



LEGISLATION ON TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

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INTERNATIONAL BACKGROUND

- Convention on the international trade in endangered species of wild flora and fauna
Washington D.C. 1973
- Council Decision (EU) 2015/451 of 6 March 2015 concerning the accession of the European Union to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)



EU LEGISLATION ON TRADE

- CITES
- Seals
- Cetaceans
- Furry animals



EU LEGISLATION

CITES:

- Council Regulation (EC) No **338/97** on the **protection of species of wild fauna and flora by regulating trade therein**, as amended
- Commission Regulation (EC) No 865/2006 laying down **detailed rules** concerning the implementation of Regulation 338/97, as amended
- Commission Implementing Regulation (EU) 2019/1587 of 24 September 2019 **prohibiting the introduction into the Union of specimens of certain species** of wild fauna and flora



REGULATION (EC) No 338/97

4 different protection regimes:

- Annex A - corresponds to Appendix I of CITES
- Annex B - Appendix II of CITES
- Annex C - Appendix III of CITES
- Annex D - contains species which are not listed in CITES Appendices



wider scope than CITES




REGULATION (EC) No 338/97

- **'Specimen'** shall mean any animal or plant, whether *alive or dead*, of the species listed in Annexes A to D, *any part or derivative* thereof, *whether or not contained in other goods*, as well as any other goods which appear from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be or to contain parts or derivatives of animals or plants of those species, unless such parts or derivatives are specifically exempted from the provisions of this Regulation or from the provisions relating to the Annex in which the species concerned is listed by means of an indication to that effect in the Annexes concerned.



ART. 8 OF REGULATION 338/97

- (1) The purchase, offer to purchase, acquisition for **commercial purposes**, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in **Annex A** shall be prohibited.
 - This prohibition shall also apply to specimens of species listed in **Annex B** except where it can be proved that such specimens were acquired in accordance with the legislation in force.
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CASE C – 154/02

The prosecutor indicted Mr Nilsson for the following:


- first, for having in Tyringe (Sweden), in August 1998, unlawfully and either intentionally or recklessly purchased the following mounted specimens: two sparrow hawks, two hobbies, two hen harriers, one Ural owl, four tawny owls, one goshawk, two kestrels, one snowy owl, one hawk owl, one short-eared owl, one barn-owl, one marsh harrier, four buzzards, one long-eared owl, one crane, one golden eagle and one sea-eagle despite the fact that those species are included in Annex A to Council Regulation (EC) No 338/97,
- second, for having in Tyringe, in July 1998, unlawfully and either intentionally or recklessly purchased a mounted brown bear despite the fact that this species is included in Annex A to Council Regulation (EC) No 338/97.

CASE C – 154/02

- Do stuffed animals listed in Annex A [to Regulation No 338/97] fall within the definition of worked specimens?
- What if the worked specimens were acquired more than 50 years previously?
- What does the „acquisition“ mean?
- What if the present owner is not the person who acquired the specimen more than 50 years previously?




ART. 8(3) OF REGULATION 338/97

- **2. Exemption from the prohibitions referred to in paragraph 1 may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis where the specimens:**
 - (a) were acquired in, or were introduced into, the Community before the provisions relating to species listed in Appendix I to the Convention or in Annex C1 to Regulation (EEC) No 3626/82 or in Annex A became applicable to the specimens; or
 - **(b) are worked specimens that were acquired more than 50 years previously; or**
 - (c) were introduced into the Community in compliance with the provisions of this Regulation and are to be used for purposes which are not detrimental to the survival of the species concerned; or
 - (d) are captive-born and bred specimens of an animal species or artificially propagated specimens of a plant species or are parts or derivatives of such specimens; or
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C – 154/02

DEFINITION OF ACQUISITION

- *‘worked specimens that were acquired more than 50 years previously’* shall mean specimens that were significantly altered from their natural raw state for jewellery, adornment, art, utility, or musical instruments, more than 50 years before the entry into force of this Regulation and that have been, to the satisfaction of the management authority of the Member State concerned, acquired in such conditions. Such specimens shall be considered as worked only if they are clearly in one of the aforementioned categories and require no further carving, crafting or manufacture to effect their purpose;
 - purchase of a mounted brown bear in 1998
- 
- exemption from the prohibition – just certificate is needed if the specimen was acquired more than 50 years previously

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REGULATION (EC) No 338/97

- **‘trade’** shall mean the introduction into the Community, including introduction from the sea, and the export and re-export therefrom, as well as the use, movement and transfer of possession within the Community, including within a Member State, of specimens subject to the provisions of this Regulation;
- **‘transit’** shall mean the transport of specimens between two points outside the Community through the territory of the Community which are shipped to a named consignee and during which any interruption in the movement arises only from the arrangements necessitated by this form of traffic;

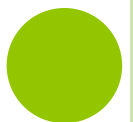


REGULATION (EC) No 338/97

Introduction into the EU of specimens of species listed in **Annex A:**


Import permit must be presented; this permit can be granted when the following conditions have been met :

- **Export permit** or re-export certificate
- Introduction would not have harmful effect on the conservation status of species
- Accommodation for a live specimen is adequately equipped
- The specimen is **not used for primarily commercial purposes**
- The risk of injury, damage to health or cruel treatment will be minimized



REGULATION (EC) No 338/97

Introduction into the EU of specimens of species listed in **Annex B**:

- **Import permit** must be presented; this permit can be granted when the following conditions have been met :
 - Export permit or re-export certificate
 - Introduction would not have harmful effect on the conservation status of species
 - Accommodation for a live specimen is adequately equipped
 - The risk of injury, damage to health or cruel treatment will be minimized
 - The specimen may be used **for commercial purposes!**
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REGULATION (EC) No 338/97

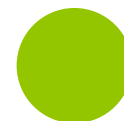
**Introduction into the EU
of specimens of species
listed in **Annex C** :**

At the border customs office at
the point of introduction the
importer must present

- Import notification
- Export permit / re-export certificate / certificate of origin



Sea eagle



REGULATION (EC) No 338/97

Introduction into the EU of specimens of
species listed in **Annex D**

- import notification



Dendrolagus goodfellowi

**IMPLEMENTING REGULATION (EU)
2019/1587 PROHIBITING THE INTRODUCTION
INTO THE UNION OF SPECIMENS OF CERTAIN
SPECIES OF WILD FAUNA AND FLORA**



**Restrictions on the introduction to the
EU - For example:**

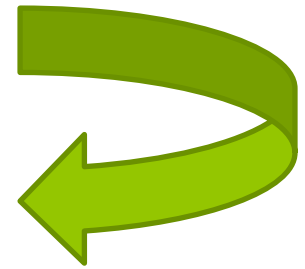
- *Macaca fascicularis* from Laos;
- *Trioceros quadricornis* from Cameroon;
- *Hippocampus algiricus* from Guinea and Senegal;
- *Ornithoptera priamus* from Solomon Islands (wild and ranched specimens) and others.

The introduction into the Union of specimens of the species of wild fauna and flora set out in the Annex to this Regulation from the countries of origin indicated therein is prohibited.

REGULATION (EC) No 338/97

Export or re-export from the EU

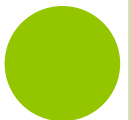
- Export permit/re-export certificate



Conditions:


- No harmful effect on the conservation status
- Specimens were legally obtained
- Risks of injury during the shipment are minimized
- Other requirements are met

Derogations from conditions (Art. 5(6))



REGULATION (EC) No 338/97

○ Derogations (Art. 7)

1. Specimens of Annex A species born and bred in captivity or artificially propagated
  treated as Annex B species
2. Transit
3. Personal and household effects
4. Scientific institutions




REGULATION (EC) No 338/97

- MS have a **duty** to prohibit the purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in **Annex A** → Derogation from the prohibition based on certificate (Art. 8(3))
- The prohibition applies to Annex B species which were not acquired legally → how in the light of presumed innocence, may a keeper of animals listed in Annex B prove satisfactorily that his specimens were acquired in accordance with the legislation? (C- 344/08)

REGULATION (EC) No 338/97

Other requirements

- Movement of live specimens within the EU based on prior authorization (Art. 9)
 - Designation of custom offices with trained staff (Art. 12)
 - Notification/reporting requirements (to the Commission)
 - Duty to designate management authority with primary responsibility for implementation of this Regulation and for communication with the Commission
 - Duty to designate one or more scientific authorities with appropriate qualifications (Art. 13)
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REGULATION (EC) No 338/97

Enforcement

- duty to monitor and ensure compliance
- take appropriate measures to ensure the imposition of sanctions for infringements of the Regulation



- seizure/confiscation of specimens
- refusal to accept the shipment and return of the specimen to its place of departure
- fine
- **illegal trade in endangered species is a crime!**

