transparency in the timber trade sector, and hence improve protection of CITES species.

References

- 1 Ó Críodáin, C (2007) Study on the Effectiveness of the EC Wildlife Trade Regulations. A *TRAFFIC Europe report for the European Commission*, Brussels, Belgium, http://ec.europa.eu/environment/cites/pdf/studies/effectiveness_study.pdf
- 2 European Commission (2008) EC wildlife Trade Regulations – Stakeholder Meeting, *Summary Report*, http://ec.europa.eu/environment/cites/pdf/summary_record.pdf
- 3 European Commission/TRAFFIC Europe (2008) *Reference Guide to the European Community, Wildlife Trade Regulations*. Brussels, Belgium, http://ec.europa.eu/environment/cites/pdf/2007_referenceguide2_en.pdf
- 4 CEC, *CITES*, Commission webpage, http://ec.europa.eu/environment/cites/home_en.htm