

II. International trade

By mr A.V. van den Berg

II.1. Who supervises compliance with the CITES-regulation in your country? Do the monitoring efforts concern as well the import into and export from the Community as the commercial activities and movements of life specimens within the Community, your country?

Implementation of the CITES-regulation in the Netherlands, especially with respect to its enforcement, is governed by the Flora- en faunawet (Flora and Fauna Act; further FFA). Under the FFA, the General Inspection Service (AID) of the Ministry of Agriculture, Nature and Food Quality has the principal responsibility for the control in The Netherlands of illegal trade of protected plants and animals, albeit for indigenous species or for species under CITES. For this purpose AID also supports Customs and ordinary police. Regional Environment Teams of the ordinary police monitor the compliance of businesses (e.g. animal and plant traders, nurseries) with (e.g.) the CITES obligations, Interregional Environment Teams of the ordinary police are responsible for large scale criminal investigations in this field. Customs supervise, with assistance of AID, the compliance with CITES rules at the national borders such as the Rotterdam harbour and Schiphol Amsterdam Airport (import and export).

II.2 If protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? Do they include the possibility of seizure and confiscation of specimens? What is the level of fines and prison sentences? Are the sanctions often applied and considered to be effective? Can the sanctions be applied on legal persons?

II.3. Conduct falling under article 3(g) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has this provision already been implemented in your country, as the case may be, by pre-existing legislation? How is this conduct described in your legislation: copy- and paste or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply other types of sanctions or to simply drop the case?

1. The core provision in the FFA on trade in protected species (par 13) reads:

“1. It is prohibited:

a. to order, to purchase or to obtain, to have available for sale, to sell or to offer for sale, to carry, to offer for transport, to deliver, to use for commercial gain, to hire or to rent, to exchange or to offer for exchange, to exhibit for commercial purposes, to import into or to export from The Netherlands or to possess plants or vegetal products, or animals, eggs, nests or animal products pertaining to a protected indigenous or foreign plant species or to a protected indigenous or foreign animal species respectively.”

This provision entered into force on 01-04-2002. Before that date, the implementation of the CITES-regulation was covered by the Act on Endangered Foreign Animal or Plant Species. This pre-existing provision also covers article 3(g) of the Ecocrime directive. As can be stated by comparison, it isn't copy-pasted from the directive.

2. Enforcement of the FFA can take the form of administrative measures or of imposing penal sanctions. Administrative measures and penal sanctions can be, and are in practice, also applied to legal persons, as far as possible (imprisonment of legal persons seems less possible).

2. Administrative measures

The Minister of Agriculture, Nature and Food Quality is, under the FFA (par 112), entitled to:

- Issue an order under penal sum (injunction) with respect to anybody who violates the FFA. This means that if and as long as a trespasser does not follow the order, he has to pay an amount of money (per infraction and/or per time period).
- Decide to bring back illegally imported protected plant or animal species or products thereof to the country of export, to the country of origin or to any other foreign country suitable for the purpose of CITES, at the full or partial expense of the owner, importer or carrier or his representative in the Netherlands.
- Wholly or partially recover the costs of care, housing or storage of these plants, animals or products to the owner, importer or carrier or his representative in the Netherlands, if it has been decided that these plants etc. will not be brought back.

This version of par 122 has entered into force on 01-07-2009. Comparable previous versions were in force at least from 01-04-2002.

3. Criminal sanctions

Under the Economic Offences Act, violations of par.13 of the FFA are criminal offences.

They are considered to be crimes if committed deliberately, and otherwise are considered to be misdemeanours.

- For crimes of this kind, maximum penalties are six years of imprisonment and/or a fine of € 45.000,-; if the value of the goods related to the crime committed is higher than ¼ of € 45,000,-, the maximum fine is € 450.000,-.
- For misdemeanours, maximum penalties are one year of imprisonment and/or a maximum fine of € 11.250,-; if the value of the goods related to the misdemeanour committed is higher than ¼ of € 11,250,-, the maximum fine is € 45.000,-.
- The general minimum penalties are 1 day of imprisonment and a fine of € 2,-.

There is no difference between penalties for natural and legal persons.

4. In criminal investigations, seizure of specimens is possible. As a part of a conviction, the court can order the confiscation of specimens.

5. The Prosecutors Office have developed an Enforcement Strategy Document for the FFA. For law enforcement, par 13 of the FFA is a priority paragraph.

a. *Specific priorities*

- For indigenous protected species, enforcement will concentrate on season linked catch of (prey) birds and amphibians, as well as on the trade activities with respect to the most vulnerable and the commercially most interesting animal and plant species (monitoring of traders including import and export).
- For the import and export (including transit) of foreign protected species, law enforcement with respect to private persons will concentrate on souvenirs (mostly dead specimens and products thereof), especially on the large scale passenger transport on international airports.
- For the import and export (including transit trade) of foreign protected species by importers and couriers for trade purposes, law enforcement will concentrate on air freight handling on airports (import of live species and/of fresh products). Customs, with support of AID have a central role there. For foreign protected species the harbours of Flushing and Rotterdam are

most important (tropical timber and plants, traditional Chinese medicine, reptiles, tropical ornamental birds, tortoises, eggs, caviar, ivory, animal skins, cactuses and orchids).

- For traders within The Netherlands (including nurseries) monitoring will concentrate primarily on trade streams: availability of licenses, marks, trade registration. Important (illegal) trade streams are again traditional Chinese medicine, reptiles, tropical ornamental birds, tortoises, eggs, caviar, ivory, animal skins, cactuses and orchids.

b. *Directives for the public prosecutors in court*

The Document contains also a calculation scheme for the public prosecutors in court cases concerning the CITES-regulation.

The base factor is the possession of an animal or a plant.

- Annex A animal species (dead or alive), per specimen: € 660,-
- Annex B animal species (dead or alive), per specimen: 440,-
- Annex A or B plant species (dead or alive), per specimen: € 264,-
- Parts of Annex A or B animal or plant species, per specimen: € 176,-
- Ivory: per gram € 2,20,-
- Products made of Annex A animals: a range from € 22 for less than 500 gram to € 5.280,- for 500-1000 kilogram animal stuff
- Products made of Annex B animals: a range from € 22 for less than 500 gram to € 3.520,- for 500-1000 kilogram animal stuff
- Products made of Annex A or B plant species: a range from € 22 for less than 500 gram to € 2112,- for 500-1000 kilogram vegetable stuff.
- Annex C animal or plant species (dead or alive): per specimen € 196,-
- Parts of annex C animals or plants : per specimen € 132
- Products made of Annex C plant or animal species: a range from € 22 for less than 500 gram to € 1584,- for 500-1000 kilogram animal or vegetable stuff
- The Directive contains a specific fine scheme for personal goods such as souvenirs and furniture, ranging from € 2,20 for one gram of ivory to € 330,- for 350 to 500 gram of caviar.

Calculation factors:

Recidivism: once + 50 %, twice + 100%, more + 150 %

Professionalism: private person: - 25 %, small enterprise + 0 %, medium enterprise + 25%, large enterprise + 50 %.

For the courts these calculation schemes are not binding; nevertheless the courts will generally follow the public prosecutor.

5. In criminal procedure, a paramount principle is the opportunity principle. This means that the public prosecutor has the right to decide whether or not he will bring a case before the court. So he has the competence to drop cases, depending on workload and priorities. It should be taken into account that under the Economic Offences Act, roughly 90 % of the cases fit for prosecution will end with a financial transaction (fine) offered by the public prosecutor to the trespasser followed by payment by the trespasser to the State. There are no reasons to believe that this is different for the enforcement of par 13 of the FFA.

6. Some statistics on the implementation of the CITES legislation

Derived from a fact sheet of the Ministry of Agriculture, Nature and Food Quality of June 2008

Customs

2005 monitoring actions 19.669 violations 492

2006 monitoring actions 26.799 violations 641

AID monitoring actions on the basis of information received

2006 1000 CITES informations and questions, 700 monitoring actions, 58 warrants, 17 warnings, 47 cases transferred tot the public prosecutor

Number of infractions

2005 129

2006 104

2007 117

CITES cases handled by the public prosecutor

2006 499

2007 490

Seizures and specimens

Indigenous protected animals dead or alive: 162 seizures, 2885 specimens

Foreign projected animals dead or alive: 451 seizures, 7986 specimens

Foreign protected plants dead or alive: 250 seizures, 302554 specimens (4 big cases on cactuses, orchids and Cycas)

Examples from police, AID and Customs practice:

2005 ivory, prepared birds on collectors fair

1600 kg caviar

8 tusks and 22 feet of African elephants at Schiphol Amsterdam Airport

2006 Fennek

5 poisonous tarantulas

Chlorocebus at Schiphol Amsterdam Airport

2 pumas and squirrel monkey

5 Haliaeetus pelagicus

2007 22 prey birds from Germany, Belgium and the UK

2008 25 iguanas and 5 spectacled caymans

88 songbirds from Surinam

3 Asheras

2003-2007 24 primates