



Response to the EU Commission's consultation on wildlife trafficking

*Statement on behalf of the research project "European
Union Action to Fight Environmental Crime" (EFFACE)*

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Comments are made with particular reference to the comparative Case Study on Wildlife Trafficking in the UK and Norway and the Report on EU Organised Crime Instruments and the Environmental Crime Legal Analysis of EU instruments on organised crime in the perspective of fighting environmental crime, which are currently being conducted for the EFFACE project.

1. Is the policy and legislative framework currently in place in the EU against wildlife trafficking adequate?

Problems with the policy and legislative framework in place:

- All Member States are required to enforce CITES through the implementation of the EU Wildlife Trade Regulations. It is essential that all implement and enforce these uniformly as failure to do so leaves all Member States at risk, due to the open market. Once illegal wildlife/products enter the EU it becomes more difficult to identify and apprehend the offenders. However, there is considerable variation across Member States in terms of the priority given to this offence and therefore the resources and training in place to enforce these regulations. In order for policy and legislation to be adequate, the resources must be provided to enforce it and to train/educate relevant agencies so there is both a general competency and expertise available to respond to the offences in all member states. Prioritizing a focus on wildlife trafficking (WLT) and providing the resources necessary to effectively prevent it must be encouraged and directed from the top political level in all Member States (and beyond, in source countries).
- CITES and EU Wildlife Trade Regulations are implemented in many of the countries bordering the EU (e.g. Norway as an EEA member), yet these offences are given limited attention by law enforcement agencies. WLT is not recognized as a priority and there is a general ignorance among law enforcement agencies. These weaknesses on the EU borders may also facilitate opportunities for WLT within EU borders.
- The frequency of changes to what is already complex legislation (e.g. CITES) results in non-compliance, poor enforcement and prosecution, especially when changes (e.g. recent issue in the UK with definition of worked/unworked ivory) are not communicated clearly to key stakeholders (e.g. commercial traders or front line customs officers). A clear communication strategy of changes in regulations and policy which includes all key stakeholders is required. A communication strategy, involving key stakeholders, is also essential for disseminating information on changes to the public.
- Current international legislation is focused on conservation and trade – ‘maintaining nature for our own benefit’ - more emphasis on animal welfare within legislation and the need

for development (rather than further enforcement) is necessary in recognition that treating animals humanely can also add to human development (e.g. food security, disaster management, poverty reduction).

- A clearer position on animal welfare in current legislation and policy is required (e.g. what happens to confiscated live animals - the use of euthanasia to destroy healthy animals should not be an acceptable option, no matter which Appendix/Annex a species is in). In some countries, (e.g. Norway) euthanasia is the rule rather than the exception, especially for reptiles confiscated in private homes. This may be prevented by making this process more transparent, where each member state is required to produce a report for public dissemination which details how all confiscated live animals have been managed. The UK, for example, has a good record of re-homing animals but this is an informal process facilitated by the commitment of agency staff, rather than a legal requirement. Confiscation of proceeds of illegal wildlife trafficking is a major problem on the agenda of CITES. Confiscation of assets derived from illegal wildlife trafficking has been addressed at the European level just through non-binding instruments. The Commission Recommendation of 13 June 2007 identifies a set of actions for the enforcement of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein. It proposes that in order to increase the enforcement capacity of this Regulation that Member States should take measures "ensuring that facilities are available for the temporary care of seized or confiscated live specimens and mechanisms are in place for their long-term rehoming where necessary."¹ Some EU Member States are experiencing problems with confiscation, their failure to take the recommended measures result in wildlife being returned to the country of origin or back to the offender. For example, Spain is experiencing problems that can affect the deterrent effect of measures adopted to fight this type of environmental crime² because in some cases offenders may keep the wildlife due to the lack of homing facilities. The European Parliament in its recent Resolution of 15 January 2014 has recommended that "Member States provide for immediate confiscation of any seized specimens, in order to better implement CITES and protect the welfare of live animals" – this should be made a priority by Member States.

¹ See Commission Recommendation of 13 June 2007 identifying a set of actions for the enforcement of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (*notified under document number C(2007) 2551*) (2007/425/EC), *OJ L 159*, 20.06.2007, p. 45.

² The Spanish police forces in charge have denounced that because of the lack of resources, wild animals must stay with those responsible of their illegal trafficking due to the lack of facilities to keep them with the adequate conditions.

Further consideration also needs to be given to the welfare of wildlife returned to the country of origin. Considerations should include the availability and conditions of facilities in these countries to care for the animal's welfare (e.g. if sanctuaries are used are they funded adequately to ensure the conditions are suitable for these animals).

- As the main focus of this legislation and policy is the conservation of wild species, species listed in Annex I which are born and bred in captivity or artificially propagated are allowed to be traded as per Annex II conditions – this provides a significant loophole for the illegal trade as such legal trade hides the illegal trade, and allows for “laundering”. Additionally, this condition allows also, for example, the practice of tiger and black bear (for bile) farming, cruel procedures, particularly unsuitable for wild animals. Similar issues are evident in the legal trade in birds/raptors – due to the nature of the trade it is difficult to identify and enforce prohibitions on the illegal trade, and it is identified as particularly problematic in terms of animal welfare due to the large number of birds which die in transit.
- The adoption of a new Directive on 14 March 2014³ on the freezing and confiscation of proceeds of crime in the European Union can be considered a missed opportunity since it fails to regulate environmental crime and in particular, organised environmental crime. Thus it does not address the problem of confiscation related to illegal wildlife trafficking.
- The EU uses the IATA (International Air Transport Association) Live Animal Regulations as the minimum standard for transporting animals for the legal wildlife trade in a safe and ethical manner. These regulations are voluntarily signed up to by companies/businesses. Member States may refuse authorisation for transporting animals for those found to be in breach of these regulations. However, as there is no database of such breaches or other avenue for Member States to share information across the EU on companies with a record of infringements (e.g. involved in overcrowding, inappropriate facilities/space), offenders banned in one member state can continue to reoffend in another. A central database which requires Member States to report such incidents is essential for making transport companies accountable for their actions and to prevent future infringements. Closer inspection of those facilitating the legal trade may also assist in preventing and detecting the illegal trade, as animals are known to be trafficked in this way (e.g. hiding illegal species among legal species).
- Prosecution and sentencing are identified as particularly weak areas of enforcement in both the UK and Norway. For legislation to be effective there is a great need for specialist

³ See *COM(2012) 85 final* of 12 March 2012, the Press Note “Council adopts directive on the freezing and confiscation of proceeds of crime” 7643, PRESS 145. The final version of the Directive is available at register.consilium.europa.eu/pdf/en/13/pe00/pe00121.en13.pdf

training at all levels of the Criminal Justice System (CJS) and for a sentencing guide or guideline document on sentencing practices. Both training and guides should be required by all Member States in order to support the relevant CJS agencies. Additionally, there are notable variations in the maximum penalties available in Member States when sentencing WLT offences, and, as evident in the UK, these maximum sentences are seldom (if ever) used and there are also inconsistencies in use of the lowest penalties available (e.g. fine, caution, imprisonment) by the different regulation and enforcement agencies. To encourage consistency within and between Member States it would also be beneficial for each Member States to complete a report on sentencing outcomes for WLT prosecutions to determine if punishment is proportionate and to identify how frequently maximum penalties are used. Inconsistent penalties, lenient punishment and delays (because of the lack of priority placed on WLT offences in the judicial system) undermine both the possibility of legislation having a deterrent effect and effectively punishing offenders.

- To ensure EU policy/legislation is enacted in an adequate and consistent manner by member states, each member state should be encouraged to update their legislation and provide an overview of the legislation which can be used to enforce WLT offences. Member States should be required to update relevant legislation and polices more frequently. For example, the UK COTES and CEMA, which regulate the WLT, require updating. In Norway revision of the CITES regulation has been delayed for years. In the UK, many key stakeholders have argued for a complete overhaul of the wildlife legislation, as it is presently seen as incoherent and, in parts, out of date. For example, while the penalties available within UK domestic legislation such as CEMA (Customs and Excise Management Act 1979) are perceived by many enforcement agencies to be adequate (e.g. maximum of 7 years in custody), the maximum sentence of two years custody under COTES (Control of Trade in Endangered Species (Enforcement) Regulations 1997) is seen as inadequate and problematic as it does not send a clear message to offenders. The development of a single piece of legislation which consolidates all relevant wildlife legislation in one place is called for, with the understanding that this would enhance consistency and compliance, and would make enforcement and prosecution more effective and efficient.
- Both CITES and the EU Wildlife Trade Regulations contain less strict provisions and permit requirements regarding trade to and from the EU in some specimens of species listed in the Annexes that are considered personal and household effects. Both the definition of 'personal or household effects' and the exemptions in place cause confusion for both law enforcement officers (who may have received limited training in the regulations) and for members of the public (e.g. tourists), and may provide offenders with an opportunity to offend. Further the accumulation of "household effects" may have devastating effects for the species involved, for example sea horses. A better way would be to prohibit all purchase of CITES species products, whether from appendix I or II, without permission.

2. Should the EU enhance its approach to wildlife trafficking by developing a new EU Action Plan, as called for by the European Parliament?

Argument for a new Action Plan:

An EU Action plan would present a useful way forward by providing a coherent voice within the EU on responding to WLT. In particular, an Action Plan could:

1) Provide sustained strategic direction for EU member states, such as the adoption of an agenda of legal measures to be proposed, adopted and implemented in the next years.

2) Could help highlight the serious and organized nature of WLT and enhance awareness among the public and politicians as part of a preventative approach. In doing so, it may provide a vehicle for each member state to develop an evidence based approach to responding to WLT, an integrated approach among law enforcement agencies which encourages cooperation, coordination and discourse nationally and internationally (particularly important given the united border control required by the single European market) and redirect focus towards other possible responses (e.g. prevention, education). Previous proposals made by the European Parliament should also be considered in this new Action Plan, such as the call (in 2012) "to develop innovative instruments for the prosecution of those who commit environmental offences in which organised crime plays a role"⁴ and (in 2013), for "joint action be taken to prevent and combat illegal environment-related activities connected to or resulting from organised crime and mafia-type criminal activities, including by strengthening European bodies [e.g. Europol and Eurojust] and international ones [e.g., Interpol and the United Nations Interregional Crime and Justice Research Institute (UNICRI)], as well as by sharing working methods and information held by the Member States that have been the most involved in combating this form of crime, with a view to developing a common action plan"⁵.

3) Would also be beneficial if it provided further opportunities for law enforcement and government agencies to engage with a broader range of stakeholders – e.g. transport companies,

⁴ European Parliament Resolution of 25 October 2011 on organised crime in the European Union, (2010/2309(INI)), *OJ C 131E*, 8.5.2013, p. 66–79.

⁵ European Parliament Resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken (final report) (2013/2107(INI)), available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0444&language=EN&ring=A7-2013-0307>

international agencies, NGOs, etc. - to share information and intelligence.

Possible difficulties:

An Action Plan would need to consider the resources in place to respond to WLT (as is already evident in the enforcement of WLT legislation, an action plan is only as effective as the commitment and resources available to back it up). Equally, a plan would need to assess the relationship between legal and illegal trade – the difficulties of responding to WLT is compounded by the fact that WLT, unlike other serious trafficking offences, is facilitated by a large profitable legal trade and consequently parallel legal and illegal trafficking and markets. This is evident in terms of the trafficking of wild-caught birds/reptiles by claiming they are locally bred, and by the forgery of CITES certificates, which provide easy opportunities for offending, including corruption.

3. How could the EU increase political commitment at all levels against wildlife trafficking? What diplomatic tools would be best suited to ensure coherence between different international initiatives?

Opportunities to increase political commitment:

- Lessons could be learned from member states, such as the UK, where WLT, in recent years, has received significant political attention: 1). Recent developments have involved a combination of education, public pressure and media pressure which has highlighted the wider impact of WLT offences, facilitated largely by the extensive campaigning by NGOs and the increased publicity of noteworthy seizures and prosecutions by enforcement agencies. 2) UK political commitment has also been influenced by the growing evidence of a link between WLT and organised and serious crime and the implications for national security. Although it is important to ensure there is commitment to enforcing all types of WLT (not just organised and serious offences), it may be easier to engage political support by clearly establishing the link (above) and discussing how current legislation and resources (for serious and organised crime) can be used to respond to WLT. 3) The involvement of key figureheads has also facilitated widespread discussion and focus on WLT and provided the opportunity for government officials to engage with key stakeholders who have clearly detailed the difficulties and opportunities in preventing WLT. Further opportunities are required nationally and internationally (e.g. through for a), for key stakeholders to come together with politicians to discuss SWOT of responding to WLT.
- It is important for politicians to understand the total 'cost' of WLT. While the 'dark figure' of WLT remains high it is difficult to clearly establish the financial and social cost to communities, animals and the environment. More accurate figures and evidence could be achieved through better recording and measurement of WLT. Additional Funding for research is also required to further understand the immediate impact and long term consequences on animals, people, and the environment. Such research could identify

evidence-based solutions – such as alternative livelihoods for poachers who are motivated by poverty and approaches which negatively impact the desire for WLT products/animals.

- The EU should consider the possibility of taking advantage of the Green Diplomacy Network that now is part the External Action Service. This diplomatic tool could orchestrate campaigns and demarches specifically focused on the fight against WLT. In this way, all Member States acting individually should also act on behalf of the EU itself.

4. What tools at international level should the EU focus on to enhance enforcement against wildlife trafficking and strengthen governance?

International Tools already available:

- EU-TWIX (an online forum and database developed by the Belgian Federal Police to assist national law enforcement agencies across the EU, including CITES Management Authorities and prosecutors, in their task of detecting, analysing and monitoring WLT activities) according to UK law enforcement agencies is an essential resource in the response to WLT. It enables communication - the swift exchange of information/intelligence - between member states. However, the effectiveness of this exchange is largely dependent on regular inputs from enforcement agencies in all member states. Engagement varies considerably from one country to another. All Member States should be required to train relevant enforcement and agency personnel to use EU-TWIX and to engage regularly with the system.
- Key international agencies such as INTERPOL, UN (United Nations), WB (World Bank), and WCO (World Customs Organization) already play an important role in responding to WLT, however, resources within these agencies for WLT are limited. Further funding is needed to support additional positions within these agencies and to assist in enhancing education and awareness (e.g. the WCO would benefit from educating their officers and providing data programs like 'Green Parrot' to all members). For example:

1) **The EU should support the institutional system of the UN Convention on transnational organised crime, by supporting upgrading the role and competences of UNODC.** This institution has a very limited operational capacity. It should be able to enhance cooperation among source states and states of demand and transit. The mandate of the UNODC to fight against environmental crime and organised environmental crime was given in 2011, by the Economic and Social Council through its Resolution 2011/36 on crime prevention and criminal justice responses to trafficking in endangered species of wild fauna and flora. In the resolution, the Council requested UNODC to, inter alia, continue to provide technical assistance to States, upon request, particularly as regards the prevention, investigation and prosecution of trafficking in endangered species of wild

fauna and flora, within its mandate and in cooperation with Member States, relevant international organizations and the private sector. Pursuant to that resolution, a series of transnational organized crime threat assessments, addressing the scope and prevalence of trafficking in wild fauna and flora, is currently being prepared, in consultation with Member States, partners and international organizations.

2) The EU should financially support the UNODC to enhance the enforcement of the Convention in those Member States with difficulties to implement its most basic measures, among which are the creation of criminal offences, the adoption of new frameworks on extradition, judicial assistance and law-enforcement cooperation, as well as the promotion of training and technical assistance for the establishment and the improvement of the skills of national authorities against organised crime. Additionally, this could facilitate the UN collecting more intelligence and information – as the CoP has indicated governments do not provide complete and accurate information – therefore there is a need for the exchange of information on patterns and trends in transnational organized crime and successful practices for combating organised crime.

- Key stakeholders (e.g. detailed above) should be encouraged to include WLT as a specific topic (or cluster) in their annual meeting programs (E.g. World Economic Forum Meeting).
- Additional funding for international academic social research is required to facilitate an evidence based approach to responding to WLT – this is a ‘social’ problem requiring social research (in addition to scientific research) to more fully understand the motivation behind each level of the WLT (e.g. demand, trade and supply) and the link to serious and organised crime.
- The ICCWC (International Consortium on Combating Wildlife Crime) Wildlife and Forest Crime Analytic Toolkit is a comprehensive resource which provides governments with the tools to conduct a comprehensive analysis of the strengths and weakness of the CJS responses and other measures related to the protection and monitoring of wildlife and forest products. Each EU member state should be encouraged to use the relevant parts of this toolkit to provide a current overview of the challenges and future direction of their response to WLT.
- **The EU and its Member States should propose to the Conference of the Parties of the UN Convention on Transnational Organised Crime the adoption of a Fifth protocol on illegal wildlife trafficking** addressing those serious environmental crimes such as illegal fishing, illegal logging and WLT. This Convention that omitted all reference to the environment, introduces a wide definition of “serious crime” (article 2, paragraph b), which enables the CoP to identify new forms and dimensions of transnational organized crime, with a view to facilitating a more uniform approach at the global level. This considerably

enhances the potential use of the Convention for the purposes of international cooperation⁶.

The Commission on Crime Prevention and Criminal Justice (CCPCJ hereinafter) is a body within the United Nations, dealing with crime prevention and criminal justice policy. Recently, many NGOs have pleaded for it to expand the work of the **UN Office on Drugs and Crime (UNODC)** to address illicit trafficking in protected species of wild fauna and flora.⁷ In its 22nd session held in Vienna in April 2013, it addressed *"The challenge posed by emerging forms of crime that have a significant impact on the environment and ways to deal with it effectively"*. This Commission session is thus an important opportunity to build on the UN's acknowledgement that wildlife and forest crime is serious transnational organised crime, and to drive further action on criminal justice issues relating to illicit wildlife and timber trafficking.

Additional Tools:

- In addition to enhancing awareness among key stakeholders of current fora which discuss WLT, it is necessary to develop new opportunities for international agencies to discuss the problem more openly, to share experience and intelligence and to facilitate multiple agendas (e.g. political, business, welfare, etc...). Examples of previously successful fora include:

UNODC Joint Activities in the *Framework of the International Consortium⁸ to Fight Environmental Crime and Organised Environmental Crime⁹*

A meeting of the Ivory and Rhinoceros Enforcement Task Force was held in Nairobi in May 2011, where law enforcement officers exchanged information and developed strategies for combating the illegal trade in ivory. The meeting was attended by 20 high-level law

⁶ Conference of the Parties to the Convention on Transnational Organised Crime of the 5 July 2012, *CTOC/COP/2012/7*, p. 2.

⁷ See the Document of EIA, WWF and Traffic, *Eco Crime Transnational Organised and Serious*, available at <http://www.eia-international.org/eco-crimes-transnational-organised-and-serious>

⁸ The International Consortium on Combating Wildlife Crime is formed by UNODC, INTERPOL and UNEP, the Secretariat of CITES, -the Convention on International Trade in Endangered Species of Wild Fauna and Flora-, INTERPOL, the World Customs Organization and the World Bank.

⁹ CoP 2012 to the Convention on Transnational Organised Crime.

enforcement officers representing wildlife, customs and national park authorities, the police, and law enforcement agencies from 12 countries. Participants also considered intelligence supplied by Australia, Canada and the United States of America.

A workshop on establishing a network of controlled delivery units was held in Shanghai, China, from 7 to 9 December 2011. The workshop brought together 50 participants from 18 countries, including police, customs and judicial officials from Africa and Asia, as well as experts from organizations that are members of the International Consortium on Combating Wildlife Crime. The workshop covered law enforcement in China and efforts to counter forest and wildlife crime, the identification of global routes used for smuggling wildlife and timber, methods used to detect the smuggling of wildlife and timber, controlled delivery techniques (including their financial aspects) and prosecution. The workshop included group activities aimed at building a network of practitioners. Follow-up will include monitoring and reporting on participants' future collaboration and controlled delivery operations.

A seminar for senior-level police and customs officers of States that still have tigers living in the wild was organized under the auspices of the International Consortium in Bangkok on 13 and 14 February 2012. The seminar was attended by representatives from Bangladesh, Bhutan, Cambodia, China, India, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, Nepal, the Russian Federation, Thailand and Viet Nam and representatives from all five International Consortium partners. The seminar was one of the initial collaborative efforts of the Consortium to provide to law enforcement officers technical assistance related to trafficking in wildlife.

A workshop on electronic permit systems was organized by the secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, with the support of China and the European Commission. The workshop, held in Guangzhou, China, from 9 to 11 May 2012, provided participants with an opportunity to express

their needs, share knowledge, establish partnerships and develop funding strategies.

- There is growing evidence that the internet greatly facilitates WLT, therefore a consistent and collective approach to monitoring the internet (including the dark web) would be beneficial for all member states. Some Member States have specific agencies responsible for conducting research and monitoring the internet, but this is an area that requires further understanding and regulation from all Member States (e.g. updating legislation on internet offences). A similar argument could be made for the needs to develop a consistent and collective approach to identifying the chain involved in WLT and understanding the development of networks among the various actors (e.g. poachers, trade, and purchase). Member States already use tools to enforce other serious organised crimes, these tools should be also be adopted for WLT in order to understand the actors and processes involved in the trade and thereby develop more effective enforcement.
- WLT is an international problem which requires international evaluation. The EU should propose the development of an international report, such as the World Drug Report (UN), which could highlight the current nature and extent of WLT internationally, provide important lessons on the measure used to control WLT and suggest future developments in responding to WLT. This report would highlight the WLT as a priority by identifying the long-term implications of WLT, in particular, addressing the issues of development and security. The report could influence countries to uphold international treaties, support political collaboration between countries and cooperation on the measures used to respond.

5. What tools are most suitable for EU action to address international and EU demand for illegal wildlife products? What role could civil society and the private sector play in this regard?

Tools for reducing Demand

- Reducing demand and preventing the development of new markets for demand should be central to the strategy adopted to stop WLT, but it is also the greatest challenge. Apparently there is little knowledge about the widespread harms of WLT among the general population. Evidence from UK law enforcement agencies suggests that 'non-compliance' (e.g. failure to comply fully with the regulations and policy requirements – often due to ignorance or paperwork error - rather than those purposefully committing an offence) makes up a significant portion of their CITES seizures, (e.g. tourists bringing back souvenirs/pets). As previously discussed, WLT legislation and policies are complex, change regularly and include exemptions which may be open to interpretation, thereby creating possible loopholes and facilitating ignorance. Clearer and more simplistic legislation and policy (e.g. requiring certificates for all CITES listed 'personal' effects) could become an

effective tool in reducing demand (e.g. many tortoise may be saved if tourists stopped purchasing them as souvenirs).

- The recent European Parliament Resolution of 15 January 2014 proposed that EU Member States follow the example taken by the US, Philippines and Gabon to destroy their stockpiles of illegal ivory, (later followed up by France in February 2014 and similar actions have been taken in China and the US) in order to create public awareness of the increased demand for ivory and the increased levels of illegal trade and poaching¹⁰. This should be seen by EU Member States as a key tool in decreasing both demand and WLT offences. Member States should be encouraged to “engage the CITES Standing Committee regarding Decision 16.47 from CoP on provisions to streamline the disposal of illegally traded and confiscated specimens in order to ensure coordinated approaches to information exchange and rapid rehoming of confiscated live animals.”
- There are many motivations for engaging in the demand side of WLT, predominantly UK stakeholders indicate ‘greed’/‘finances’ as the motivation, yet this is clearly an area about which there is far less understanding (e.g. what influences/causes trends, why do some businesses take the risk of importing illegal ‘stock’ alongside their legal). Our understanding of the motivations to trade/purchase products from iconic species (such as ivory, rhino horn and tiger claw (products) is increasing, however less is understood about the motivations behind the pet (e.g. reptile) and collector (e.g. birds/eggs) offences and the cultural influence on the bush meat trade and the trade in animals used for medicinal purposes, for example. Funded research should be used as a tool to develop a more detailed understanding of the motivation behind demand and thereafter, the most effective responses to reduce demand.
- NGOs frequently play a key role in education and awareness campaigns, but the EU should identify this as a more significant part of the official response. Education and awareness is required at all levels (schools, private sector, travel locations, trade locations - internet). For example, information about the lack of effect of traditional medicines must be dispersed in migrant communities, through key figureheads and community fora, where possible (e.g. religious and political leaders). Opportunities to engage with the private sector, as key stakeholders in WLT, need to be facilitated at the national and international level. These organisations could be used more effectively by law enforcement and government agencies to provide tools or become a tool for informing their clients, to reduce demand and enhance compliance (e.g. IATA regulations, EBay messages to buyers of ivory online). Within the UK, for example, law enforcement agencies work closely with the private sector and interest groups who can act as ‘experts’, can assist in intelligence gathering and facilitate education and awareness to others (for example, see the Due

¹⁰ EP Resolution of 15 January 2014 on wildlife crime, 2013/2747, p. 1-3

Diligence Code 1999) as part of their enforcement response.

- Enforcement of the codes of conducts and non-binding instruments regarding WLT (e.g. IATA) should be enhanced and best practices should be disseminated at EU level. Legal status should also be upgraded.

6. How can the EU best add value to address the peace and security implications of wildlife trafficking?

- Wildlife poaching, especially that involving keystone species (e.g. rhino, elephants, chimpanzees and gorillas), takes place in conflict ridden countries (e.g. DR Congo). This situation makes protecting wildlife much more difficult - both in terms of preserving the wildlife and protecting the enforcement officials. Wildlife rangers have died in great numbers protecting wildlife from insurgent groups. In the same way as the UN sends troops to ensure peace (e.g. in Lebanon and Afghanistan), the EU could encourage the UN to also support these countries with troops to protect their wildlife. In doing so, the EU gives recognition to the importance poaching has in sustaining conflicts (through the resources involved in the trade), and to the value in responding to WLT to protect both animals and people and enhance peace and security.
- The scope and dangers of trafficking in endangered species of wild fauna and flora has already been examined in the UNODC report *Organized Crime and Instability in Central Africa: A Threat Assessment*¹¹, which describes the interconnections between different criminal actors, outlines the various trafficking flows and identifies some possible options for intervention under a regional framework approach. Considering the difficulties related with civil war and conflicts, UNODC has given clear advice on the way to solve problems related to illicit commercial flows: even though the illegal trade is facilitated by locally-based criminals, in each case, at least one component of the supply chain lies outside West Africa. Thus, the EU should try to control those flows entering the EU Member States by reinforcing border controls and intelligence work on how WLT networks work.

7. How could the EU cooperation instruments better support the reinforcement of the capacities of developing countries for wildlife conservation and action against wildlife trafficking?

Enhancing capacity in developing countries:

- Both EU Member States and developing countries demonstrate a varied approach to responding to WLT – some of which are very successful (e.g. the successful multi-agency campaigns Operation Charm in the UK). These examples of ‘best practice’ should be

¹¹ Ibidem.

shared through relevant fora. EU Member States have been, and continue to work to overcome many difficulties in responding to WLT – for example: limited training/education for official agencies, unclear roles and awareness of external agency functions, limited opportunity for multi-agency co-operation, campaigns and partnerships, unclear legislation and policy, limitations in the availability and knowledge of the use of key investigation/identification resources (e.g. DNA, technology), limited understanding among prosecution and sentencing officials, financial restraints which limit the resources available to enforce effectively and corruption among those responsible for enforcing the law. These issues also negatively affect the capacities of some developing countries to respond to both conservation and trafficking. For example, in Africa, organised environmental crime raises problems of collective criminality in which local impoverished communities rely on petty environmental crime to survive, while the orchestrators of the criminal organization thrive under the veil of legal companies and trade. These organizations are supported by weak corrupt governments in emerging powers or states in transition after devastating wars. As the EU continues to 'put its own house in order' the lessons learnt may be useful if shared with developing countries through relevant fora (e.g. conferences, replication of EU-TWIX type community outside the EU) and guides (e.g. identification guides) which could be funded/facilitated through EU cooperation instruments. Such cooperation should be flexible in order to adapt to each specific case in each geographical hub.

- The ICCWC **Wildlife and Forest Crime Analytic Toolkit (detailed above)** can help government agencies to identify the types of responses which may better support their strategy against WLT and highlight the areas which require funding and resources, in order to establish a cohesive and effective response to wildlife conservation and protection. EU cooperation instruments could be used to encourage developing countries to engage with this helpful resource, and in doing so should require all EU Member States to adopt (the relevant parts of) this toolkit to evaluate their own response – this would benefit both the EU response to WLT and that of developing countries.
- The EU, through communication instruments, could also assist developing countries in identifying appropriate alternatives to enforcement in their response to WLT, for example: education, opportunity provision, training, community engagement, (also alternative within enforcement – e.g. restorative justice), etc...have all been used effectively in the UK to reduce offences linked to disadvantage. These strategies require long-term commitment, but are effective preventative measures which must be used alongside enforcement to respond effectively to WLT.

8. What measures could be taken to improve data on wildlife crime in the EU so as to ensure that policy-making can be more effectively targeted?

To improve data on WLT, the EU needs to reduce the 'dark figure' of crime – this could involve:

- Better recording practices by Member States – this would require centralised databases in each member state and effective recording procedures. For example, all crimes relating to both CITES-listed and not-CITES listed wildlife should be registered by Police and Customs with a specific coded for CITES and non-CITES cases. Such coding should include data about the offender, species/product and where the animal/product was trafficked from, in order to show the prevalence and chain of actors and locations. The CPS and Courts should also code WLT cases in this manner as this will allow for transparency in the prosecution of cases, as it will be possible to determine if CITES regulations have been applied in all similar cases and if sentencing has been consistent. Sanitized versions of this information should be available to the public to further enhance transparency for the public.
- Until 2004, the data on organised crime provided by EU Member States were biased by poor questionnaire design and implementation. The problem with defining organised crime, in particular, the use of a restrictive definition, negatively impacted upon the quality of the information sent to EUROPOL by EU Member States. The limitations of the data collected over the years by EUROPOL on the organised nature of WLT has been recognised by EUROPOL. Most recently, in November 2013, the first Threat Assessment on Environmental Crime in the EU, produced by EUROPOL, pointed out that “the most prominent environmental crimes featuring the involvement of organised crime in the EU are the trafficking in illicit waste and the trafficking in endangered species”. Further research and intelligence is now required - Europol and Eurojust should develop new questionnaires and engage in additional research on organised environmental crime, using the lessons learnt in previous years to ensure it is recording accurate and appropriate information and can illuminate the nature of the organised crime link to WLT further.
- Further training and education for all enforcement agency officers in order to enhance identification through better detection and recording of WLT offences.
- Further engagement in information sharing across Member States – as discussed, EU-Twix is a good example where this works well. This could facilitate better detection and data recording.
- Enhance awareness and cooperation among key stakeholders to further develop intelligence and compliance (e.g. organisation may be willing to share information on non-compliance)

9. What measures could be taken to strengthen enforcement against wildlife trafficking by environmental authorities, police, customs and prosecution services in the Member States and to reinforce cooperation between those authorities? How could awareness of the judiciary be raised?

Measures to strengthen enforcement and reinforce cooperation:

- In order to strengthen enforcement (e.g. among environmental authorities, police, customs and prosecution services, judiciary) there needs to be stronger commitment to stopping WLT by those responsible for the budget and setting priorities. Enforcement is negatively impacted when it is not a priority for these agencies and when there are limited resources allocated to detect, enforce, record or prosecute offences. At each stage of the enforcement process limitations are evident in terms of agency member's understanding of, or ability to, respond to the problem - in particular prosecution and sentencing has been identified as particularly problematic in the UK and Norway. Failure to prosecute cases and the use of lenient sentences demotivate enforcement officers who, in the UK for example, often work outside of and in excess of their contracted workload to bring these offenders to court.
- Prosecution and sentencing have been identified as particularly weak points in the enforcement response. In Norway, as is evident in many member states, WLT offences are usually regarded as misdemeanours, and consequently not prioritised. The first EU assessments on the implementation of Directive 2008/99 on the protection of the environment through criminal law demonstrates that some sectors of the judiciary have been reluctant to enforce the criminalization of environmental offences. An increased approximation of domestic sanctions on environmental offences and, in particular, in wildlife trafficking is a prerequisite for enhanced cooperation among national authorities. Measures are required to provide support for these agencies to ensure those involved in WLT cases are informed, experienced and capable. The development of sentencing guidelines or guides which compile reports on verdicts in previous cases would be beneficial as these could help establish WLT as a serious offence, highlight the best legislation to employ in the case, and clarify the importance of increased penalties and the use of maximum penalties for offenders. Networks such as ENPE –the European Network of Prosecutors of the Environment- and IMPEL – the European Union Network for the Implementation and Enforcement of Environmental Law- are contributing highly to raise the judiciary's awareness. Special projects should be dedicated to wildlife trafficking law enforcement.
- National and international co-operation and multiagency approaches to WLT have facilitated a strong enforcement response in the UK. This is characterized by opportunities for agencies to exchange information and ideas through regular fora and training, clear role descriptions and allocations to agencies and officers and communication of this to other agencies and stakeholders, cross-agency roles (e.g. National Crime Agency and Customs), management of a centralized database and regular communication with and assistance from key stakeholders (e.g. INTERPOL, NGOs). A similar approach would be beneficial in all member states. Additionally, the importance of communicating agency roles and responsibilities to other law enforcement agencies and key stakeholders cannot be

underestimated. For example, when the UK National Wildlife Crime Unit became responsible for managing a centralized database on offences recorded by the police, progress was limited due to police forces not reporting incidents to the team. However, by raising awareness of the agency and its remit, the information submitted by police forces has increased year on year, as did the requests for assistance and information on specific Wildlife offences (cases which previously may have been ignored).

- A European Criminal Policy on environmental crime, which particularly address WLT is required as it would raise awareness, in general, and could be a first attempt to address some key issues in order to reinforce cooperation among Member States authorities.
- Enforcement will be strengthened if each member state develops coherent national legislation that is current, and (if required) collates all wildlife offences in one place and provides the necessary powers for the enforcement agencies involved (e.g. appropriate powers to arrest and search a premise). Doing so may help compliance and detection and will facilitate successful prosecutions and sentencing of WLT cases.
- Until recently, within the UK, failure to prioritise WLT as a serious offence, has facilitated the general perception among enforcement agencies that wildlife officers are of lesser importance within the force. A direct result of this is that these positions are less attractive to law enforcement officers looking to develop their career. By encouraging Member States to prioritise wildlife crime, to develop specialised roles within enforcement agencies and ensure these roles facilitate career development it will enhance the attractiveness of these positions to new officers and enhance the role for current officers.
- Due to the difficulty of identifying the extent of WLT and the changing nature of the trade (e.g. species, source and transit countries) there are difficulties in setting targets for law enforcement agencies. Target setting can also negatively impact on the behavior of officers (e.g. reduce motivation to enforce when a target is met or encourage manipulation of figures). Nonetheless, if law enforcement agencies are required to reach set targets in the identification/seizure of other offences/produce, it is important to ensure there is also a target for WLT offences. Target setting can communicate to officers the priority they should give to an offence (this is evident in the targets set for drugs offences). Should Member States be encouraged to introduce targets for Customs and Police forces for the confiscation of WLT products or arrests of offenders, this may help law enforcement agencies to set WLT as a higher priority, thereby facilitating additional seizures and producing more reliable data for more efficient policy making. If such targets are to be effective there will be a need to make them flexible and achievable and ensure they do not limit efforts to detect offences. The development of clear and transparent recording procedures would limit the opportunities to manipulate figures. According to data from Norway, (EEA, not EU member but following EU/ regulation) the focus and interest of Police and Customs and also the judicial system deriving from political priorities, are on drug crimes. Custom officers have goals relating to the number of confiscations of drugs

they must make each month, while there are no corresponding goals for CITES. This entails that CITES confiscations are only random and by chance. When CITES confiscations are made, the cases are delayed in the judicial system, often over several years, resulting in lenient punishment, most usually a minor fine. In many cases it is not established whether a confiscated animal or product of an animal is CITES-listed or not. Consequently, if WLT was elevated on the political agenda, this measure would entail an increased focus on CITES offences by first line Customs and police officers.

10. How could existing tools against organised crime at EU and Member States level be better used to address wildlife trafficking? What additional measures should be envisaged, e.g. regarding sanctions? What contribution could Europol and Eurojust make in that regard?

- Despite the fact that the principal EU instruments dedicated to fighting organised crime do not address directly the specific organised environmental crime, they have left some room for an extensive interpretation of the goals to be achieved and have detailed in annexes the "other serious crimes" that could be addressed when required. Organised environmental crime should be incorporated in EU legal instruments as one of these serious crimes.
- In responding to organised crime, EU institutions are dealing with legal problems at both domestic and international levels that have hampered enforcement of WLT offences. In practice, the existing legal framework to fight against organised crime in Europe - given by the Council Framework Decision 2008/841/JHA of 24 October 2008 - has raised serious doubts about its capacity to solve the problems it was created to fight against. The domestic problems have a magnifying effect since the inability of individual Member States to cope with organised crime hinders the process to approximate this criminal offence regionally. The disparities in the implementation of this Framework Decision have triggered problems of enforcement that have led organised crime to thrive in those Member States with minor sanctions and with the lowest level of human and economic resources dedicated to fight this profitable criminal phenomenon. This problem is specially acute in the case of WLT, where Member States' different sanctions impede cooperation and the application of other EU instruments such as the EU warrant. The Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime establishes broad definitions of organised crime and criminal organization which are limited with a criminalization technique based on a quantitative threshold. The threshold of 4 years' imprisonment for a WLT offence is not met in most EU Member States, making very difficult to prosecute the offence as an organised crime. However, both open definitions, criminal organisation and organised crime, have been much criticised and their reform has been considered by the European Parliament and academia as a precondition of further legal developments on this subject. The difficulties highlighted herein must be

considered when developing new tools (e.g. legislation) to enforce WLT and/or organised environmental crime.

- There is a reluctance with the EU Council of Ministers to incorporate organised environmental crime as a serious crimes to be envisaged by long term strategies. For instance in its new Policy Cycle, when setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017, the Council did not consider incorporating a reference for the environmental crime but just to add a mere reference to the fact that "all actors involved must retain a margin of flexibility to address unexpected or emerging threats to EU internal security, in particular regarding environmental crime and energy fraud"¹². The EU consider two possibilities in response to this: 1) To reform Directive 2008/99 in order to introduce a reference to organised environmental crime. This reform could recover its first proposal where all references to organised crime or criminal organisations that appeared on minimal harmonisation of sanctions were suppressed in the final text. Recital 12 highlighted that "an approximation is particularly important where the offences have serious results or the offences are committed in the framework of criminal organizations which play a significant role in environmental crime". And 2) To reform the Framework Decision on organised crime in order to introduce expressly organised environmental crime and in particular illegal wildlife trafficking.

¹² See Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017, Doc. 137401, 6-7 June 2013, p. 3, available at [and the Draft Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017, 25.05.2013, Doc. 9849/13.](#)

