

# **EU legislation related to wildlife crime**

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Ludwig Krämer

[Kramer.ludwig@skynet.be](mailto:Kramer.ludwig@skynet.be)

# What is wildlife crime?

**Acts which breach environmental legislation on fauna and flora with a (significant) negative, harming impact on the environment (IPEC-EU Commission)**

**Acts that negatively affect ecological and/or biological systems for the purpose of securing material gains (EFFACE)**

**Comments:**

- wildlife is not limited to animals
- not all breaches of legislation are crimes
- what is significant?
- omission to act

# **EU environmental legislation which indirectly influences wildlife**

- (1) Directives which fight pollution of air, water, soil**
- (2) Directive on environmental liability (better: environmental restoration)**
- (3) Directive on ship-source pollution**
- (4) Directives prohibiting the unauthorised discharge or the dumping of waste**
- (5) Regulations on permitting of chemicals, pesticides and biocides**
- (6) Biotech legislation**
- (7) Directive on sustainable use of pesticides**

# EU legislation to prevent wildlife crime

## Prohibitions

- (1) Birds (directive 2009/147): deliberate killing and capture, destruction of nests or eggs, keeping, disturbance; narrow exceptions**
- (2) Protected species (directive 92/43) positive lists for animals and plants  
deliberate capture or killing, eggs, disturbance, trade (animals)  
deliberate picking, collecting, cutting, destruction , uprooting (plants)  
significant deterioration of a habitat within a protected site**
- (3) Endangered species (Regulation 338/97) trade of specimens or parts  
derogations foreseen . Example: ivory ban**
- (4) Seals (Regulation 1007/2009) all trade; exceptions for Inuits and personal use**
- (5) Timber (Regulation 995/2010) illegally harvested timber**

# EU legislation to prevent wildlife crime

## Permits

- (1) Endangered species (Regulation 338/97): import, export, re-export permit:  
species bred in captivity; personal or household effects, science  
Trade derogation; 50 years old; not detrimental for species, captive born,  
science, breeding purposes, research and education, endemic species
- (2) Animals in zoos (Directive 1999/22) zoos (but not circuses) need a permit
- (3) Invasive alien species (Regulation 1143/2014) Prohibition (exc.: permit)
- (4) Some derogations under the Birds and Habitats directives (ex: wolves, lynxes,  
legally killed birds, Art.6; derogations under Art.9 Birds directive)
- (5) Timber imports from partner countries (Regulation 2173/2005) : FLEGT licences;  
Partner countries: Indonesia

# **EU legislation to prevent wildlife crime**

## **Sanctions**

- (1) Directive 2008/99 on environmental crime, Article 3 (f) and (g):**
  - it is a criminal offence to kill etc protected species (except: de minimis)
  - it is a criminal offence to trade in protected species (except: de minimis)
  - it is a criminal offence to deteriorate a protected habitat

are lacking : illegal logging, hunting, fishing, animal welfare
  
- (2) Regulation 338/97 on trade in endangered species, Article 16:**

sanctions shall include, if appropriate, seizure and confiscation
  
- (3) Regulation 995/2010 on timber, Article 19:**

sanctions shall take away the economic benefit; shall increase in cases of repetition

# Ortolan and traditional hunt in France

Ortolan (emberiza hortulana) is a migrating bird protected by Dir.2009/147. Its capture, killing and sale is prohibited since 1979. Since 1980, its numbers in France diminished by 84% (European Commission). It is estimated that 30.000 to 50.000 ortolans are captured every year.

The birds are then put into a dark cage, because then they eat more. They increase their weight 2 to 4 times. Then they are sold (up to 150€), drowned in armagnac, an alcohol, and cooked. The dish is a speciality.

France tolerates that people with up to 30 cages capture the bird. It promised in 1979 (directive) ,1999 (national ban), 2007, 2016 and 2017 to stop the capturing. The Commission sent a formal letter to France in January 2013, and a reasoned opinion on 16-6-2016. On 17.11.2017: file closed.

11 Hunters with more than 30 cages were caught in 11-2015. Judgment on 17-11-2016 (Tribunal Grande Instance Mont-de-Marsan). Appeal judgment 13-4-2017: 150 euro for a contravention (Tribunal correctionnel de Dax).

# **Valdecanas island in Spain**

**Valdecanas was an EU protected habitat of the Natura 2000 network. In 2007, the Regional Government of Extremadura allowed the construction, in that habitat, of 300 luxury villas (500.000 €), 2 hotels, a golf course, an artificial beach etc. It was warned that this was not legal, but declared the project to be of regional interest.**

**In 2011, the Regional Supreme Court declared the construction illegal. On appeal, the Spanish Supreme Court declared the construction illegal and ordered its demolition. The Regional Government refused, arguing that demolition was too expensive and counterproductive. This is the present situation.**

**Who takes criminal prosecution against the Regional Government?**

**Action by the European Commission?**



# Forest fires in Portugal/Spain 2017 (EFFIS)

**Portugal: 21.006 forest fires, 539.921 hectares burnt, 117 fatalities**

**Spain: 13.798 forest fires, 245.073 hectares burnt, 7 fatalities**

**Portugal :32.7% intentional fires**

**49.7% negligence**

**Sanctions?**

# **Top 10 EU MSt in illegal bird killing and taking per year (Birdlife International)**

<b>1. Italy</b>	<b>3.4 to 7.8 million</b>
<b>2. Cyprus</b>	<b>1.3 to 5.2 million</b>
<b>3. Greece</b>	<b>485.000 to 922.000</b>
<b>4. France</b>	<b>149.000 to 895.000</b>
<b>5. Croatia</b>	<b>166.000 to 855.000</b>
<b>6. Spain</b>	<b>103.000 to 405.000</b>
<b>7. Romania</b>	<b>22.300 to 177.000</b>
<b>8. Germany</b>	<b>53.000 to 146.000</b>
<b>9. Malta</b>	<b>5.800 to 211.000</b>
<b>10. Belgium</b>	<b>12.800 to 107.000</b>

**Birdlife: About 25 million birds illegally killed or taken per year  
in the Mediterranean**

# On sanctions in EU law

- (1) EU law includes criminal and administrative sanctions. „Penalties“ , „sanctions“ and „fines“ do not have a criminal law connotation.**
- (2) Sanctions shall be effective, proportionate and dissuasive (CJEU)**
- (3) EU competence for criminal sanctions is limited: the EU may not decide on the nature and kind of criminal sanctions, this is the competence of Member States; see now Article 83 TFEU for serious crimes.**
- (4) Until now, EU environmental law limited itself to repeating the CJEU formula**
- (5) Recent evolution:**
  - not handing in GHG emission trading allowances: 100 euro/ton (dir.2003/87)**
  - a car that is not in compliance with the type-approval: up to 30.000 euro (Regulation 2018/858, Article 85)**

# **Problems with EU legislation on wildlife crime**

**Enforcement of existing provisions is the biggest problem of environmental law; yet, the EU seriously underrates this problem. There is a lack of political will to effectively enforce existing provisions.**

# Problems

**Why has the EU a sophisticated enforcement system in competition law and an food-feed law, but not in environmental law (inspectors, investigation powers, fight against organised crime groups-cartels, sanctions which take away economic benefits?)**

# Problems

**No serious statistics on environmental crime and the enforcement efforts exist**

**Twix (EU trade in wildlife information exchange) confidential**  
**EFFIS (European Forest Fire Information System)**

# Problems

**No data on court enforcements . Splendid isolation of judges  
No information on administrative sanctions**

# Problems

**Enforcement of provisions to protect wildlife is practically not possible without support of NGOs (TRAFFIC, IFAW, Archelon etc). Yet, the tools and resources made available to them are grossly insufficient, including transparency and participation.**



# The Böll-syndrom

**„Good morning, secretaries. Today, something has to happen“.**

**„Good morning, Director. Today, something *will* happen“.**

**This goes on since (how many?) years.**

# Conclusions

- **The EU has some legislation to combat wildlife crime**
- **However, that legislation is neither complete nor really finetuned**
- **What lacks in particular is a determined enforcement of the existing rules**
- **The responsibility for this situation is shared between the EU Commission and Member States**
- **There is no political will visible to seriously change the present state of affairs**