Co-operation with national judges in the field of environmental law under the European Commission Framework Contract ENV.A.I/FRA/2012/0018

Training module

HOW TO ENFORCE EU LEGISLATION ON BIODIVERSITY AND WILDLIFE TRAFFICKING

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Trier, Germany

Organised by Academy of European Law

Enforcement of EU wildlife protection rules and implementation on national level

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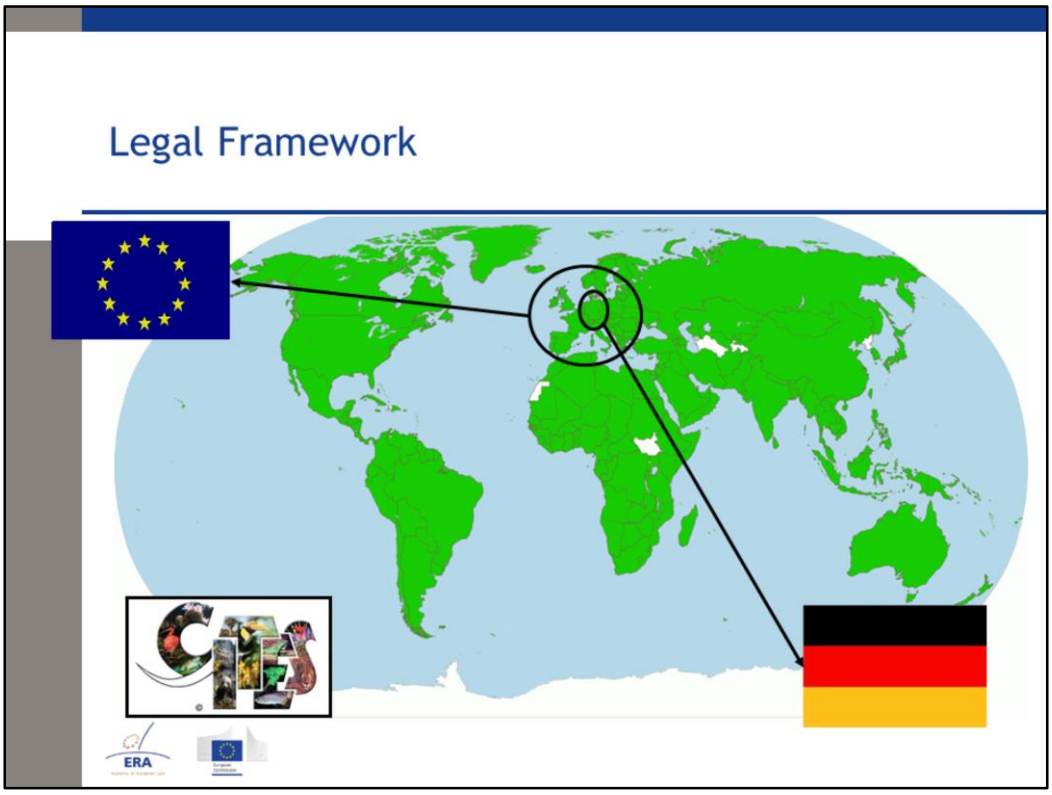
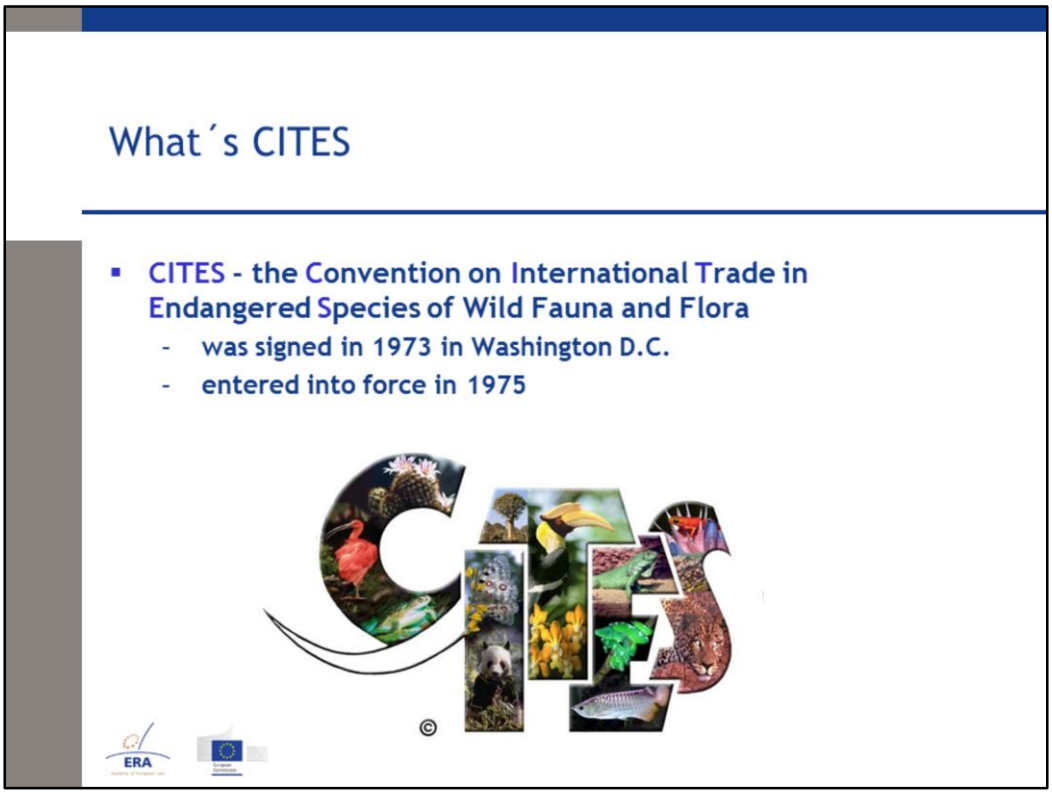


The international Wildlife Trade Regulations are based on an international agreement, the CITES Convention. CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Currently 181 parties have signed the Convention.
Since 1984 the European Union (formerly the European Economic Societies) has established directly applicable regulations (EU Wildlife Trade Regulations) to implement CITES in a prober and uniform way in the EU. In addition each EU Member state has to prepare domestic legislation to implement the EU Wildlife Trade Regulations.



CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

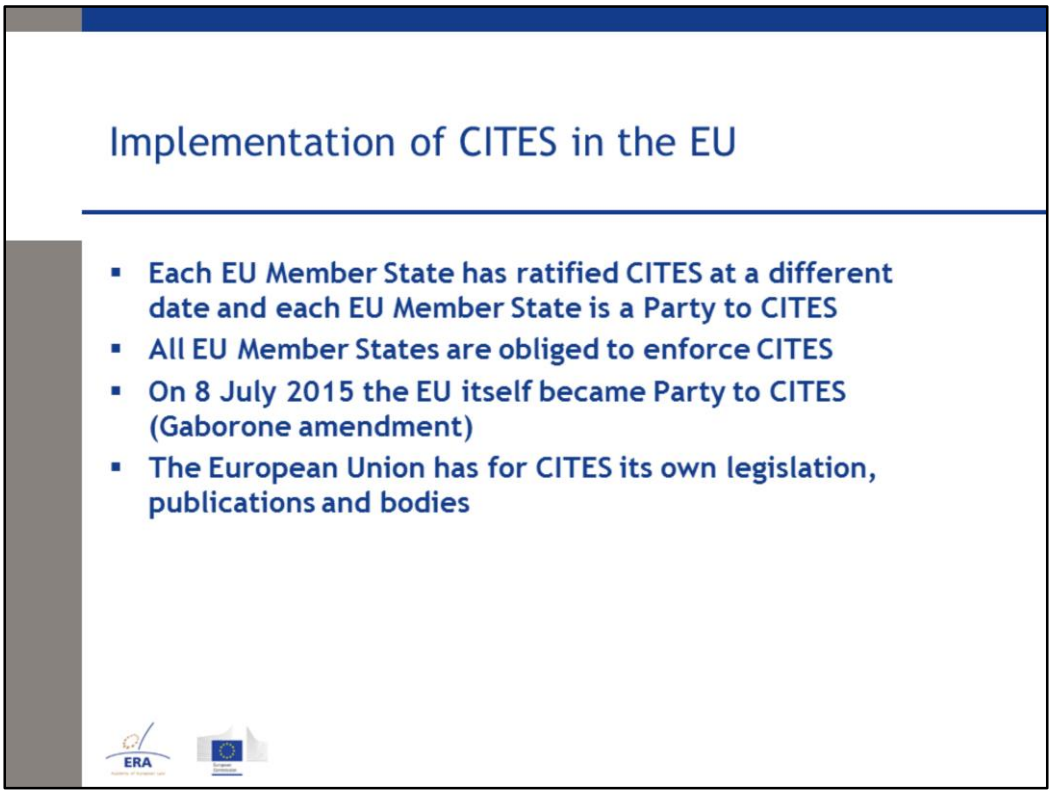
CITES was drafted as a result of a resolution adopted in 1963 at a meeting of members of IUCN (The World Conservation Union). The text of the Convention was finally agreed at a meeting of representatives of 80 countries in Washington DC., United States of America, on 3 March 1973, and on 1 July 1975 CITES entered in force. The original of the Convention was deposited with the Depositary Government in the Chinese, English, French, Russian and Spanish languages, each version being equally authentic.

Because the trade in wild animals and plants crosses borders between countries, the effort to regulate it requires international cooperation to safeguard certain species from over-exploitation. CITES was conceived in the spirit of such cooperation. Today, it accords varying degrees of protection to more than 30,000 species of animals and plants, whether they are traded as live specimens, fur coats or dried herbs.

CITES Appendices

- Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances.
- Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival.
- Appendix III contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade.

The pictures show from the top
Radiated Tortoise (Astrochelys radiata)
Blue-and-Gold Macaw (Ara ararauna)
King Vulture (Sarcoramphus papa) listed in App. III according to the application of Honduras. It is worth to notice that the listing of a species in App. III covers specimens of all populations and is not limited to the population of the country which applied for the listing. Only in specific cases the listing is limited to specific populations. These information are included in App. III directly.

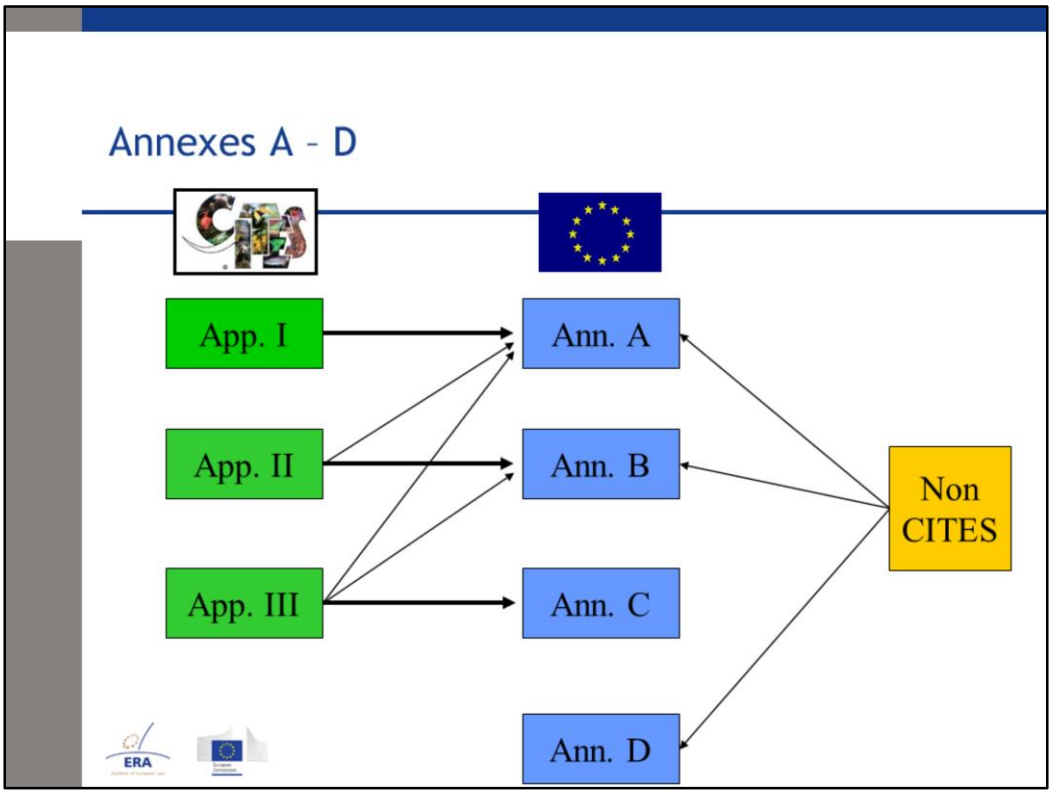


The EU itself became a party to CITES after accession of the Gaborone amendment by the required number of Member States. Having in mind 28 Member States and consequently 28 votes, the EU is in CITES an important member.
(remember: acceptance of proposals is based on 2/3 majority votes)

Changes in regulations takes place through regulations.
As a consequence of listing decisions on the COP and European committee, the annexes of the Council regulation are regularly adjusted
The last adjustment of the Council regulation was made through EU Regulation ,
In this way the council regulation stays in force but is adjusted.
The current version of the Annexes of the Reg. No. 338/97 was published in Reg. (EU) No. 1320/2014.

Council Basic Regulation No 338/97

- This regulation implements CITES and is applicable for all EU Member States and goes a bit further than CITES prescribes.
- By using this EU regulation the entire EU becomes one common market for CITES.
- Part of this regulation are the Annexes A, B, C and D, that are updated after every CoP
- Annexes A,B and C are more or less translations of Appendices I, II and III of CITES
- Annex D has no equivalent in CITES and lists species that need monitoring to decide if listing in the EU-Annexes will be necessary



Annex A

- All CITES **Appendix I-listed** species;
- Any species (listed in CITES Appendix II, III, or non-CITES-listed) that is or may be in Community or international demand that is threatened with extinction, or is so rare that any **trade would imperil its survival in the wild**, and
- **Look-alike species** (listed in CITES Appendix II, III, or non-CITES-listed). If most of the species in a genus (or most of the subspecies in a species) are listed in Annex A, the remaining species can be listed if this is essential for the effective protection of the species listed in Annex A, in order to exclude commercial trade in the entire genus or species.

Finally, although there is no separate provision in *Regulation (EC) No. 338/97*, **CITES-listed species** that in **1997** were subject to a **trade prohibition under Community legislation** on the protection of indigenous species (Directive on the protection of wild birds and the so-called "**Habitats Directive**"), are automatically listed in Annex A. The names of these species in Annex A are printed in **bold**. However, species that came within the remit of

those Directives
with the accession of later Member States, or that were added to the Appendices since 1997 are
not treated in this way because this would require approval by the Council of Ministers.

Annex B

Annex B contains:

• CITES **Appendix II-listed** species (if they are not already included in Annex A);

• Appendix I-listed species with a "Community" reservation (currently not applicable since there
are no Appendix I-listed species subject to such reservation);

• **Any species** (CITES Appendix III-listed, non-CITES-listed) subject to **levels of international
trade** that might **not be compatible with the survival of populations in certain countries, or
with the maintenance of its total population at a level that is consistent with its role in the
ecosystem**. Look-alike species, which are listed for effective control of trade in the species
mentioned above

• Species (CITES Appendix III-listed, non-CITES-listed) known to pose an **ecological threat** to
species that are indigenous to the European Community (currently only four species listed).

Annex C

Annex C contains:

• CITES **Appendix III-listed species** that are not already included in Annex A or B, and

• Appendix II-listed species with a "Community" reservation. (This is currently not applicable
since there are no Appendix II species subject to such reservation).

Where Appendix III-listed species in Annex C are concerned, the species as a whole are subject to
the corresponding provisions of the Regulations, and not just the populations of the countries that
listed them in Appendix III.

Annex D

Annex D contains:

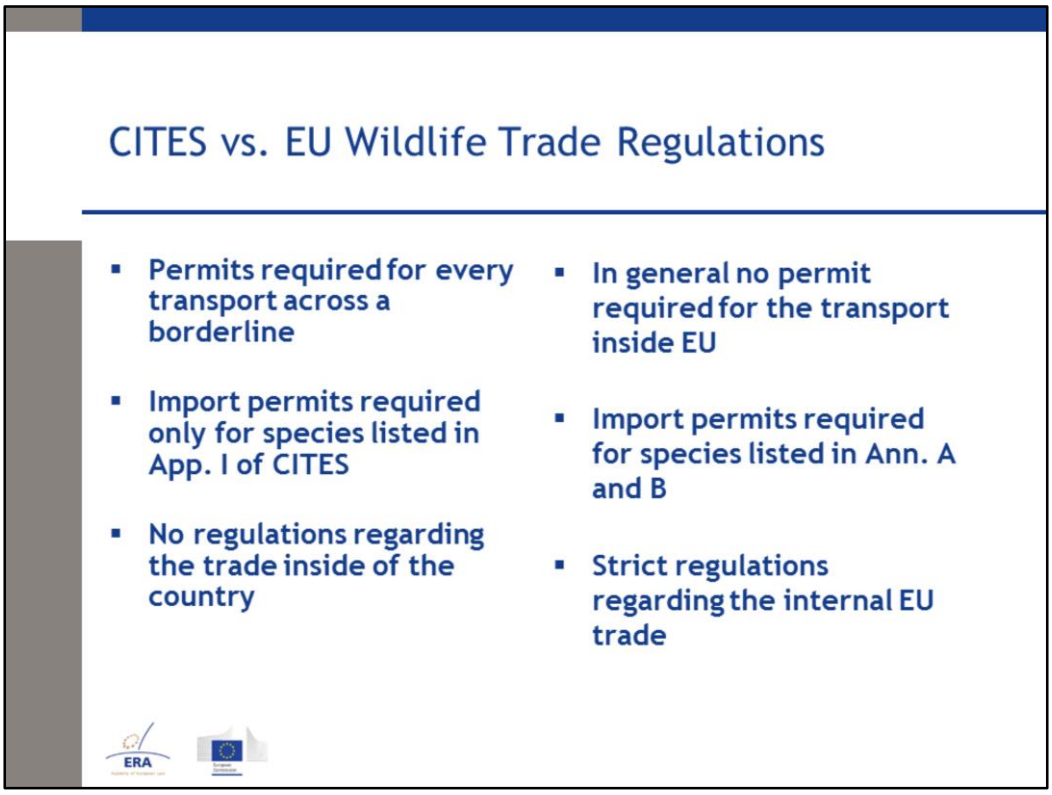
• **Non-CITES-listed species** that are not listed in Annexes A to C, and are **imported into the
Community in such numbers as to warrant monitoring**, and

• **Appendix III-listed species with a reservation** (there are 7 of these).

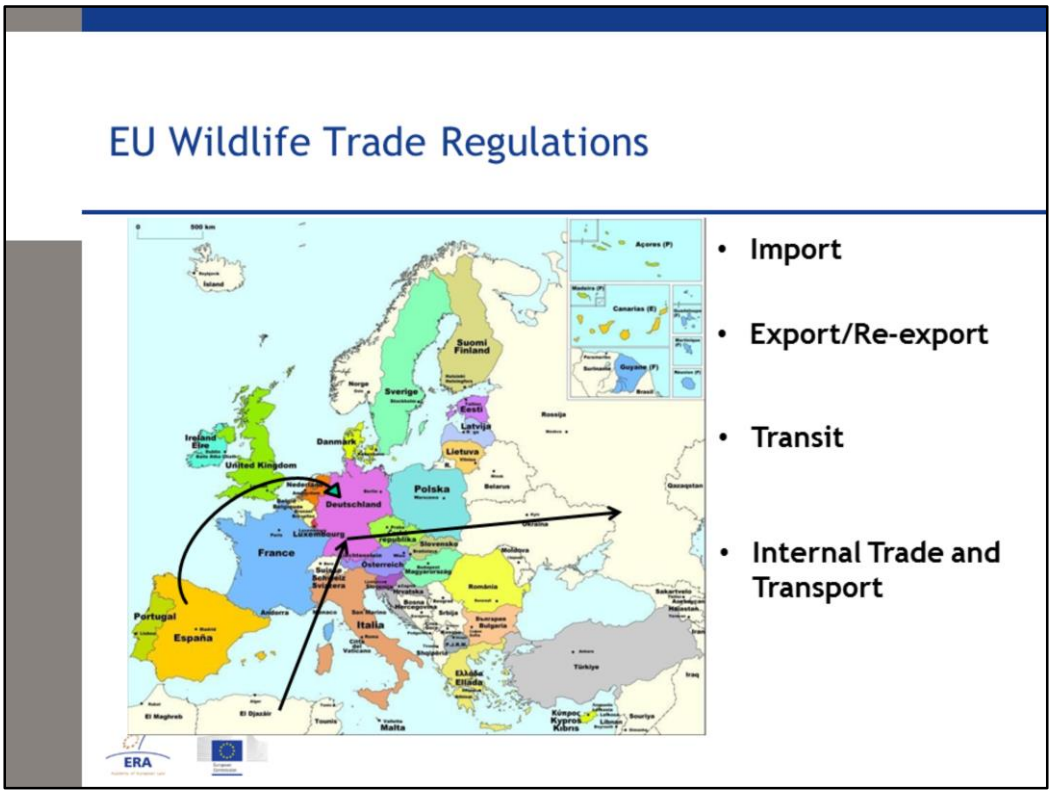
Annex D lists species that do not have a CITES equivalent. **Imports** of specimens of Annex D-listed
species require an **import notification**. As the purpose of Annex B is to

ensure sustainable trade in
species and thus prevent them from becoming Annex A candidates, the Annex D monitoring system
is intended to allow the **early detection** of possible conservation concerns to the species listed.
Where necessary, Annex D-listed species can be proposed for “up-listing” and brought under the
trade provisions applicable to Annex B-listed species. Some former Annex D-listed species have
subsequently been added to Appendix II and – by this means – to Annex B.

For the time being two major Commission Regulations are in force. The implementing Regulation 865/2006 deals more with detailed rules regarding the implementation of the Basic Regulation and the documents; Regulation 792/2012 prescribes the form of the documents used.
In addition a further regulation dealing with import restrictions will be published regularly once per year.



The current EU-Regulation has set up some stricter measures than CITES - like the import permit requirement for species listed in Ann. B, but it has also reduced the permit requirement because no import- and export permits are required for the trans-border transport within the EU.



EU Wildlife Trade Regulations are dealing with several areas which can be separated into two major areas:

- Trade with non-EU states (this covers import, export and re-export and as specific type of trade the transit shipments);
- Trade inside the EU (inside the EU no border control of goods will be carried out because of the uniform market. To make the internal trade at least a little bit transparent and to have some regulations, rules regarding the internal trade and for the transport of live specimens are set up).

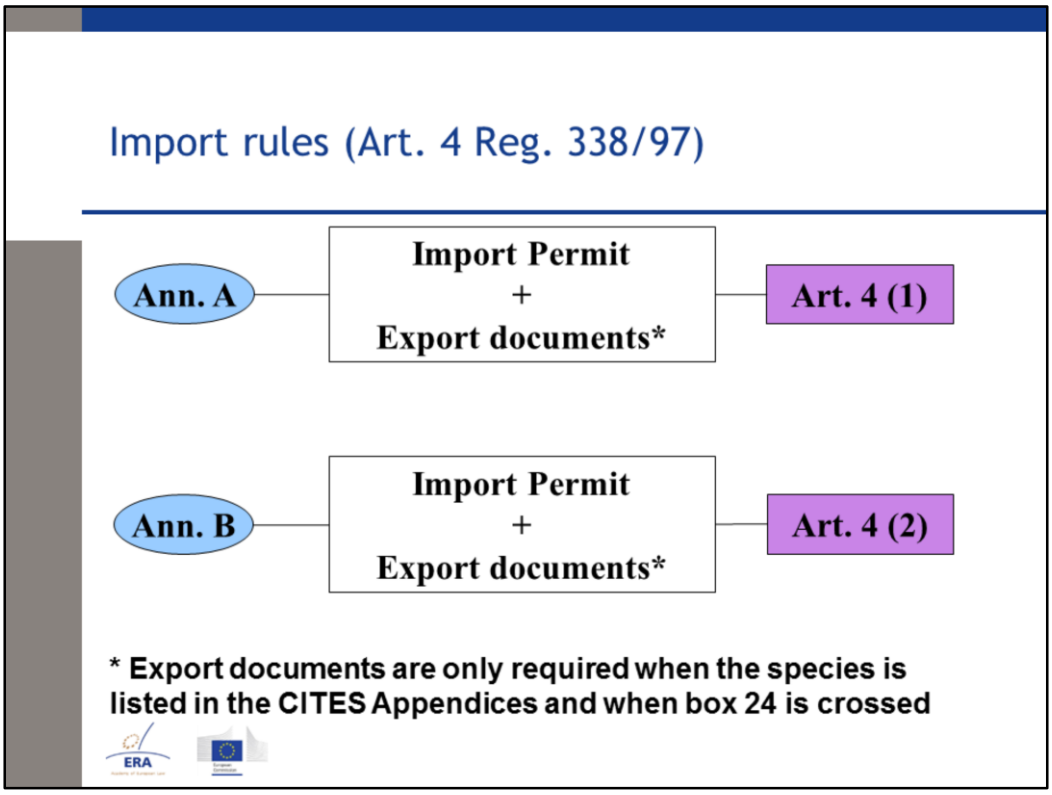
The restrictions and prohibitions as laid down in the Regulation are working for specimens of protected species. The term specimen covers live animals, dead animals but also any recognizable part and derivative such as jewellery made from Ivory or raw tusks.

Specimen

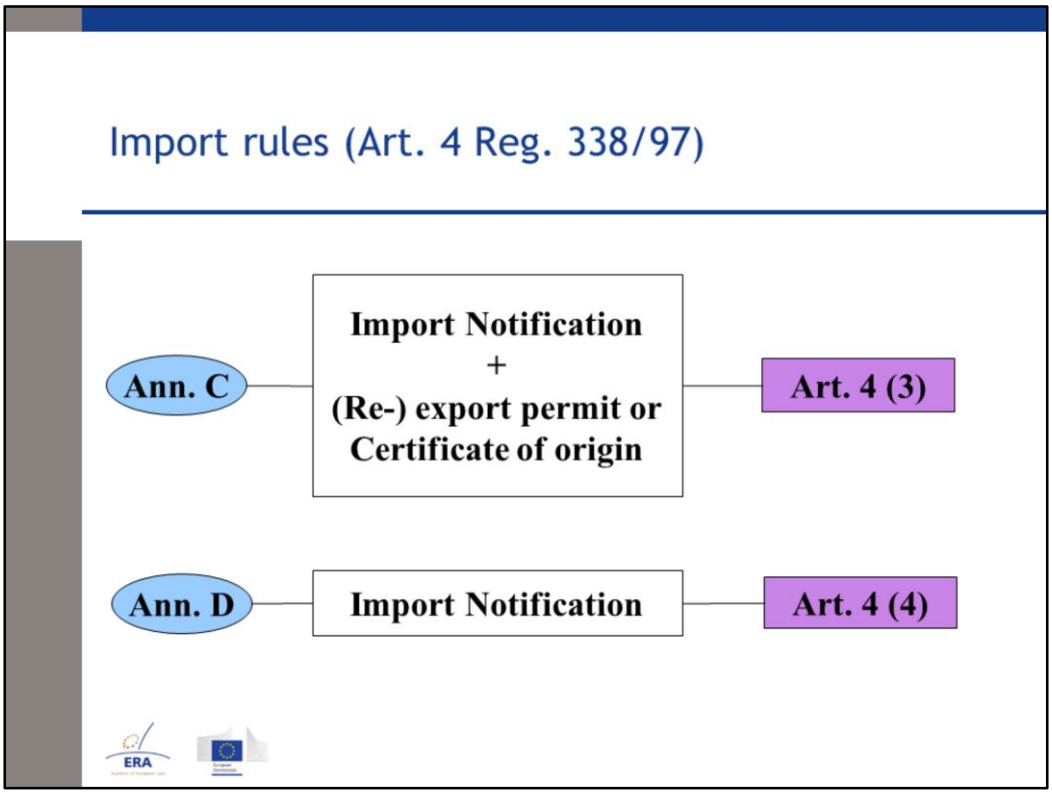
Any other goods which appear from any circumstances (label, packaging, mark) to be or to contain parts or derivatives of a protected species.

Composition: Musk, Leopard bone, Radix aconiti, Radix aconiti kusnezoffii, Mentholum, Methyl salicylate,Chondroitini sulfas,Borneol, Rhizoma kaempferiae, Radix angellcae dahuricae, Diphenhydramine hydrochloride ,Camphor, etc 17kinds.

The definition “specimen” also covers any other goods which appear from any circumstances to be or to contain parts or derivatives of a protected species. This rule is very helpful in the case of medicinal products, cosmetic products or other manufactured products which contain parts of protected species but where these parts can´t be identified directly. If the species is mentioned on the package, the list of ingredients or on any other circumstances the product will fulfil the definition “specimen” and will be handled according to the legislation.

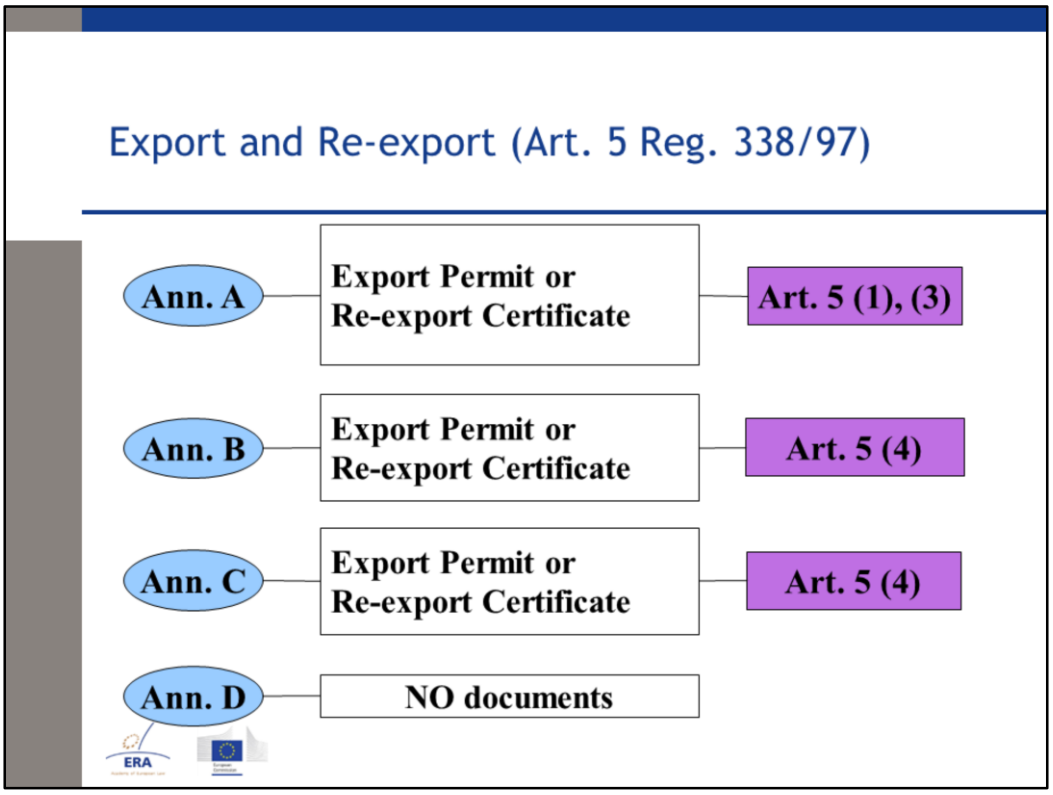


Ann. A and B **Export permit or re-export certificate** issued by country of export and **import permit** issued by the EU Member State of destination.
(please note: The export permit is only required when the species is listed in the CITES Appendices and when the requirement is clearly prescribed in the import permit)



Import of Ann. C:
Export permit or re-export certificate or certificate of origin issued by the country of export (depending on whether or not the country of export has listed the species in Appendix III of CITES)
and **import notification** completed by the importer and presented to the Customs office upon introduction into the EU.

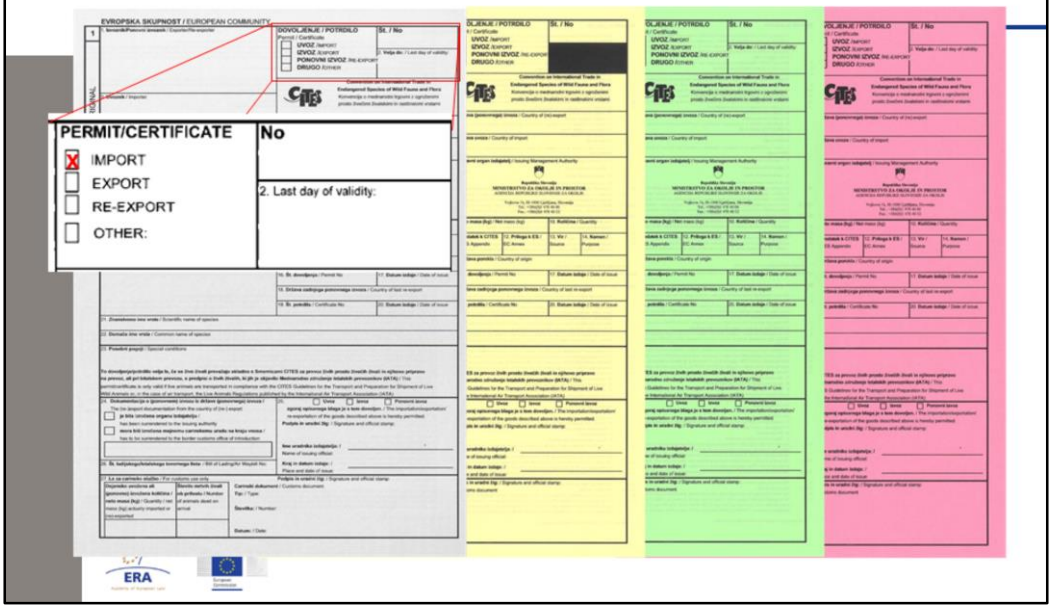
Import of Ann. D
Import notification completed by the importer and presented to the Customs office upon introduction into the EU



Ann. A : **Export permit or Re-export Certificate** issued by the EU Member State of export. Import permit, issued by country of destination (only required from a third country when the species is listed in Appendix I of CITES) must be presented to Management Authority prior issuing the (re)export permit. But import permit has not to be presented at customs clearance.
Ann. B **Export permit or Re-export Certificate** issued by the EU Member State of export.
Ann. C **Export permit or Re-export Certificate** from the EU Member States of export.

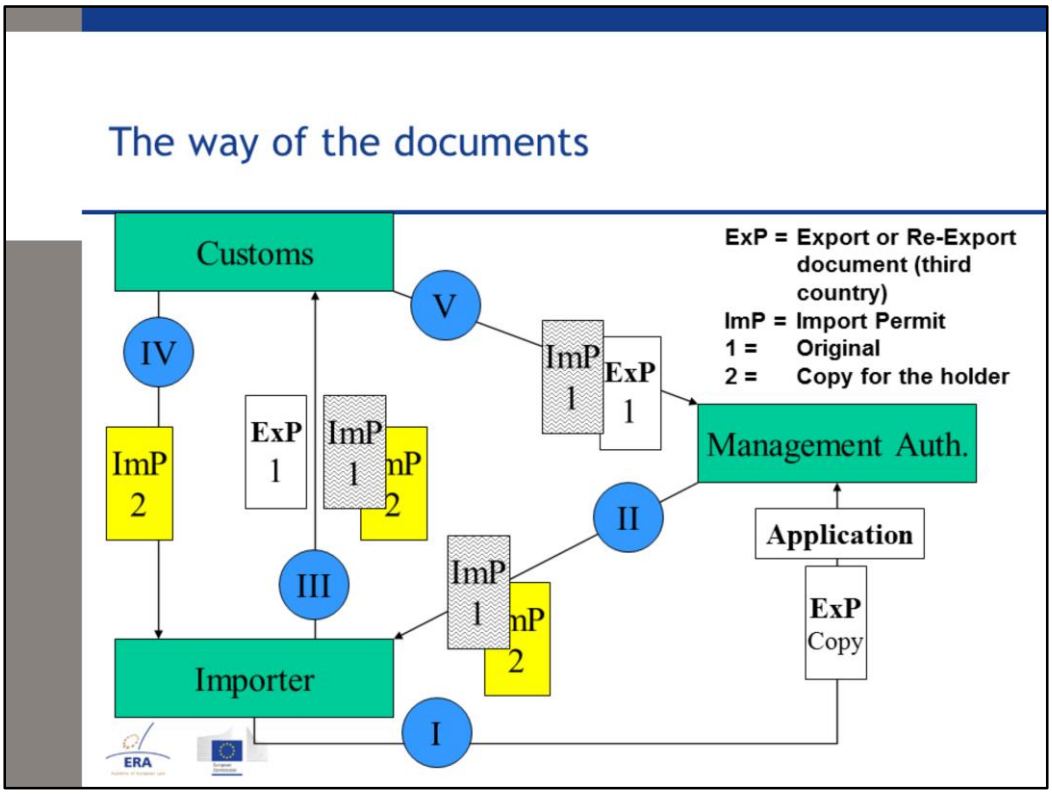
No documents are normally required for the **export or re-export** of species listed in **Annex D**

Model of the permit



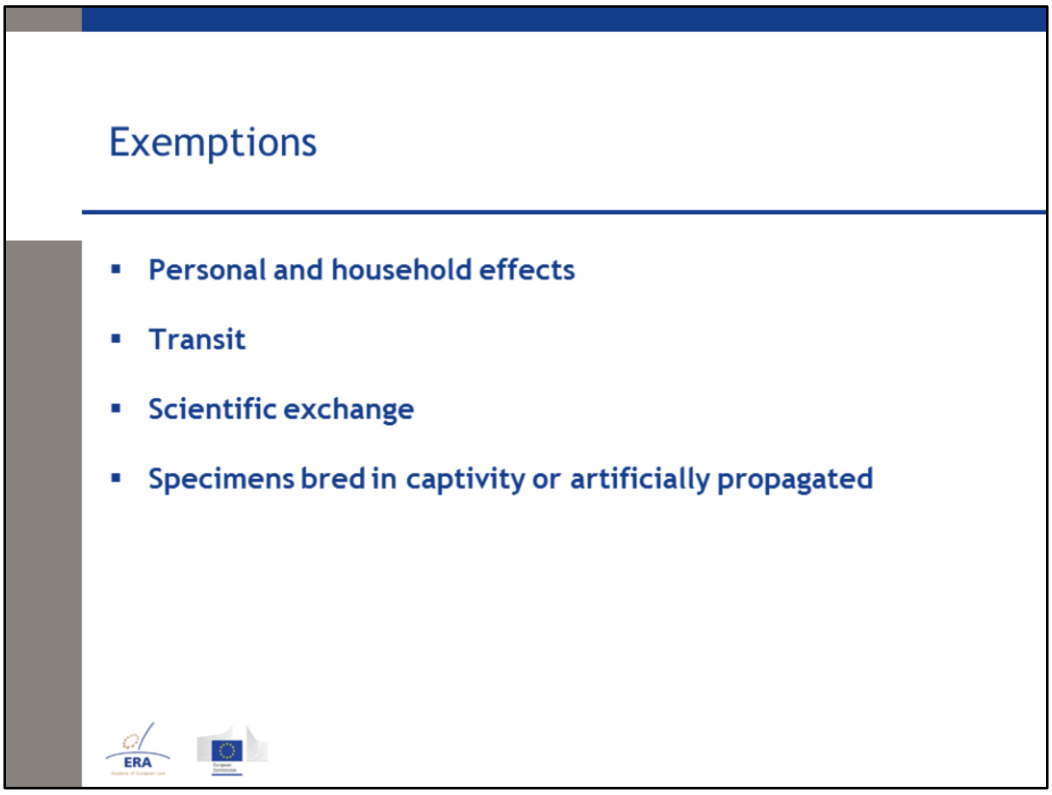
Original Form number **1** White with grey guilloche
Copy for the **holder** Form number **2** Yellow
Copy for the **exporting or re-exporting country** (only in the case of specimens of CITES Appendix I-listed species) Form number **3** Pale green
Copy for the **issuing authority** Form number **4** Pink (not to be handed to the applicant)

The permits may have Annexes if different specimens belong to the same shipment. The **annex** attached to a permit and the number of pages must be **clearly indicated on the permit**. Each annexed page must include the number of the permit and the signature, and stamp or seal of the issuing authority. Annexes may also contain lists of numbers of identification marks (rings, tags and the like) for which there is no prescribed form for the annex.

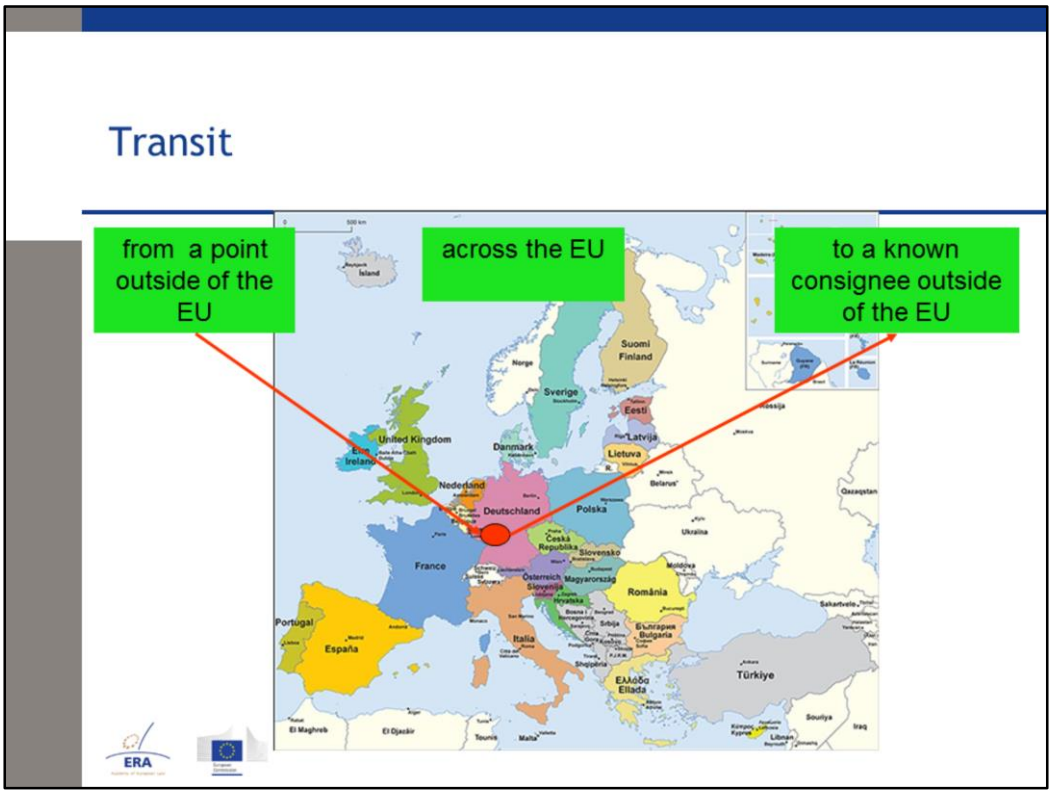


Import permits, export permits and re-export certificates shall be applied for in sufficient time to allow their issue prior to the introduction of specimens into or their export or re-export from the Community.
The duly completed form shall be submitted to the management authority of the Member State of destination and shall contain the information and be accompanied by the documentary evidence that the authority deems necessary in order to enable it to determine whether a permit should be issued.

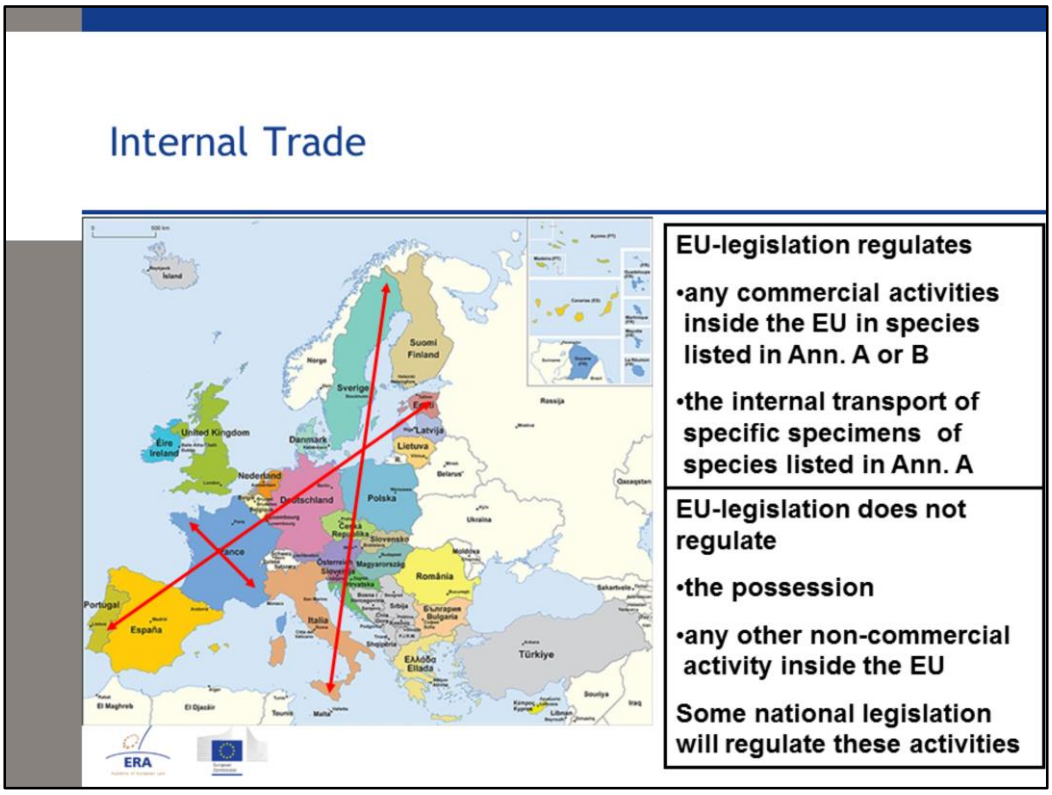
The importer or his authorised representative shall surrender all the following documents to the border customs office at the point of introduction into the Community: (1) the original import permit (form 1); (2) the 'copy for the holder' (form 2); (3) where specified in the import permit, any documentation from the country of export or re-export. Where appropriate, the importer or his authorised representative shall indicate in box 26 the number of the bill of lading or air waybill.



There is a number of circumstances where the rules governing import and export of specimens of annexed species are less strict. These exemptions are based on CITES.



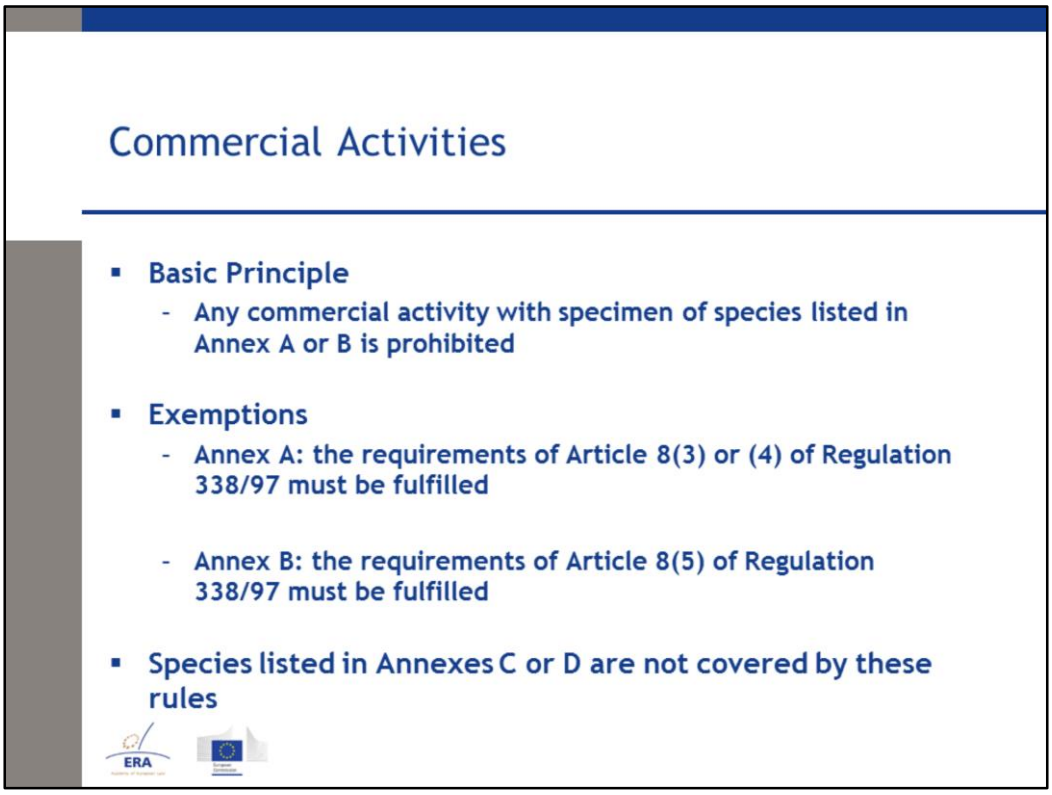
Transit shipments should be checked regularly. The definition of transit means the transport from outside the EU across the EU to a known consignee outside the EU. The goods must be kept under customs control.



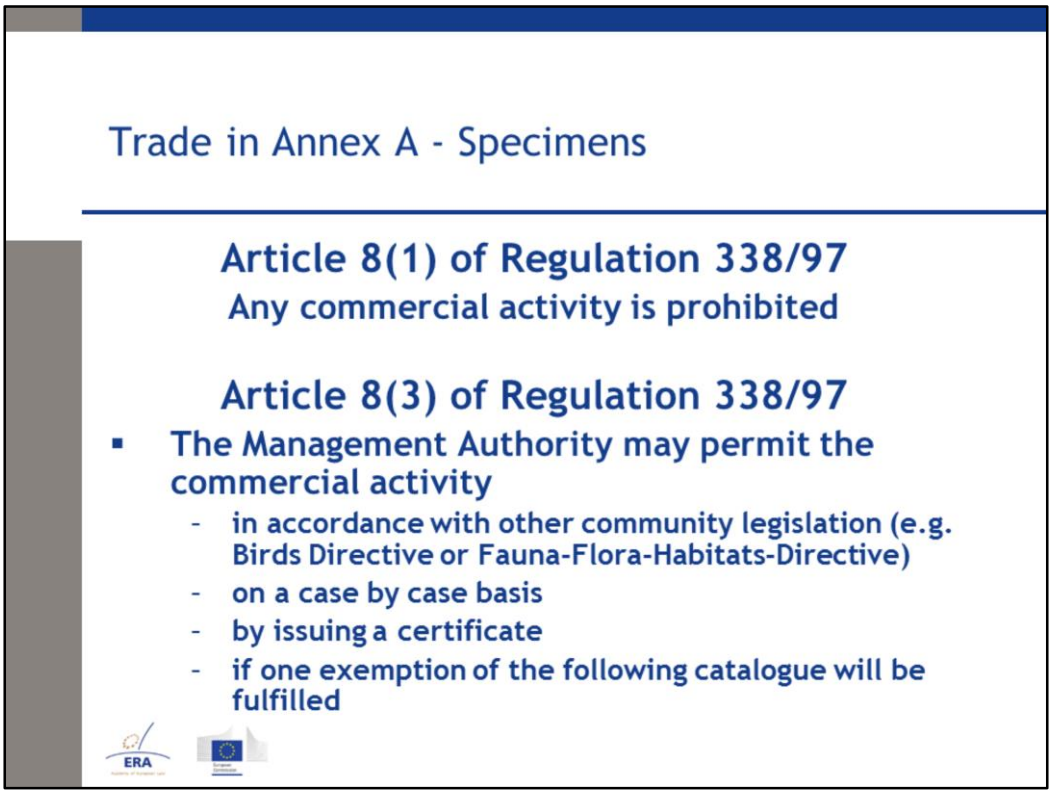
The current legislation is limited to some specific activities which are clearly described in Article 8 part 1 and Article 9 part 1 of Regulation 338/97. The legislation does not regulate other activities inside the European Union. Article 8 part 2 of Regulation 338/97 offers the option to regulate the possession to EU Member States, but this must be done in the domestic legislation and will work only in the single Member State using this option.

In the definition of commercial activities as given in Article 8(1) of Regulation 338/97, somebody may distinguish between two different actors both fulfilling the definition of commercial activity. Both actors can be affected by the prohibitions. Some of the terms are easy to understand such as sale. Nevertheless the definition not only covers the sale for money but it also covers any cognate expression such as hire, barter etc. (see Article 2(p) of Regulation 338/97). Therefore finally any exchange of protected specimens covered by any kind in return of something will fulfil the definition.
Some other commercial activities, such as display for commercial activities, are of high importance. For the time being some reptile travel around may fulfil the definition too. The discussion at the committee is not yet finished, as, for example, public zoos are doing some commercial activity when displaying specimens to the public for a fee.

It is worth to recognize that gifts are not covered by the Regulation. Often the problem arises to identify an activity as a commercial activity according to the definition. Sometimes some more intensive investigation will be required to clarify such a question.

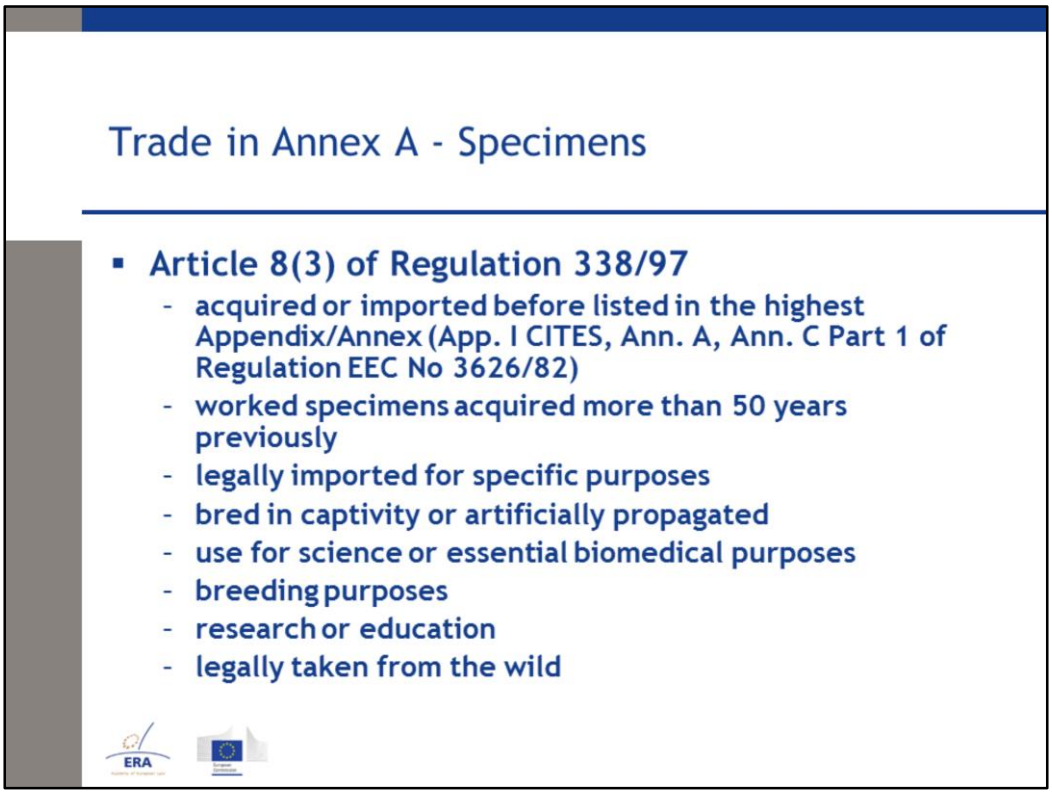


The basic principle regarding commercial activities in specimens of species listed in Annexes A or B of Regulation 338/97 is more or less simple - any commercial activity is prohibited.
Nevertheless, the EU has set up some exemptions or derogations regarding this very strict restriction. General rules can be found in Article 8(3) – (5). Additional rules regarding the procedure how to issue the exemption for Annex A and also regarding simplifications can be found in Implementation Regulation.

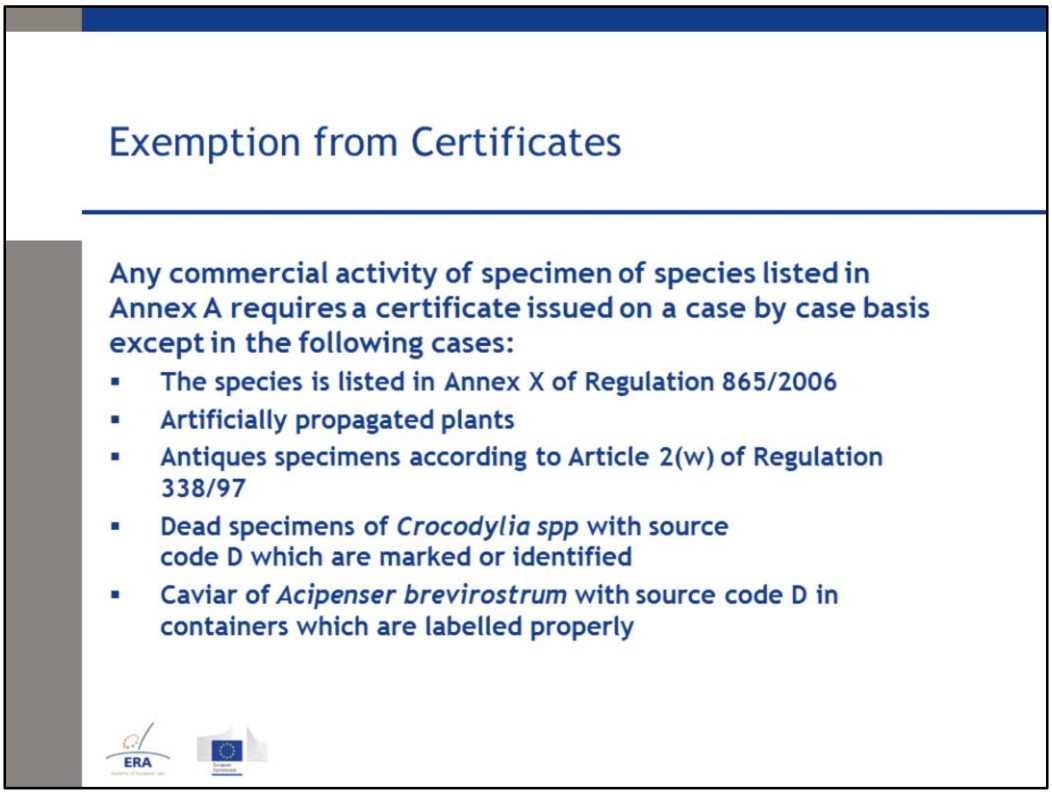


The general rule for specimens of species listed in Annex A is that any commercial activity is prohibited. Please be aware that the derogation of Article 7(1) of Regulation 338/97 for specimens legally bred in captivity is not working in the case if the regulation of commercial activities according to Article 8 is involved.

There are some **specific exemptions** from the internal trade prohibition and under certain conditions specimens of species listed in Annex A are allowed to be used for internal trade – including commercial purposes - inside the EU through the issuance of a **certificate** and on a **case-by-case basis**. In addition to Article 8(3) of Regulation 338/97 also some other EU-regulations have to be taken into account. Especially the Birds Directive (Directive 2009/147/EC) and the Fauna-Flora-Habitats Directive (Directive 92/43/EEC). These two directives which need to be implemented to the domestic legislation will also contain some very strict trade restrictions (Article 6 of Birds Directive and Article 12 of Fauna-Flora-Habitats Directive). Both directives also allow to issue exemptions but only under extraordinary circumstances (Article 9 of Birds Directive and Article 16 of Fauna-Flora-Habitats Directive). These directives are mostly affected if specimens shall be commercially used which are taken from the wild in a Member State of the European Union (Exemption according to Article 8(3) (h) of Regulation 338/97).



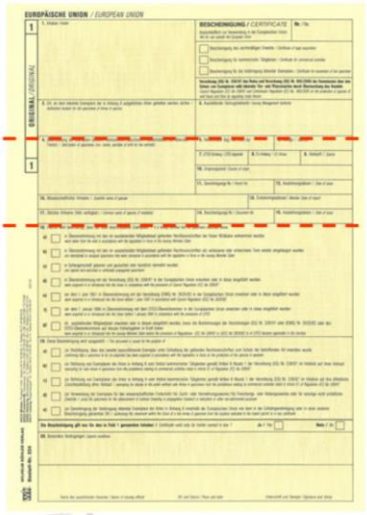
The catalogue of Article 8(3) of Regulation 338/97 is a closed list of exemptions. Some of the specific exemptions for which certificates are required, relate to specimens from **certain sources** – in which case there are **no restrictions on their use** – while **others** apply to specimens from **any source** (as long as there has been **no conservation detriment** arising from the use of the specimen), but in these cases the **uses are restricted** to specific primarily non-commercial ones.



The Commission can define **general derogations** for **Annex A-listed species,** from the prohibitions of commercial use and trade laid down in Article 8(1) of Regulation 338/97 (see Article 8(4) of Regulation 338/97). There are several conditioned exemptions in which internal trade in such species is less strictly regulated. At least three exemptions have been established which allow the commercial activity without issuance of a certificate:

• Species that are **commonly bred in captivity** in the EU;
• Commercial use of **artificially-propagated plants** listed in Annex A, and
• Trade in **worked specimens** that have been acquired **before 1 March 1947** ("Antiques").

Form of the Certificate



Common Information

Specimen related information

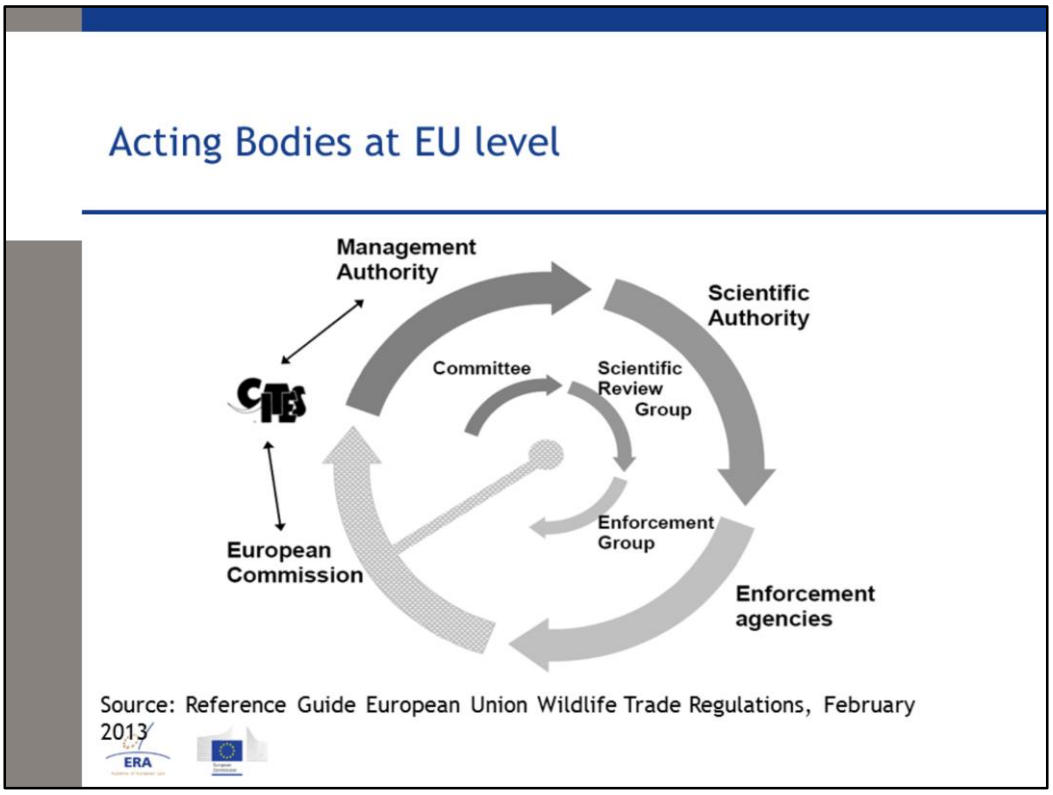
Permitting section

Trade in Annex B - Specimens

Article 8(5) of Regulation 338/97

- Any commercial activity is prohibited **but**
- such activities are allowed where it can be proved that
  - the specimens were legally acquired inside the European Union or
  - the specimens were legally introduced into the European Union

There are no formal requirements how to prove these exemptions!



This slide shows the cooperation of different bodies within the European Union such as the Committee, the Scientific Review Group and the Enforcement Working Group which are established on the legal basis of Regulation No 338/97.

Committee:

The European Commission is assisted in its work by a Committee, composed of representatives from Member State Management Authorities and chaired by the Commission.

The role/tasks of the committee are:

Support the Commission by setting up uniform conditions and criteria for different areas

Cooperate with the Commission to establish the required regulations to implement CITES

Scientific Review Group (SRG)

The role of the Scientific Review Group is to examine any scientific question relating to the application of the Regulations.

SRG is composed of representatives from Member State Scientific Authorities and chaired by the Commission

Enforcement Working Group (EG)

The task of the group is

- To monitor enforcement policy and practice in EU Member States
- Make recommendations to improve the enforcement of wildlife trade legislation

- Promote the exchange of information, experience and expertise on wildlife trade control related topics between Member States
- Share intelligence information

National Bodies

Every Member State needs to have a:

- Management Authority
- Scientific Authority
- Enforcement Agencies

The above mentioned authorities need to be notified to the CITES-Secretariat and are published on the CITES website www.cites.org.

Management Authority

The Management Authority is responsible for:

- Issuing CITES permits and certificates
- Reporting and communicating to the CITES Secretariat and European Commission
- Participating in the EU Management Committee Meetings
- Participating in meetings of the CoP
- Preparing new legislation on the national law

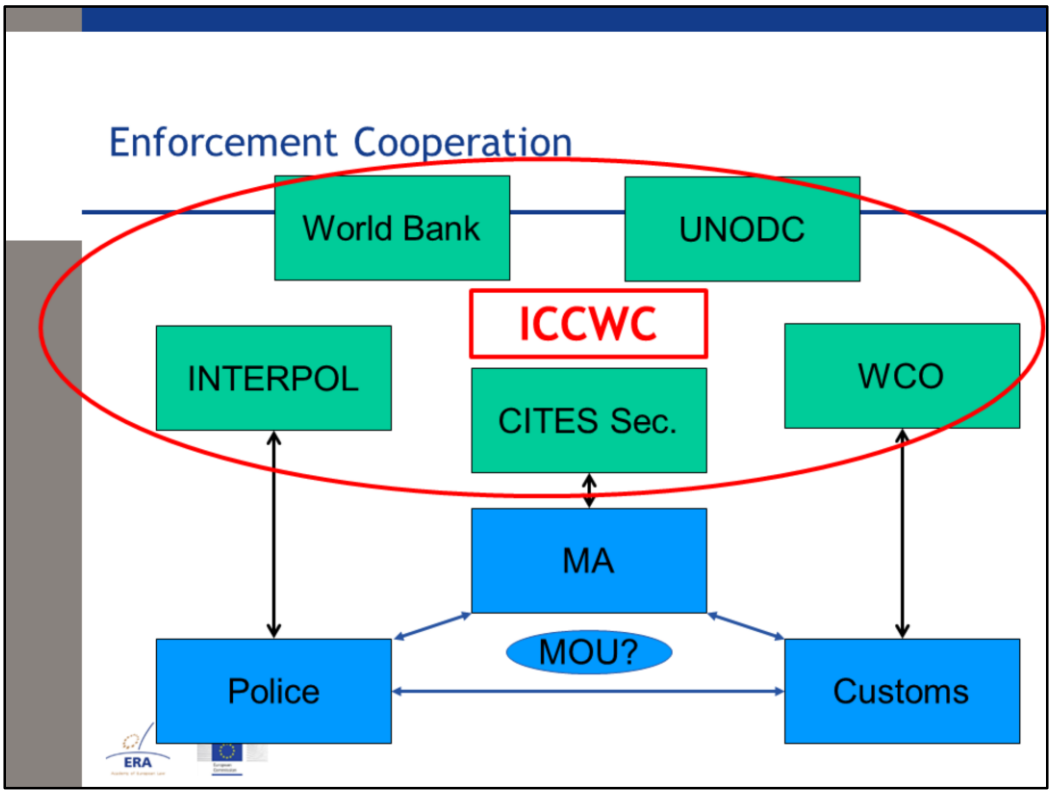
Enforcement Bodies

National Enforcement agencies appointed for CITES enforcement such as:

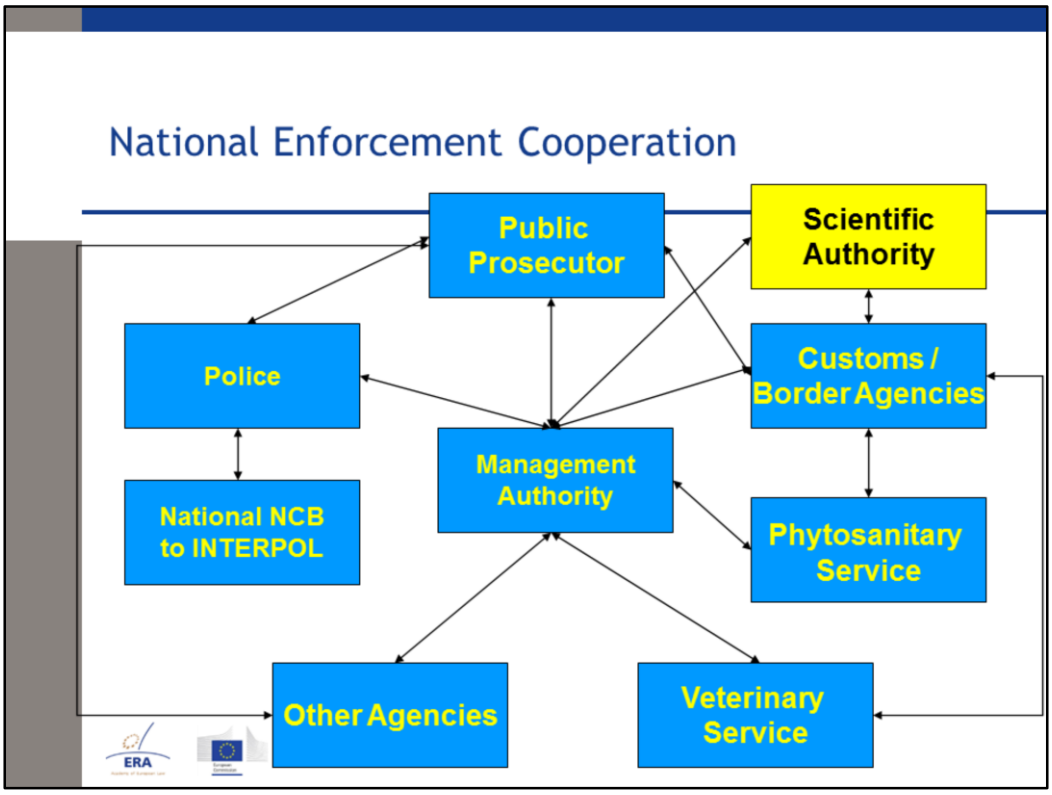
- Police
- Customs
- Border police
- Nature protection inspectorates
- Vets etc.

EU Wildlife Trade Regulations

- 28 Member States
- 28 different organisational structures
- 28 different domestic legislations
- 28 different priorities



At national level at least three different authorities are involved in the enforcement of the EU Wildlife Trade regulations (CITES Management Authorities, Customs and Police). Each of these authorities has an international counterpart. The international counterparts together with the World Bank and the United Nations Office of Drugs and Crime now form ICCWC (International consortium on combating wildlife crime).



Other agencies include medicine control authorities / local councils / environmental inspectors / fisheries protection / forestry staff / water bailiffs / nature protection agencies etc. may be involved in the enforcement also.

Information to the pictures
Top middle: ivory products seized from an transit-shipment. In total more than 1000 products have been seized (total weight more than 100 kg)
Top right: seized black Cocatoo transported in a carbo box
Bottom right: Seized parrot eggs coming from the Caribbean region and destined for the EU. The eggs were hidden in carbo boxes and wooden statues, in total more than 70 eggs.
Middle: seized glass eels of the European eel. These glass eels are illegally caught at the European West coast and often transported to China illegally.
Bottom middle: live Indian Star tortoises (Geochelone elegans) hidden in sacks and additionally wrapped with adhesive tap. These „packs“ have been put in suitcases; in total 380 tortoises have been seized.
Bottom left: Green tree python, a very liked python species because of the interesting different colours.

Numerous seizures of protected specimens have taken place in the EU. Prominent materials are pangolin scales (top middle) which were taken from animals in western Africa. Top right shows two Rhinoceros horns
Top left shows seized ivory tusks cut into pieces and the picture Bottom middle shows sawn timber.

Top right: Hyazinth Macaw (Anodorhynchus hyacinthinus)
Top left: European Orchid species (Orchidaceae spp.)
Bottom right: Red Kite (Milvus milvus)
Bottom middle: Glass Eels of the European Eel (Anguilla anguilla)
Bottom right: Madagascar Angulated Tortoise (Astrochelys yniphora), one of the rarest tortoise species in the world

Enforcement Problems

- **Legal framework**
  - Complicated legislation
  - Strict rules vs. very soft rules
  - Different implementation of some directives
  - Different regulations regarding seizures and punishment
- **Organisational matters**
  - Different responsibilities and different authorities in charge
  - Different levels of training and experience
  - Transmission of information
  - Availability of centralized databases
  - Secure, unique and uniform marking systems

Enforcement Problems

- New challenges
  - Trade on Internet
  - Wild vs. Bred in captivity or artificially propagated
  - New species groups in trade (timber, sharks)
- Public awareness and recognition
  - Acceptance and support by public and decision-makers
  - Judiciary

What gets lost?

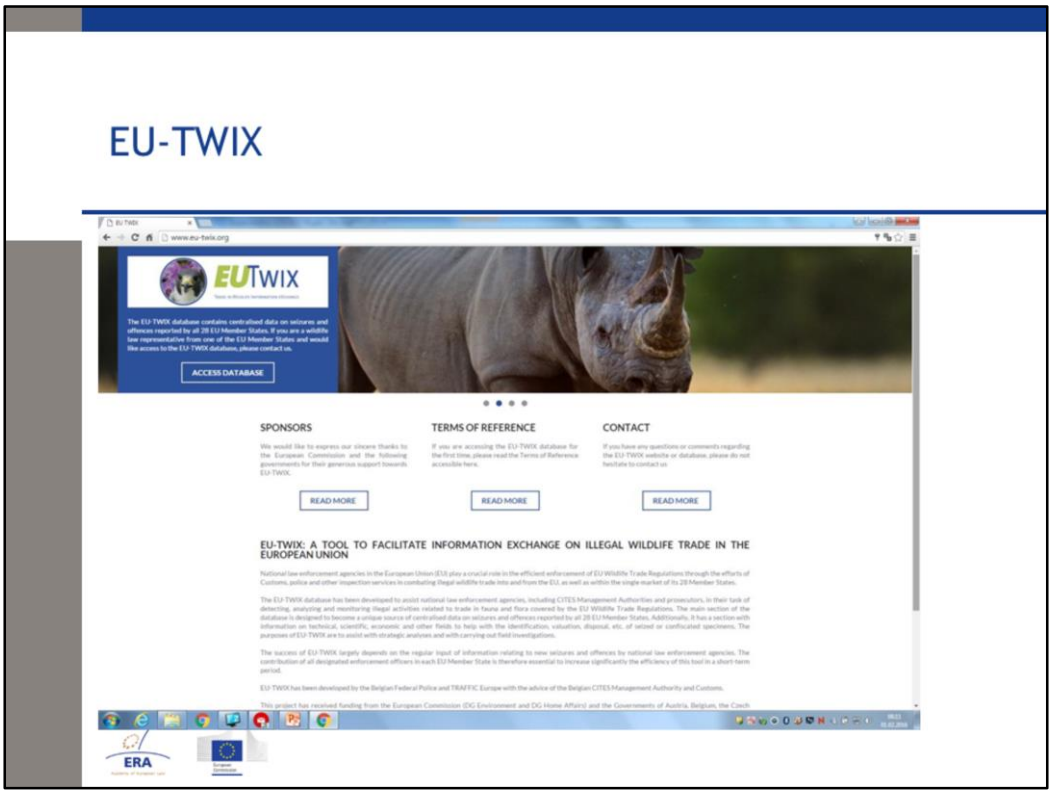
- Poaching in the EU
  - European Eel
  - Birds of prey
  - Wolf, Bear, Lynx
- Collecting of plants
  - Orchids for ornamental plants
  - Destruction of habitats (e.g. for agricultural use)
  - Live plants for medicinal or food purposes

Different solutions in different countries

- Slovenia
  - Inter-Sectoral Committee for the prevention of illegal Wildlife trade
- Czech Republic
  - Czech Environmental Inspectorate
- Germany
  - Standing Committee on 'Species and Biotope Conservation' of the "Bund/Länder" Association for Nature Conservation" (BLANA)
- UK
  - National Wildlife Crime Unit and the Border Force CITES Team

EU TWIX

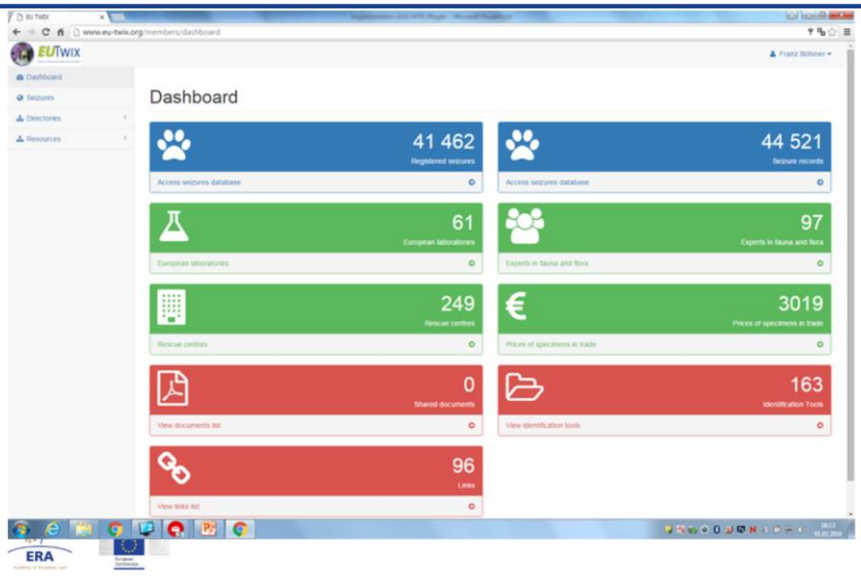
- "EU - Trade in Wildlife Information eXchange"
- EU-TWIX = Internet tool developed to facilitate information exchange and international co-operation between wildlife law enforcement officials in the EU
- 2 components:
  - the database
  - the mailing list
- Administration is managed by TRAFFIC



Access restricted to selected officials (with personal access codes).
Possibility to a) enter data directly online and b) view the existing data.
Database benefits of CEN – captures all customs seizures from 170+ member countries including endangered species which may not be reported elsewhere. For EU Member States, the endangered species records are automatically transferred from CEN to EU TWIX where authority to do so has been given thus cutting out duplication of records.

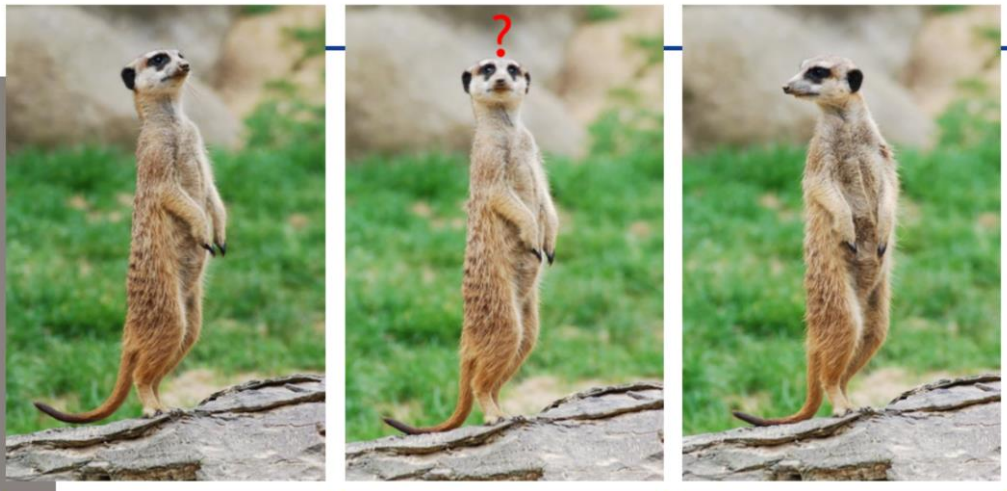
Database benefits of ECOMESSAGE – records nominal information on seizures and suspects. This information is not held in either EU TWIX or CEN.

EU-TWIX


Dashboard
41 462
Registered seizures
Access seizures database
44 521
Seizure records
Access seizures database
61
European laboratories
European laboratories
97
Experts in fauna and flora
Experts in fauna and flora
249
Rescue centres
Rescue centres
3019
Prices of specimens in trade
Prices of specimens in trade
0
Shared documents
View documents list
163
Identification Tools
View identification tools
96
Links
View links list
ERA

Currently more than 800 users in EU Member States but also in neighbouring countries are using EU TWIX and the mailing list.

The END



Did you understand everything?	Who? Me?	Yeah, you!