

Section 6

NATURE PROTECTION LEGISLATION

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Nature Protection - Overview

1. Introduction and Overview

This section of the Handbook deals with EC legislation in the nature protection sector. It contains an introductory overview of the sector followed by individual fiches for selected pieces of legislation. The current update is a limited attempt to bring to the attention of the reader the most recent developments since the previous version of this handbook. For more information, please consult the nature website of the European Commission at http://ec.europa.eu/environment/nature/index_en.htm.

1.1 EU Policy

The nature protection sector covers nine EU directives and regulations in total. Their main provisions are aimed at protecting habitats and wild flora and fauna.

The aims of EU policy on nature protection are outlined in the Box below.

Principles of EU Nature Protection

Contributions to the protection of biological diversity throughout the EU by ensuring that selected habitats and species are maintained at a "favourable conservation status".

Protection of threatened endemic, rare, vulnerable and endangered wild flora and fauna (including priority species for which EU has particular importance) within each Member State and throughout Europe as a whole.

Protection of habitats of Community importance (including priority habitats for which EU has particular importance), which are in danger of disappearing in their local or regional range or are outstanding examples for bio-geographical regions of Europe.

Contributions to the conservation of certain rare or threatened flora and fauna in countries outside Europe, by restricting trade in species.

In order to achieve these aims, a number of requirements are laid down, that follow a similar pattern in each legal instrument, namely:

- Planning. Setting targets and establishing administrative arrangements to enable appropriate nature protection mechanisms to be implemented effectively.
- Regulation. Identifying and implementing legal mechanisms to ensure compliance with EC requirements.
- Monitoring. Assessing the effectiveness of the application of each legal instrument.

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- Reporting. Procedures for informing the Commission of each Member State's performance in complying with the legal instruments and reporting to the Commission on implementation.

1.2 EU Legal Instruments

The nature protection sector comprises four directives, four regulations and one Council decision as summarised in the Box below.

Nature Protection Legislation

Council Directive 79/409/EEC on the conservation of wild birds.

Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

Council Directive 83/129/EEC concerning the importation into Member States of skins of certain seal pups and products derived therefrom.

Council Directive 1999/22/EC relating to the keeping of wild animals in zoos.

Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein.

Council Regulation (EEC) No. 348/81 on common rules for imports of whales or other cetacean products.

Council Regulation (EEC) No 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.

Regulation (EC) No. 2494/2000 on measures to promote the conservation and sustainable management of tropical forests and other forests in developing countries.

Council Decision 98/145/EC on the approval, on behalf of the European Community, of the amendments to Appendices I and II to the Bonn Convention on the conservation of migratory species of wild animals as decided by the fifth meeting of the Conference of the Parties to the convention.

Many of these instruments have been amended. The following text gives an overview of each of the legal instruments identified in the Box (further information is provided in the fiches following this chapter).

1.2.1 The Wild Birds Directive

This directive requires Member States to protect naturally occurring wild birds and their habitats, by measures including the designation and management of Special Protection Areas and prohibiting certain harmful activities. This involves, in particular, taking special conservation measures to ensure that wild birds and their habitats, in particular Annex 1 species, are protected. There are some exceptions that allow hunting of certain species, and allow governments to take action to prevent serious damage caused by birds.

1.2.2 The Habitats Directive

The aim of this directive is to contribute to the protection of biological diversity in the EU. This is to be partly achieved by establishing a European ecological network of representative sites (known as Natura 2000) and ensuring that selected habitats and species are maintained and protected in order to maintain and/or restore them at a "favourable conservation status". Special Areas of Conservation (SACs) are to be designated in order to ensure habitat and species protection. In addition to site protection, the directive provides for strict protection of certain species of European conservation concern.

1.2.3 The Skins of Seal Pups Directive

This directive aims to protect certain species of seal from over-exploitation, through the prohibition of the commercial importation of skins of seal pups and products derived from these skins.

1.2.4 The Endangered Species Regulation

This regulation implements the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by regulating trade in certain plant and animal species that are or may be threatened by trade.

1.2.5 The Regulation on Imports of Cetacean Products

This regulation contributes to the protection of marine mammals, e.g. whales and dolphins, by restricting trade in cetacean products.

1.2.6 The Regulation on Leghold Traps

The banning of the use of leghold traps and limiting imports into the Community of pelts of animals caught by these traps are the main objectives of this regulation.

1.2.7 Council Decision on Amendments to the Bonn Convention

This council decision is aimed at amending the appendices to the Bonn Convention on the Conservation of Migratory Species of Wild Animals.

1.2.8 The Zoos Directive

The directive aims to protect wildlife and preserve biodiversity by providing for the adoption of measures by Member States for the licensing and inspection of zoos. It requires the enforcement of licensing regimes using appropriate measures including the closure of all or part of a zoo in breach of the licensing requirements and the imposition of effective, proportionate and dissuasive penalties.

1.2.9 The Tropical Forests Regulation

The objective of this regulation is to contribute to the conservation and sustainable management of forests in developing countries, so that such countries may meet the economic, social and environmental demands placed upon forests at local, national and global levels. The regulation requires the provision of financial assistance and appropriate expertise to achieve this objective and sets aside EUR 249 million for implementation during 2000-6.

The Table below summarises other EC legislation relevant to nature protection. These items of legislation are described in greater detail in the horizontal sector implementation planning framework.

Table - Summary of Key EC Legislation in Other Environmental Sectors of Relevance to Nature Protection

Related Legislation	Relevance
Horizontal legislation (see Section 2 of the Handbook)	

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Environmental Impact Assessment Directive (85/337/EEC), amended by Council Directive 97/11/EC and Directive 2003/35/EC	Prescribes an EIA for new projects which are judged to have a significant impact on the environment. The results are to be made public, and the views of the public taken into consideration in the consenting procedure. One of the triggers for requiring an EIA is where sites of value to wildlife are potentially affected.
Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment	Prescribes a procedure to follow to ensure sufficient public participation in certain land development projects affecting the environment, and hence nature and local biodiversity (e.g. the establishment and extension of nature parks and biospheres).
Access to Environmental Information Directive (2003/4/EC)	Requires environmental information held by public bodies to be made available to the general public on request. Some of the nature protection directives require Member States to collect information relating to the protection of habitats and species. Most of this information held by public bodies would be affected by this directive. This new directive, repealing Directive 90/313/EEC, intends to ensure that EC law is consistent with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters and to provide a single coherent legislative text.
Reporting Directive (91/692/EEC)	Contains provisions on the transmission of information and reports concerning certain EC directives from Member States to the European Commission. Nature protection directives contain various reporting requirements (see Section 6).
Directive 2007/2/EC establishing an infrastructure for spatial information in the European Community (INSPIRE)	Member States must establish a system for spatial information including biodiversity lists and other statistics and meta-data on nature protection areas and on specific types of flora and fauna.
Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage	The directive establishes a framework for environmental liability based on the polluter pays principle, with a view to preventing and remedying environmental damage. The directive covers, amongst others, direct and indirect damage to species and natural habitats protected by the Birds Directive or the Habitats Directive. For damage affecting protected species and natural habitats, the directive is aimed at restoring the environment to how it was before it was damaged. For this purpose, the damaged natural resources or impaired services must be restored or replaced by identical, similar or equivalent natural resources or services either at the site of the incident or, if necessary, at an alternative site.

1.3 Related International Agreements on Nature Protection

Various Member States and candidate countries are parties to one or more of the major multilateral environmental agreements dealing with nature protection. The European Community itself is also a signatory to many of these agreements. These are briefly described below, but in any legal interpretation, EC law under the Treaty of Rome will always take precedence for Member States.

1.3.1 Convention on Wetlands of International Importance Especially as Waterfowl Habitat

Opened for signature in Ramsar, Iran: 1971

Entered into force: 1975

The overall aim of the Ramsar Convention is to stem the encroachment on and loss of wetlands, which are defined as areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres. To address this aim, the convention promotes the concept of wise use of wetlands through comprehensive national policies, and obliges parties to designate at least one site for inclusion in the List of Wetlands of International Importance. Sites included in the Ramsar list should be the subject of conservation measures, which include the establishment of nature reserves. If a site has to be de-listed, the party should compensate for the loss by creating additional nature reserves or by protecting, in the same area or elsewhere, an adequate portion of the original habitat. The EU is not a signatory to Ramsar but through its nature directives contributes significantly to the achievement of Ramsar's objectives in the Member States.

1.3.2 Convention on Biological Diversity

Opened for signature in Rio de Janeiro, Brazil: 1992

Entered into force: 1994

This treaty is the only one dealing comprehensively with biodiversity in its own right, as well as the sustainable use of biological resources. It not only complements other multilateral environmental agreements, but also addresses important issues such as access to genetic resources, the equitable distribution of benefits derived from the use of these resources, transfer of relevant technologies, and financial support. Parties to the convention undertake to prepare national biodiversity strategies, and plan to integrate the conservation of biodiversity and sustainable use of biological resources into relevant sectoral or cross-sectoral plans, programmes or policies. In addition, parties are committed to survey their biodiversity; identify components that may need special protection; identify, monitor, and subsequently regulate or manage activities that may threaten biodiversity; encourage research and training; increase public education and awareness; and develop such techniques as impact assessment and contingency plans for emergencies to minimise any loss of biodiversity. The European Community is a signatory to the convention and has developed an EC Biodiversity Strategy¹³³ as well as biodiversity action plans dealing with the integration of biodiversity into different policy sectors¹³⁴.

1.3.3 Convention on International Trade in Endangered Species of Wild Fauna and Flora

Opened for signature in Washington: 1973

Entered into force: 1975

CITES has the basic aim of regulating trade in wild animals and plants that are considered to be threatened by such trade. Trade in endangered species, listed in the convention's Appendix I, is normally prohibited (exceptions may be made, for example to establish captive breeding

¹³³ COM(1998) 42 final.

¹³⁴ COM(2001)162 final. Volumes I-V.

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schemes); those species included in Appendix II are subject to limitations on their trade, controlled by a permit system that aims to ensure that exploitation does not further diminish their populations. Each party undertakes to establish a scientific authority (to advise on whether export levels are detrimental to national populations of the species concerned) and a management authority (to ensure that trade takes place legally).

1.3.4 Convention on the Conservation of Migratory Species of Wild Animals

Opened for signature in Bonn, Germany: 1979

Entered into force: 1983

The Bonn Convention aims to conserve migratory animals over the whole of their range. Commonly referred to as the CMS, the convention provides both a framework and practical mechanisms for linking protected areas along migration paths, forming a common bond between them and a rationale for the increasingly popular trend of twinning protected areas. The international migration behaviour of animals should be included as part of any national or regional protected areas system plan review to highlight gaps in coverage of routes, especially geographic bottlenecks (e.g. narrow mountain corridors) and vital resting places. Such initiatives emphasise the need for close co-operation among CMS parties, especially developed and developing countries that host the same migratory species at different stages of their life cycles.

There are two appendices to the CMS that list migratory species that would benefit from conservation measures taken by range states – countries that exercise jurisdiction over any part of a species' distribution. Appendix I lists species that are in danger of extinction throughout all or a significant proportion of their range. The range states are required to give them full protection from such activities as hunting, fishing, capturing, harassing and deliberate killing and should endeavour to conserve their habitat, to counteract factors impeding their migration and to control other factors that might endanger them.

Those migratory species whose conservation status requires, or would benefit from, the implementation of international co-operative agreements are listed in Appendix II. Several such agreements have been, or are being, established, for example:

- Agreement on the Conservation of Bats in Europe, September 1991 (entered into force on 16 January 1994).
- Agreement on the Conservation of African-Eurasian Migratory Waterbirds, 16 June 1995 (entered into force on 1 November 1999).
- Agreement on the Conservation and Management of the Houbara Bustard (under preparation).

1.3.5 Convention on the Conservation of European Wildlife and Natural Habitats

Opened for signature in Berne, Switzerland: 1979

Entered into force: 1982

The Berne Convention aims to conserve wild flora and fauna in their natural habitats, to promote co-operation between countries in their conservation efforts, and to give particular emphasis to endangered and vulnerable species. In its provisions, the convention lays out measures to be taken by the parties to maintain the populations of wild flora and fauna and their habitats in general, as well as special protection actions needed for species listed in Appendix I (strictly protected plants), Appendix II (strictly protected animals) and Annex III (protected animals). It should be noted that the convention is open to any country where European wildlife occurs naturally, whether or not the country is in Europe. This chiefly applies to migratory species moving to Asia and Africa.

2. Development of Sectoral Strategy and Implementation Plan

2.1 Introduction

EC legislation on nature protection requires Member States to restrict or prohibit the trade in certain wild plants and animals and to establish a system of protection for certain indigenous habitats and species. This section describes the key aspects of developing a strategy for the nature sector and is complemented by Section 3, which describes the organisational and logistic requirements.

2.2 Approach

2.2.1 Introduction

In practice, there are a range of organisational options and in some cases it may be more efficient for one institution to be allocated responsibility for several tasks. The various options that can be adopted for developing a strategy for this sector are discussed in the following section.

2.2.2 Set Policy

Central government, normally in the form of the ministry responsible for the environment, must set nature conservation policy – having regard for the EU principles of wildlife protection. It must then determine the institutional structure for the key tasks identified in Section 1.1, namely:

- planning;
- establishing policies and guidelines;
- designating sites for enhanced protection;
- putting in place species protection measures;
- ensuring implementation of plans and policies;
- monitoring; and
- data collection and reporting.

It would be possible for the ministry to undertake almost all of these tasks itself, but there are a number of factors that point towards alternative options, including:

- political independence;
- clear accountability; and
- decentralisation and local self-determination.

Communication is an all-embracing task that must be undertaken by all the appointed institutions, under the overall co-ordination of the ministry (see Section 3).

2.2.3 Planning

There are two possible approaches to planning: top down – planning from the centre; and bottom up – the aggregation of decentralised plans. In either case, the starting point is a national policy and the choice will depend on the national philosophy of government. The competent authority will need to be responsible for planning, determining the actual mechanism for implementing the requirements of the directives and regulations. Within the nature protection sector there are three main aspects: protection of wild species from destruction; protection of valuable sites in terms of biodiversity and/or use by migratory species; and restrictions on the import/export of certain animals and plants and derivatives from them (skins, eggs, foodstuffs, cosmetics, etc.). Primary

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responsibility for planning, however, could be undertaken by the implementing authority. The choice will depend on the way in which implementation is achieved. If the initiative for implementation is likely to be taken, to a large extent, by government – whether local or central – it may be logical for the implementing authorities to prepare the plans, at least at the decentralised level.

3. Institutions and Relevant Parties

3.1 Stakeholders

A number of stakeholders have an interest in, or may be affected by, legislation in the nature sector. The principal stakeholders, and their roles in the process of developing and implementing a sectoral strategy to achieve compliance with EU policies and legislation on nature, are identified in the Box below. The following subsections focus on the main groups of organisations that need to be involved in nature protection followed by issues concerning communications.

Principal Stakeholders and their roles in the nature sector	
Stakeholders	Roles
Central government (e.g. a ministry or department) →	Implementation and maintenance of compliance with EU policies and legislation on nature protection, including establishing planning and designation procedures and reporting to the Commission.
Environmental agencies working on behalf of central government (e.g. nature conservation bodies and national research centres) →	Provision of planning procedures, collation of data on wildlife and preparation of lists for site designations and preparation of management plans.
Regional and local government →	Involvement in the planning process, incorporating wildlife habitat and species protection.
NGOs →	Represent the public interest. Lobbying on planning and environmental issues. Represent, hold data and undertake research into specialist wildlife aspects, such as birds or rare animals.
Research institutions (e.g. universities) →	Technical research, <i>inter alia</i> , specific species status, biology and requirements, habitat management and species and habitat conservation value criteria.

3.2 National Government Institutions

National governments are ultimately responsible for achieving and maintaining compliance with EU policies and legislation on nature protection. They have a duty and obligation to secure compliance in a manner and within a programme either stipulated in the relevant EU instrument, or agreed with the responsible EU institution. Typically the primary responsibility for achieving and maintaining compliance is delegated to a single national institution, e.g. a ministry or department of the environment. However, other ministries or departments in national government will inevitably need to be involved in some way at various stages in the planning and implementation process. For example, ministries with responsibilities for agriculture, economy,

export/import, foreign affairs, local government, and trade and industry could all potentially be affected by the implementation of EC nature legislation.

The lead ministry (in the majority of cases the environment ministry) should identify which other ministries (see above), national government agencies and bodies need to be involved in the process of planning and implementing EC nature protection legislation. For example, the legislation related to restrictions to trade will possibly require the involvement of the ministries of agriculture, economy, export/import, foreign affairs and trade and industry. In addition, a range of governmental agencies and departments are likely to have key roles, particularly as many Member States delegate the day-to-day work within the nature sector to specialist agencies, under the supervision of the ministry of environment (or similar). The role and input of each type of organisation to be involved must be carefully identified and agreed between the lead ministry and the organisation concerned. It will be necessary to resource the competent body with specialist staff, particularly ecologists and other scientists and also perhaps legal advisors.

The lead ministry should take responsibility or identify and appoint the competent authorities required to take responsibility for functions described in the nature sector legislation.

3.3 Competent Authorities

The types of functions to be undertaken by competent authorities under the EU nature sector legislation are illustrated in the Box below. Some of this technical expertise may already exist in one or more agencies or bodies such as local and regional governments in the candidate countries. However, in some areas, the necessary expertise or sufficient staff resources may not be readily available.

Examples of Activities which are Specifically Required to Be Undertaken by Competent Authorities in Respect of EC Legislation on Nature Protection

Planning and Implementation:

- establish a system whereby general protection is afforded to all birds in the wild state (79/409/EEC);
- identify and designate Special Protection Areas (SPAs) for birds (79/409/EEC);
- implement procedures to prohibit the import of certain seal products (83/129/EEC);
- identify and establish a network of Special Areas for Conservation (SACs) (92/43/EEC);
- establish a system of protection for certain plant and animal species (92/43/EEC);
- establish management authorities and scientific authorities and designate customs offices for carrying out checks (EC 338/97/).

Enforcement and Monitoring:

- prohibit the taking of certain species of plant and animal (92/43/EEC);
- take actions to prohibit certain damaging activities relating to the sale, capture and exploitation of certain bird species (79/409/EEC);
- encourage scientific research into the effects of protection measures for certain plants and animals (92/43/EEC) and (79/409/EEC);
- conduct appropriate assessments of developments that potentially damage the scientific interest of SACs and SPAs (92/43/EEC) and (79/409/EEC);
- carry out checks at border points to ensure that imports and exports of certain species of plants and animals are covered by the appropriate permits and certificates (Regulation (EC) 338/97);
- monitor internal trade in certain species of plants and animals (Regulation (EC) 338/97);

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- establish a monitoring system to include review of import licensing procedures and compliance with the directive (Regulation (EEC) 3254/91);
- monitor the implementation of import permits required for trade in certain cetacean species (Regulation (EEC) 348/81).

Reporting:

Report to the Commission

- on the designation of a competent authority (Regulation 83/129), (92/43/EEC), (338/97/EEC), (Regulation (EEC) 3254/91);
- on transposition and implementation (92/43/EEC), (Regulation 83/129), (Regulation (EEC) 3254/91), (348/81/EEC);
- on the eligibility and designation of SACs (92/43/EEC);
- on the eligibility and designation of SPAs (79/409/EEC);
- on derogations from the directive due to overriding interests (92/43/EEC);
- on the results of scientific investigations and research (92/43/EEC);
- on hunting regulations in the context of the Wild Birds Directive (79/409/EEC);
- on the introduction of non-native species (79/409/EEC);
- and, in the case of species listed in the appendices to the convention, the convention secretariat, on any steps taken by the competent authorities in relation to significant infringements of this regulation, including seizures and confiscations (Art. 14(2), Regulation (EC) 338/97);
- on information for CITES reports (Regulation 338/97).

Within the nature protection sector, legislation falls broadly into two categories; firstly, protection of species and designation of valuable sites for them; and secondly, restrictions on imports and exports of certain animals and plants and their derivatives. It would therefore be possible for an environment ministry, for instance, to act as the single competent authority and oversee implementation as a whole. However, as the legislation concerning import and export restrictions is inherently related to trade, a ministry of trade or agriculture could act as the competent authority. Either way, the competent authority will need to provide a co-ordination role for the legislation and interact with the supporting government agencies and departments and other organisations involved. The structure of the competent authority depends largely on the organisation of government (e.g. if it is of a central or federal nature).

3.4 Communication and Consultation

Planning and implementation of legislation in the nature protection sector will require extensive consultation and communication with a range of organisations, including importers and exporters, landowners and managers, planning authorities and the general public. Consequently, comprehensive communication is very important for the effective implementation of this legislation.

The legislation related to protection of valuable wildlife habitats and species will require communication with, *inter alia*, the following:

- other government ministries, departments and agencies;
- regional and local government;
- authorities responsible for land-use planning (both local and regional);

- bodies such as water authorities, coastal and flood defence agencies, forestry authorities;
- landowners and land managers;
- the general public;
- education facilities, such as schools and universities; and
- NGOs.

The legislation related to the protection of rare species through restrictions in their trading will require communication with, *inter alia*, the following:

- other government ministries, departments and agencies;
- regional and local government;
- customs departments;
- relevant industrial/commercial organisations;
- the general public; and
- education facilities, such as schools and universities.

It is common in the EU for national governments, often through their specialist agencies, to undertake wide-ranging consultations prior to implementing new legislation concerning the protection of habitats and species. These consultations enable nature conservation agencies and non-statutory organisations to have an input into the implementation mechanism and prepare themselves for the implications of the new legislation. In an increasing number of countries the NGO sector is already, or is becoming, a major player in the environmental sector. NGOs are also extending their original role as small landholders or managers to large landowners by becoming involved in policy and decision making (by lobbying and through consultations in land-use planning).

There are many examples of tremendous growth in the membership, activities and influence of NGOs involved in the nature sector. These include the World Wide Fund for Nature (WWF), which is a key player world-wide; BirdLife International; Greenpeace, which is one of the more activist NGOs in the world campaigning for environmental causes; and TRAFFIC, which is an NGO mainly involved in capacity-building activities to enhance the implementation of CITES. As such it is strongly recommended that comprehensive consultation is undertaken with the NGO sector. Consultation concerning this type of legislation is also important for landowners and managers who will be affected by, for instance, restrictions to land management practices. Other groups could also be affected by new legislation, such as hunting groups, including wildfowling and shooting organisations, which are often very popular in Europe. Such organisations are represented at the European level by the Fédération des Associations de la Chasse d'Europe (FACE).

4. Technical Issues

EC legislation in the nature sector contains very little in the way of technical standards, particularly compared to some of the other sectors, such as waste, air or water. The legislation concerning trade restrictions for rare flora and fauna simply requires that Member States adhere to the trading restrictions by implementing complementary national legislation. The EC directives regarding birds and habitats require Member States to safeguard, *inter alia*, migratory birds and habitats that are nationally representative within each Member State. These nationally representative sites will form an overall network of sites throughout the EU. The Birds and Habitats Directives include lists of species and habitat types that are to be afforded additional protection. Therefore these lists in effect constitute the technical standards to be followed.

5. Regulation and Enforcement

5.1 Overview

As with all legislation, laws and regulations concerning nature protection must be put into practice by means of an effective administration and enforcement system in order for the desired results to be achieved.

The main regulatory functions involve the following primary tasks:

- the issuing of licenses and permits for import and export of certain listed species of plants and animals;
- monitoring and inspection of shipments and trading documentation to ensure compliance with legislation;
- designation of qualifying sites and species to afford them greater protection from damage;
- monitoring and inspection of sites and species to assess the effectiveness of protection mechanisms;
- control of development on or affecting protected sites; and
- the introduction of complementary management practices to protect sites and species.

5.2 Licensing and Permitting

In recognition of the need to strengthen the protection of rare and endangered wildlife, both flora and fauna, three regulations deal with the implementation of CITES (Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein; Regulation No 865/2006 on detailed rules concerning the implementation of Regulation No 338/97 on the protection of species of wild fauna and flora by regulating trade therein; and Regulation (EC) No 1037/2007 on suspending the introduction into the Community of specimens of certain species of wild fauna and flora). These regulations control trade in such protected species by introducing import and export procedures, lists of protected species and suspension measures. In addition, there is one regulation on imports of cetacean products ((EEC) No. 348/81) and one directive (the Skins of Seal Pups Directive, 83/129/EEC) concerned with restricting the import and export of threatened species and products derived from them. Such restriction or control of trading is regulated by a system of licensing and permitting, focused on the points of entry to countries. From an institutional perspective, a customs or international trading department or agency is likely to be the most appropriate body to actually enforce the import/export control requirements, due to their day-to-day role in regulating international trade. A specialist wildlife agency or organisation would usually have a role in providing scientific advice and training to the customs staff.

5.3 Monitoring, Inspection and Enforcement

Central government will need to maintain an overview of the implementation of the legislation. This role may include development of additional guidance to government agencies or institutions and may also involve policy refinement and decision making, particularly in cases of overriding public interest or safety. It will also be necessary for central government to set targets for full compliance with the directives and ensure that sites are selected and protected in accordance with the requirements of the directives. In the case of trading restrictions for endangered species, government will be required to maintain an overview of the effectiveness of trading restrictions and undertake consultations with other Member States as required by the directives. Reporting within a Member State may involve several levels, including NGOs with specialist nature

conservation interests, planning authorities, the specialist government agencies and the ministry itself.

5.4 Designation of Qualifying Sites and Species

Two of the directives (the Habitats Directive, 92/43/EEC and the Wild Birds Directive, 79/409/EEC) specify that certain qualifying sites within Member States should be classified (or designated) as such and that complementary management practices are introduced to ensure protection of their ecological interest. There are requirements relating to the management of sites and restrictions on operations affecting sites where these are incompatible with the maintenance of their ecological interest. Where the sites are owned by the state this should be easier to implement, but where sites are under private ownership, mechanisms to encourage positive management will be needed.

Where site management or restrictions on operations are necessary, different Member States have used a variety of implementation options, such as purchase of the site or payments to landowners to compensate for consequent loss of income. Either of these systems would require a consultative approach and a legal notification mechanism. Mechanisms must be introduced to notify potential developers and the public that a site is awarded protection and also to control activities that may negatively impact on the site.

Technical decision making is an important aspect of this work, which is more than merely an administrative task. The available human resources in terms of trained and experienced personnel should be assessed and future training and development and funding needs identified.

5.5 Data Collection and Reporting

An obligation exists in most directives to report to the Commission on progress in implementation and the degree of compliance achieved. Accurate data on various aspects of wildlife protection is a vital input to the planning process and for site management. Data collection needs to cover information on individual species of interest as well as sites designated as being of national or Community interest. Reporting is also required in order to measure the degree to which the various directives have been implemented; such reports must generally be submitted to the Commission. The implementing authority is usually best positioned to collect such data or identify data requirements. If a database is developed which is adequate for the internal needs of the country concerned, it should also fulfill the requirements for reporting to the Commission.

6. Prioritising the Implementation Tasks

In preparing their strategies and implementation plans, the candidate countries will need to prioritise the major tasks to be undertaken. This process is discussed in each of the fiches dealing with individual pieces of legislation and includes undertaking tasks such as assessing the occurrences of particular habitats and species and monitoring and evaluating particular species and areas. This will require co-operation between specialist staff (and potentially prior training) of the various competent authority/ies, ensuring co-operation at national, regional and local levels, at this preliminary stage and also at later stages. The assistance of a specially trained expert where needed may be useful, particularly when it comes to designating sites. Competent authorities may also wish to liaise with farmers, private landowners, user groups, planning authorities, NGOs and so forth, as regards nature protection legislation implementation issues.

Striving for co-operation between all management authorities and enforcement agencies, such as customs and the police, and co-ordinating the necessary training programmes to ensure successful implementation of the legislation also needs to be considered in advance.

Candidate countries should look at Member State best practice in order to assist with the implementation of nature protection legislation.

7. Economic and Financial Issues

7.1 Introduction

Implementation of nature protection sector legislation could lead to the need for a number of investments, unless a high degree of wildlife protection is already in place. In particular, finance will be required for:

- the establishment of the necessary institutional structure;
- the provision of adequate numbers of trained technical staff; and, most importantly,
- the cost of establishing and maintaining the network of national representative sites in accordance with the Habitats and Bird Directives.

7.2 Institutional Development

Implementation of the legislation in the nature protection sector requires a competent authority, such as a ministry of environment (MoE) to lead and set policies and plans. As much of this work is of a technical nature it requires the involvement of specialist personnel, including ecologists, wildlife experts and specialist biologists. In many Member States the MoE includes a number of specialists, whilst a specialist government agency (such as an environmental agency, or a conservation agency) holds the majority of expertise necessary for this sector. The need for additional staff and possibly additional government departments or agencies will depend on the current organisational arrangements and the state of the existing nature protection legislation. Countries with strong nature protection legislation will probably already have effective organisational and staffing arrangements, whilst those with less well developed organisational structures will require extensive strengthening. Other key authorities are likely to include those for customs and trade enforcement and agriculture.

7.3 Protection of Important Sites and Species

The Birds Directive and the Habitats Directive require the establishment of certain areas or sites that are important for the protection and conservation of listed species of plants and animals. In practice, this requires that sites are identified and “protected” through a formal system, which varies between Member States. In view of the need to protect any bird species from harm, restrictions on land use, development or management are very often required. Furthermore, the Habitats Directive requires not only protection *per se*, but positive management of species and habitats to enhance their nature conservation status and value. The mechanisms for achieving this require, at the least, restrictions on land management and development. These restrictions have been implemented by different mechanisms within Member States, but centre on limiting certain potentially damaging operations.

In some Member States the authorities make payments to landowners and managers for positive habitat conservation measures that maintain or restore the conservation status of habitats and species of EU interest for which the sites have been designated. In some cases, the authorities have resorted to the purchase of certain sites, as this has proved to be an effective mechanism for the long-term conservation of certain areas requiring a high level of protection.

8. Summary of Key Issues

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NATURE PROTECTION - OVERVIEW

The governments of the candidate countries should focus on efforts and actions that are fundamental to EU approximation in this sector, in particular by ensuring that:

- the totality of policies, legislation, legal mechanisms and standards adopted at the national level achieve the objectives and results aimed at by EU policies and legislation;
- a single national government authority is given the overall responsibility and requisite authority for planning and managing the process of achieving compliance with EU policies and legislation;
- arrangements are put in place for the effective involvement and participation of all other bodies or interest groups which have a significant function to perform in relation to nature protection;
- appropriate competent authorities and related organisations are designated or established and their respective duties, functions and powers are clearly defined; and
- sufficient human and technical resources are allocated to allow all key functions and tasks to be performed properly, especially those related to enforcement.

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NATURE PROTECTION - OVERVIEW

The Habitats Directive

Official Title: Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.92) corrected by Corrigendum (OJ L 176, 20.7.93) and amended by Council Decision 95/1/EC following the Act of Accession of Austria, Sweden & Finland (OJ L 1, 1.1.95) and by Council Directive 97/62/EC (OJ L 305, 8.11.97), Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1-53)¹³⁵, Council Directive 2006/105/EC (OJ L 363, 20.12.2006)¹³⁶ and Commission Decision 2004/69/EC (OJ L 14, 21.1.2004)¹³⁷, Commission Decision 2004/798/EC (OJ L 382, 28.12.2004)¹³⁸, Commission Decision 2004/813/EC (OJ L 387, 29.12.2004)¹³⁹, Commission Decision 2005/101/EC (OJ L 40, 11.2.2005)¹⁴⁰, Commission Decision 2006/613/EC (OJ L 259, 21.9.2006)¹⁴¹, Commission Decision 2008/23/EC (OJ L 12, 15.1.2008)¹⁴², Commission Decision 2008/24/EC (OJ L 12, 15.1.2008)¹⁴³, Commission Decision 2008/25/EC (OJ L 12, 15.1.2008)¹⁴⁴, Commission Decision 2008/26/EC (OJ L 12, 15.1.2008)¹⁴⁵ and Commission Decision 2008/95/EC (OJ L 31, 5.2.2008)¹⁴⁶. The directive has also been amended by the act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the

¹³⁵ Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty.

¹³⁶ The latter regulation is adapting Directive 92/43/EEC to reflect the situation after accession to the EU of Romania and Bulgaria. Annexes have been adapted to include species, protected areas etc. of these additional EU Member States.

¹³⁷ Commission Decision 2004/69/EC of 22 December 2003 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Alpine biogeographical region.

¹³⁸ 2004/813/EC: Commission Decision of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region.

¹³⁹ 2004/798/EC: Commission Decision of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Continental biogeographical region.

¹⁴⁰ 2005/101/EC: Commission Decision of 13 January 2005 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Boreal biogeographical region.

¹⁴¹ 2006/613/EC: Commission Decision of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region.

¹⁴² 2008/23/EC: Commission Decision of 12 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Atlantic biogeographical region.

¹⁴³ 2008/24/EC: Commission Decision of 12 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Boreal biogeographical region.

¹⁴⁴ 2008/25/EC: Commission Decision of 13 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Continental biogeographical region.

¹⁴⁵ 2008/26/EC: Commission Decision of 13 November 2007 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Pannonian biogeographical region.

¹⁴⁶ 2008/95/EC: Commission Decision of 25 January 2008 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Macaronesian biogeographical region.

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THE HABITATS DIRECTIVE

Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the treaties on which the European Union is founded.

A consolidated version of the directive and all its amendments can be found on the Europa website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1992L0043:20070101:EN:PDF>

1. Summary of Main Aims and Provisions

The aim of the directive is to contribute to the maintenance of biological diversity (biodiversity) in the European Union, through the conservation of certain natural habitats and the protection of certain animal and plant species.

The Habitats Directive establishes a common framework for the conservation of wild animal and plant species and natural habitats of Community importance. It provides for the creation of a network of special areas of conservation, called Natura 2000, to “maintain and restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest”.

A habitat type is defined as being of Community interest if it is in danger of disappearance within its natural range or has a small natural range or represents an outstanding example of one or more of nine biogeographical regions: the Alpine, Atlantic, Black Sea, Boreal, Continental, Macaronesian, Mediterranean, Pannonian and Steppic biogeographical regions.

On the basis of the national lists of sites of Community importance and attendant information furnished by the Member States, in accordance with Article 4(1) of Directive 92/43/EEC, the Commission has adopted a number of Commission decisions setting out initial lists of sites of Community importance for these biogeographical regions. For the Atlantic, Boreal, Continental and Macaronesian biogeographical regions, the Commission adopted updated lists of habitat sites at the end of 2007 and further updates and the initial lists for Bulgaria and Romania are foreseen.

Species are of Community interest if they are endangered (with some exceptions) or vulnerable or rare or endemic and requiring particular attention. The Natura 2000 network is intended to ensure that selected habitats and species are maintained at, or restored to, a “favourable conservation status”. Member States are also to take account of economic, social and cultural requirements and regional and local characteristics. A key means of achieving a “favourable conservation status” is the requirement on Member States to identify and designate Special Areas of Conservation (SACs) and to take various measures to protect habitats and species both within and beyond them, including prohibiting certain harmful activities. They must also carry out extensive monitoring activities related to the implementation of the directive.

Annexes I, II and III set out natural habitat types, host species and guiding criteria. Annexes I and II were updated by Council Directive 2006/105/EC to include habitats and species in the new Member States, including Romania and Bulgaria. All Member States had to bring into force the laws, regulations and administrative provisions necessary to comply with this directive by the date when the directive became applicable – which, in the case of the accession of Bulgaria and Romania to the European Union, was 1 January 2007, – at the latest.

Annex I lists today 231 European natural habitat types, including 71 priority habitats (i.e. habitat types in danger of disappearance and whose natural range mainly falls within the territory of the European Union). Annex I is based on the hierarchical classification of European habitats developed by the CORINE Biotopes project.

The enlargement of the European Union with twelve new member states in 2004 and 2007 has brought amendments to both the Habitats Directive (92/43/EEC) and the Birds Directive (79/409/EEC). Most changes concern the annexes to the directives, based on the negotiations of

amendments to the lists of habitat types and species of the above directives. New typical and endangered species and habitats in the new Member States have been added to the annexes, albeit with some geographical exceptions. For the Habitats Directive, three new biogeographical regions were added to the existing seven (Continental, Mediterranean, Alpine, Atlantic, Macaronesian and Boreal): the Pannonian, Black Sea and Steppic regions. After extensive discussions among Member States, accession countries and the European Commission, 13 new habitat types were accepted for addition to Annex I. More information regarding the biogeographical regions can be obtained at: http://ec.europa.eu/environment/nature/natura2000/sites_hab/biogeog_regions/index_en.htm

Unlike the 2004 enlargement, the consolidated annexes have not been included in the Treaty of Accession to the European Union of 2005. In regard to the political agreement regarding Bulgaria and Romania, the Council adopted Directive 2006/105/EC of 20 November 2006 adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of environment. For more information regarding the changes that the two accessions brought to the Habitats Directive, please consult the Europa website: http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm#enlargement and http://ec.europa.eu/environment/nature/legislation/habitatsdirective/docs/2007enlarg/habitats_summary.pdf

2. Principal Obligations of Member States

2.1 Planning

- Establish or delegate a competent authority to be responsible for implementing the requirements of the directive. This will usually be an environment ministry or nature conservation agency.
- Compile a list of sites that contain natural habitat types according to Annex I or host species in Annex II in accordance with criteria specified in Annex III, plus supporting scientific information; and send the list to the Commission together with information on the sites, in accordance with the format laid down in Commission Decision 97/266/EEC (Art. 4 and Annexes I, II as amended by Council Directive 97/62/EC and Annex III). Member States have to identify and designate sites in proportion to the representation within their territory of the natural habitat types and the habitats of species specified in Annexes I and II. If their sites hosting priority interests represent more than 5% of their national territory they may, in agreement with the Commission, request that the criteria in Annex III be applied more flexibly (Art. 4(2)).
- Designate these sites once they have been agreed with the Commission, as Special Areas of Conservation (SACs); and establish priorities for the management of these sites (Art. 4).
- Establish the measures necessary for the conservation of SACs which may include management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual arrangements which correspond to the ecological requirements of the habitats and species concerned (Art. 6).
- In respect of certain animal species (listed in Annex IV), establish a system of strict protection and prohibit certain activities including:
 - the deliberate capture, killing or disturbance of these species as well as the deterioration and destruction of breeding sites and resting places; and

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- the keeping, transport and sale of these species when taken from the wild (Art. 12).
- In respect of certain plant species (listed in Annex IV), establish a system of strict protection and prohibit certain activities including:
 - the deliberate picking, cutting and destruction of these species; and
 - the keeping, transport and sale of these species when taken from the wild (Art. 13).
- Establish a system to monitor incidental capture and killing of animal species listed in Annex IVa (Art. 12(4)).

2.2 Regulation

- Take appropriate steps to prevent the deterioration of SACs and the disturbance of the species for which they were created in so far as such disturbance could be significant in relation to the objectives of the directive (Art. 6).
- Assess any plan or project, individually or in combination with other plans or projects, that is likely to have a significant effect on a SAC, and ensure that such plan or project is not approved if it would adversely affect the integrity of the site, unless there are no alternatives and there are “imperative reasons of overriding public interest” as specified in the directive (Art. 6).
- If a plan or project is approved in spite of a negative assessment (for imperative reasons of overriding public interest), take all necessary compensatory measures to ensure that the overall coherence of Natura 2000 is protected and inform the Commission of the compensatory measures adopted (Art. 6).
- In land-use planning and development policies, seek to encourage the management of features of the landscape that are of major importance for wild plants and animals (Art. 10) with a view to improving the ecological coherence of the Natura 2000 network.
- Where deemed necessary, ensure that the taking and exploitation of certain species of wild plants and animals (listed in Annex V) is controlled to ensure that they are maintained at a “favourable conservation status” (Art. 14). In order to ensure that the favourable conservation status of these species is not compromised, Member States may establish a system of licences for taking specimens or may impose quotas. The periods and/or methods of taking, selling, purchasing and transporting specimens, breeding in captivity etc. are to be regulated, implying the need for a system of authorisation/registration. In some circumstances (specified in Art. 16), Member States may derogate from species protection measures provided that there is no satisfactory alternative and the derogation is not detrimental to the conservation status of the species.
- Prohibit the use of specified means of capturing and killing certain animal species (listed in Annexes IV and V) (Art. 15 and Annex VI).
- Regulate (and if necessary prohibit) the deliberate introduction into the wild of non-native animal and plant species (Art. 22).

2.3 Monitoring and Research

- Monitor:
 - the conservation status of natural habitats and species (Art. 11); and
 - the incidental capture and killing of animal species (Art. 12 and Annex IV).

- Encourage research and exchange information for the proper co-ordination of research, having regard to the objectives of the directive (Art. 18).
- Study the desirability of re-introducing native species, where this might contribute to their conservation (Art. 22).

2.4 Information and Reporting

- Consult the public before:
 - agreeing to a plan or project that is likely to have a significant effect on a SAC (Art. 6); or
 - re-introducing native species (Art. 22).
- Promote education and general information on species protection and conservation (Art. 22).
- Report to the Commission on:
 - sites that host natural habitat types and species listed in Annexes I and II;
 - cases of derogation from specified requirements of the directive (Art. 16);
 - estimates relating to possible co-financing by the Community (Art. 8);
 - research and scientific work (Art. 18);
 - implementation of the directive (Art. 17);
 - transposition, with texts of the main provisions of national law adopted in the field covered by the directive (Art. 23); and
 - compensatory measures adopted (Art. 6).

2.5 Additional Legal Instruments

A number of other legislative instruments are relevant to the implementation of this directive and must be borne in mind during implementation.

- This directive is closely linked with, and builds on, Council Directive 79/409/EEC (referred to as the Wild Birds Directive), as the SACs that are to be identified under this directive are to complement the Special Protection Areas (SPAs) established under Council Directive 79/409/EEC, to form the Europe-wide network of protected sites known as Natura 2000. Moreover, Article 6 of this directive sets out management obligations that, in so far as they relate to a SAC that is also a SPA, replace the management obligations for SPAs set out in Article 4 of the Birds Directive (Art. 7).
- The directive is linked with the EIA Directive (85/337/EEC, as amended) (see Section 2 of the Handbook), as one of the criteria which triggers an environmental impact assessment is the value and sensitivity of sites affected by proposed developments. Thus SACs (and SPAs) are evaluated for possible damage under the EIA Directive and could be seen to benefit from this additional “protection”.
- The directive is linked to the Convention on Biological Diversity adopted at the Earth Summit in Rio de Janeiro in June 1992, as this established participating governments’ approach towards biodiversity conservation. The EC is a signatory to the convention and produced four biodiversity action plans in 2001. The 2006 Commission Communication on Biodiversity and the attached Biodiversity Action Plan sets out a set of actions at the level of the Community and the Member States that respond to many of the obligations arising from this convention. More specific links to other international agreements are found in the Ramsar Convention on Wetlands of International Importance especially as

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Waterfowl Habitat, 1971; the Bonn Convention on Conservation of Migratory Species of Wild Animals, 1979; the Washington Convention on International Trade in Endangered Species, 1973; and the Bern Convention on the Conservation of European Wildlife and Natural Habitats, 1979.

3. Implementation

3.1 Key Tasks

The key tasks involved in implementing this directive are summarised in the checklist below, organised in chronological order (where possible) within each subheading.

THE HABITATS DIRECTIVE - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Establish or delegate a competent authority to be responsible for implementing the requirements of the directive.
1.2	On the basis of the criteria set out in Annex III, the competent authority should identify a suite of sites hosting natural habitat types according to Annex I or representing the habitat of species in accordance with Annex II. This list should be submitted to the Commission, which will then compile, in agreement with each Member State, a draft list of sites of Community interest. Once the composite list has been adopted by the Commission according to the procedure laid down in Article 21, Member States must designate the SACs in their territory as soon as possible and within six years at most, and establish priorities for the management of these sites.
1.3	The SACs to be selected are to include the full range of indigenous species, in particular habitat types listed in Annex I and habitats of the species listed in Annex II. The SACs will (with SPAs designated under the Wild Birds Directive) form a network of such sites throughout Europe (known as Natura 2000).
1.4	Where the area of potential SACs with priority interests in a Member State exceeds 5% of its territory, it may seek, in agreement with the Commission, a more flexible approach to the application of the criteria listed in Annex III.
2	Regulation
2.1	For the designated sites, establish the necessary conservation measures, which may include the development of management plans tailored to specific sites and statutory, administrative or contractual arrangements that will meet the ecological requirements of the natural habitat types in Annex I and the species in Annex II.
2.2	Maintain the wildlife population at appropriate levels, taking into account scientific and cultural requirements. Where considered necessary, Member States shall endeavor to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape that are of major importance to wildlife, such as linear habitat features and key traditional habitats.
2.3	Take the necessary measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range. In particular, prohibit the deliberate capture or killing of specimens of these species in the wild. Provide protection from disturbance of these species during the breeding, rearing, hibernation and migration periods and deliberate destruction or taking of eggs from the wild, and deterioration of breeding sites or resting places.
2.4	For the listed species, prohibit the keeping, transport and sale or exchange, and

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	offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this directive is implemented.
2.5	Establish a system of strict protection for the plant species listed in Annex IV (b). This system must prohibit deliberate picking, collecting, uprooting or destruction of such plants in their natural range in the wild. It must also prohibit the keeping, transport, sale or exchange and offering for sale of these species taken from the wild, apart from those taken legally prior to the directive being implemented. In both this case and the case of animals, the protection must cover all stages in the biological life cycle of the organism.
2.6	Where deemed necessary, ensure that the taking and exploitation of certain species of wild plants and animals (listed in Annex V) is controlled to ensure that they are maintained at a "favourable conservation status" (Art. 14).
2.7	Prohibit the use of specified means of capture and killing of certain animal species (listed in Annexes IV and V) (Art. 15 and Annex VI).
2.8	Regulate the deliberate introduction of non-native wildlife species, so as to protect the native populations.
2.9	Take steps to prevent the deterioration of SACs and the disturbance of species for which they were created.
2.10	Assess any plans or projects that are likely to have a significant effect on the SAC network and prohibit plans or projects that would adversely affect the integrity of the sites, unless they are necessary due to a lack of alternatives and the existence of imperative reasons of overriding public interest or safety. If a plan or project is permitted in spite of a negative assessment for reasons of public interest, take all necessary compensatory measures to ensure that the overall coherence of Natura 2000 is protected (Art. 6).
3	Monitoring and Research
3.1	Establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV (a) and, following information collection, undertake further research or conservation measures as required to ensure that capture or killing activities do not have a significant effect on the species concerned.
3.2	Establish a monitoring system covering all of the monitoring activities required in the directive. The monitoring should include population level analysis and species condition, as indicators of the conservation status of natural habitats and species. Encourage the necessary research and information exchange to achieve the objectives set out in Annex II (conservation of natural habitats and wild fauna and flora) and ensure the requisite monitoring (Annex II).
3.3	Encourage the necessary research and information exchange necessary to achieve the objectives of the directive.
3.4	Where necessary, continue monitoring and surveillance after control of the taking and exploitation of certain species of wild plants and animals to ensure that they are maintained at a "favourable conservation status" has taken place. Further regulations may include those regarding access to property, local prohibitions on timing and taking of species, hunting and fishing rules, establishment of licenses, regulation of sale and keeping of species, regulation of captive breeding and propagation and evaluation of the effectiveness of the above measures.
3.5	Study the desirability of reintroducing native species where this might contribute to their conservation.
4	Information and Reporting

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4.1	Report to the Commission, as appropriate on the following: <ul style="list-style-type: none">• sites that host natural habitat types and species listed in Annexes I and II;• nomination of sites and designation of SACs;• cases of derogations from specified requirements of the directive;• results of scientific investigations (Art. 18);• estimates relating to possible co-financing by the Community (Art. 8);• implementation of the directive (Art. 17);• measures taken to comply with the directive (Art. 23); and• transposition, with texts of the main provisions of national law adopted in the field covered by the directive (Art. 23).
4.2	Consult the public before: <ul style="list-style-type: none">• agreeing to a plan or project that is likely to have a significant effect on a SAC (Art. 6); and• reintroducing native species (Art. 22)
4.3	Promote education and general information on species protection and conservation (Art. 22)

3.2 Phasing

Experience within Member States suggests that the most demanding and time-consuming tasks associated with this directive are:

- transposition of the requirements of the directive into national legislation;
- identification of the suite of sites for designation as SACs, including rigorous assessment of the scientific and nature conservation value of the sites against the necessary criteria; and
- the formal designation of the SACs, establishment of management plans and other necessary actions following discussions with landowners and managers and arrangements for site management and, if necessary, compensation measures.

These tasks should therefore be planned to commence during the initial phase of implementation. Experience also reveals that extensive time is required for scientific analysis to identify the location and abundance of the characteristic species and habitats and also that lengthy periods of liaison with site owners may be necessary prior to designation. Particular consideration should therefore be given to these aspects, which should be programmed carefully into the implementation schedule.

Regarding the experience with the negotiations of the 12 new Member States, nature conservation was much in focus and the accession countries were encouraged to implement the EU nature directives as early as possible. Nature conservation legislation is a horizontal legislation, requiring early attention to integration into other EU policies such as structural, transport or agricultural policy.

At EU level, in July 2007 the Commission issued the "Interpretation Manual of European Union Habitats - EUR27", which is a scientific reference document. It is an extended version of the EUR15 manual, which was adopted by the Habitats Committee on 4 October 1999. It contains the new and amended habitat types for the 10 accession countries, as adopted by the Habitats Committee on 14 March 2002, with additional changes for the accession of Bulgaria and

Romania as adopted by the Habitats Committee on 13 April 2007. Descriptions of marine habitats have also been revised to take into account the interpretations given in the “Guidelines for the establishment of the Natura 2000 network in the marine environment”. For more information regarding this manual please refer to the following website: http://ec.europa.eu/environment/nature/legislation/habitatsdirective/docs/2007_07_im.pdf

The European Topic Centre on Biological Diversity provides technical and scientific support to the European Commission, DG Environment and the Member States in implementing the Birds Directive (79/403/EEC) and Habitats Directive (92/43/EEC), particularly for the establishment of the Natura 2000 network. For more information regarding the European Topic Centre on Biological Diversity and for information and software packages for support to the Natura 2000 network, please consult: <http://biodiversity.eionet.europa.eu/> and http://biodiversity.eionet.europa.eu/activities/Natura_2000/index.html

4. Implementation Guidance

New timing provisions are needed for the candidate countries. However, the first priority will be an assessment of the occurrence of habitats and species listed in Annexes I and II of the directive as these provide the basis for site designation. It will also be important to consider whether certain species or habitats need adding to these annexes to reflect better the key nature conservation characteristics of the candidate countries. The next priority is the adoption and application of a methodology to monitor species and habitat conservation status.

Implementation of the specific requirements of this directive will be influenced by the present status, needs and situation in each candidate country. However, drawing on the experience of selected Member States, a number of general observations and suggestions for implementing this directive are presented below:

4.1.1 Planning

- Decisions about how to implement the Habitats Directive are left to the discretion of the Member States. Monitoring of SACs and other species and habitats could be undertaken at a variety of levels, from local to national, although co-ordination would best be undertaken by a single competent authority. A common approach within existing Member States is to appoint a central ministry overseeing a specialist environmental agency. Some Member States have a further level of delegation to specialist government agencies dealing primarily or solely with nature conservation. This latter approach would seem to offer some advantages, as staffing tends to require specialists, trained in ecological and scientific aspects. However, the further down the line the specialist agencies are, the further they are from the decision-making process and the more they rely on recommendations and lobbying of decision makers.
- The key actors are government ministries responsible for environmental protection and government agencies with environmental or nature conservation responsibilities, scientific research organisations and, increasingly, a suite of non-governmental organisations (NGOs) which often have an interest and expertise in wildlife or particular elements of wildlife protection. The NGO sector in Europe is actively participating in nature conservation activities, including the planning and development processes and formulation of conservation policies, in consultation with statutory agencies. In addition, there are many organisations involved in conducting research on wildlife and biodiversity, both in the private and public sectors.
- The designation of land areas as SACs also involves land owners and land managers in the process. This is because, as designation seeks to maintain or restore (and enhance where possible) the conservation status of sites, restrictions on land management and

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development often prove necessary, thereby engaging owners and managers in negotiations and frequently, compensation agreements.

Examples of institutional arrangements and regulatory control

(1) In one Member State (UK), the Department for Environment, Food and Rural Affairs (Defra) is the government department with overall responsibility for the implementation of EU nature conservation policy. It is aided in this task by the three nature conservation agencies. These are the Countryside Council for Wales (CCW), English Nature (EN) and Scottish Natural Heritage (SNH), as well as the Department for the Environment in Northern Ireland. The activities of these four organisations are co-ordinated nationally through the Joint Nature Conservation Committee (JNCC), which is funded by the agencies. Local planning authorities are also involved in the implementation of the directive. They are required to identify international nature conservation interests in their structure plans, local plans and unitary development plans and to scrutinise planning applications for Natura 2000 sites. For the implementation of the Habitats Directive the government argued that existing legislation was sufficient to meet most of the obligations laid down in the directive but that some amendments or new measures would be required to comply with the habitat conservation provisions. Under national legislation, a network of sites (Sites of Special Scientific Interest [SSSIs]) representing the most important plants, animals or geographical or physiographical features, is designated. All areas of land proposed for designation as an SPA or SAC must first be notified under national legislation as an SSSI. Candidate SACs, nominated under this directive, were chosen from the network of SSSIs and thus are already afforded protection under national legislation. This does not, however, apply to marine sites.

(2) In another Member State (SE) environmental legislation has been consolidated into the Environmental Code, a framework law aimed at promoting sustainable development. The Code includes regulations to preserve biological diversity, such as different types of area protection and special provisions concerning the protection of species protection. The Habitats Directive has been implemented in the Code, and also in the related Species Protection Ordinance. The overall responsibility for nature conservation policy is with the Ministry of the Environment (MoE), whereas the Environmental Protection Agency (EPA) is the central executive agency. At the sub-national level the 21 County Administrative Boards (CAB) undertake much of the day to day work. The CABs are e.g. responsible for establishment and management of nature reserves, decide on permits, and conduct monitoring. The CABs have special environmental protection units dealing with biodiversity issues. At the local level the municipal councils have also been given power to establish nature reserves and are active in other areas.

4.1.2 Establishment of SACs

- Some Member States that have given more responsibility to regional authorities have had to overcome particular implementation issues. For instance, as central government has in effect delegated responsibility, it has been unable to act autonomously or independently from these regional agencies in the selection and designation of SACs.
- A very common practice in many Member States is to make compensatory payments to landowners or managers for restricting land use or management. This is seen as a financial burden on the state, but one that is practically unavoidable when dealing with privately owned sites.
- All the Member States contacted reported that the designation of SACs entailed long and sometimes complex consultation periods, which required large inputs from agency staff over considerable time periods.
- A further consideration is that candidate countries may have habitat types not currently listed. This has occurred in the past for other Member States and has resulted in the addition of new habitat types to the list.

Example of Arrangements for Establishing SACs

In one Member State (SE), the implementation of the Habitats Directive, especially the requirement to identify pSCIs, raised some institutional and administrative issues. The identification of pSCIs and SPAs lies within the competence of the CABs, which propose the identified sites to the Environment Protection Agency (EPA), which reviews them before passing them to the Ministry of the Environment for consideration and approval by the Government.

Sites proposed as SACs or SPAs are according to law to be a priority in the authorities ongoing efforts to formally protect areas, e.g. as nature reserves or with nature conservation agreements. The owners of SACs are awarded financial compensation if restrictions to land management are necessary to maintain the nature conservation interest. As many of the important habitats are forests, restrictive practices often mean no felling, thereby preventing income generation. Compensation is paid for restrictions in land use or part-acquisition, but the most common approach is for the state or municipality to purchase the land before the reserve is created. There is a distinct problem in the conservation of water areas. Restrictions and consideration might often be needed outside the protected core area, which calls for development of new management approaches in larger areas.

Along with a neighboring Member State (FI), this Member State faced one particular implementation problem due to the occurrence of several unique/rare habitats, many of which were not originally included in the EC Directives. Following extensive discussions with the Commission and other Member States, the national authorities have been successful in including approximately 20 new habitat types into the classification system, which tend only to be found in the north of Europe. This process has been very cumbersome and time consuming and the authorities regretted that the issue was not resolved prior to EU membership. In addition the EC habitat classification system is different to that of this country and had to be adapted in order to fit the national system. The national authorities perceive the EU requirements to be limited as lower plants are particularly important in this country as indicators of virgin forest and are not given due prominence in the EU system. The authorities consider the identification criteria could be further developed from an ecological perspective and perceive that there is a lot of work to be done in this area due to scientific/ecological reasons.

Examples of the Status of Designation of SCIs (sites of Community interest) and SACs in Some of the New Member States:

Regarding the current situation of designation of SACs, the following are examples of the number of designated sites according to http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_summaries/national_summarypdf_10/_EN_1.0_&a=d.

1. Hungary: 467 SCIs and SACs in the Pannonian biogeographical area; 46 habitats (18 of which are considered priority habitats);¹⁴⁷
2. Cyprus: 36 SCIs in the Mediterranean biogeographical area; 48 habitats (13 of which are considered priority habitats); and 13 sites with management plans in preparation¹⁴⁸;
3. Czech Republic: 768 SCIs in the Continental biogeographical area and 108 in the Pannonian biogeographical area; 60 habitats (18 of which are considered priority habitats); but no sites with management plans in preparation¹⁴⁹;
4. Lithuania: 266 SCIs in the Boreal biogeographical area; 54 habitats (16 of which are

¹⁴⁷ Source: http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_summaries/national_summarypdf_10/_EN_1.0_&a=d, July 2008.

¹⁴⁸ Source: http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_summaries/national_summarypdf_2/_EN_1.0_&a=d

¹⁴⁹ Source : http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_summaries/national_summarypdf_3/_EN_1.0_&a=d

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considered priority habitats); and 61 habitats with management plans in preparation¹⁵⁰;

5. Slovenia: 92 SCIs in the Alpine biogeographical area and 168 in the Continental biogeographical area; 60 habitats (15 of which are considered priority habitats); no habitats with management plans in preparation¹⁵¹;
6. Poland: 18 SCIs in the Alpine biogeographical area and 214 in the Continental biogeographical area; 79 habitats (16 of which are considered priority habitats); no habitats with management plans in preparation¹⁵²;
7. Slovakia: 241 SCIs in the Alpine biogeographical area and 148 in the Pannonian biogeographical area; 66 habitats (22 of which are considered priority habitats); no habitats with management plans in preparation¹⁵³.

4.1.3 Protection of SACs

- The directive requires that Member States implement a system of strict protection for the habitats and species listed in the directive and for which SACs are designated. In theory, there are several mechanisms that could be used to achieve this objective and indeed Member States have different approaches. These include site designation and protection, site purchase, strict controls over changes of use for special sites, management agreements and voluntary incentives, education and awareness.
- Some Member States have reported problems concerning both general protection of wildlife and provision of additional protection for certain species. These problems were particularly acute in countries which had a strong tradition of hunting, particularly those where there had previously been little regulatory control.
- The Commission has issued a number of guidance documents regarding the management of Natura 2000 sites, pursuant to Article 6 of the Habitats Directive:
 - Guidance document on Article 6(4) (January 2007) : http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/guidance_art6_4_en.pdf
 - Guidance document on the assessment of plans and projects significantly affecting Natura 2000 sites (November 2001): http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf
 - Guidance document on managing Natura 2000 sites (2000): http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision_of_art6_en.pdf
- There are also various opinions of the Commission relevant to Article 6(4) of the Habitats Directive and linked with specific national projects (available at: http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm#art6).

4.1.4 Monitoring

¹⁵⁰ Source : http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_summaries/national_summarypdf_13/_EN_1.0_&a=d

¹⁵¹ Source: http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_summaries/national_summarypdf_21/_EN_1.0_&a=d

¹⁵² Source: http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_summaries/national_summarypdf_18/_EN_1.0_&a=d

¹⁵³ Source: http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_summaries/national_summarypdf_22/_EN_1.0_&a=d

- The directive requires the competent authority to conduct monitoring to evaluate the nature conservation status of designated sites (as well as outside such sites) and to take remedial measures where necessary to maintain or enhance the ecological value of these sites. Monitoring requires systematic and scientifically rigorous methodologies to be applied and the results to be assessed against clearly defined objectives. The authority may undertake the monitoring itself or contract out the work to a scientific research establishment. Expert field and technical staff, analytical facilities and data manipulation skills are required. Before an appropriate monitoring methodology can be designed and implemented, clear objectives must first be set. Indicators may be a useful tool and independent experts should contribute substantially to the task of setting objectives, and developing methodologies and indicators. Baseline data should be established as quickly as possible. It is likely that there are existing monitoring programmes, eg on the conservation status of habitats and species, that can be adjusted to fulfill the requirements of the directive. Any monitoring or inspections that relate to enforcement must follow objective procedures and may need to include facilities for the archiving of samples in the event that subsequent legal action is to be taken.

Examples of Arrangements for Monitoring Compliance with Legal Requirements

(1) In one Member State (UK), the government nature conservation agencies conduct regular monitoring and assessments of all statutorily protected sites, including SSSIs, SACs and SPAs. These assessments are conducted with regard to the “reasons for designation” and the objectives and priorities for each site. When monitoring indicates that species or habitats are not in keeping with the site’s objectives, remedial measures are undertaken, including changes to site management, species conservation intervention and further detailed research. The costs of such measures can be considerable and will usually fall on central government. In some cases, EU funds may be available for management programmes (e.g. the LIFE Nature programme), particularly where these are of an innovative or “demonstration” nature. Other sites may also be monitored where they are managed under EU-funded agri-environment programmes.

(2) In another Member State (SE), the Ministry of Environment oversees the monitoring of the environment, with EPA and CABs (regional level) submitting reports to the ministry. The EPA operates an extensive information system to inform landowners and the public of ecologically valuable sites. The system includes information on the Internet and a range of publications. One publication, the “Guide to the Habitats Directive”, describing the protected habitats, has been well received within the EU. A sister publication is planned for listed species of flora and fauna.

4.1.5 Reporting

The directive requires that Member States report to the Commission on several issues, including transposition and implementation, the list of sites eligible for designation, derogations, cost estimates for potential Community co-financing and research and scientific work. The Habitats Directive is one of the EU’s most significant contributions to the aim of halting the loss of biodiversity by 2010 as set out by the EU heads of state at the Gothenburg Summit in 2001. Information gathered under the reporting requirements of the Habitats Directive will be an important source of data for that work. It should therefore be borne in mind that the monitoring, assessment and reporting of conservation status under the Habitats Directive is not only of importance in relation to the implementation of the directive itself but is a crucial building block for an overall biodiversity trends assessment in Europe and as such will influence the strategic considerations that follow.

Article 6.4 of the Habitats Directive requires Member States to inform the Commission if they adopt compensatory measures in relation to projects that have a significant negative impact on Natura 2000 sites. This information has to be submitted using a standard reporting form. This form has been integrated into the Commission’s guidance document of January 2007 on the application of Article 6.4 and can be found on: http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm#sdf

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Pursuant to Article 16 of the Habitats Directive, Member States must also report to the Commission every two years about possible derogations from the strict species protection provisions. These reports are compiled and assessed, and summaries for derogations granted between 2003 and 2004 are available at: http://circa.europa.eu/Public/irc/env/monnat/library?l=/reporting_derogations/orbicon-derogation/_EN_1.0_&a=d

Examples of a Member State's Reporting of Derogations Pursuant to Article 16

According to the Commission's composite report, a total of 9,880 derogation licences were issued between 2003 and 2004. The number of licences is divided almost equally between 2003 and 2004 (5,016 and 4,864 respectively), indicating that the enlargement of the EU by the 10 new Member States from May 2004 did not result in an immediate increase in the overall number of derogations within the EU. Most derogations (several hundred) were issued in Germany, Spain, Finland and the UK. The Commission's report shows that non-destructive and/or reversible activities such as capture (code 20), disturbance (code 80), keeping (code 50), and transport (code 130) are the main reasons for derogation, especially under reason (a): "in the interest of protecting wild fauna and flora and conserving natural habitats"; and (d): "for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants", which are considered as "unproblematic" derogations only resulting in insignificant impacts.

The Commission report shows that in one Member State (the Czech Republic), 37 derogation permissions were issued within the seven-month period between May and December 2004. Almost half of the licences are motivated by "other imperative reasons of public interest" (c), the rest being equally distributed among reasons (a) protecting wild fauna and flora, etc.; (b) preventing serious damage to crops, etc.; and (d) for the purposes of research and education – in most cases allowing for the capture or deterioration or destruction of breeding sites of a not stated number of mainly amphibians. Most licences concern Annex IV species, mainly different species of amphibians (frogs), and a few Annex V species, (likewise frogs). None of the Czech derogations appeared to be in conflict with the species protection measures of the Habitats Directive. For more information, please consult: http://circa.europa.eu/Public/irc/env/monnat/library?l=/reporting_derogations/orbicon-derogation/_EN_1.0_&a=d

The Member States must also report every six years about the progress made with the implementation of the Habitats Directive, pursuant to Article 17. Based on these reports, the European Topic Centre on Biological Diversity has produced national summaries for each Member State giving an overview of the information held in each single report. In addition, so-called national checklists are available, which give an overview of the species and habitat types present in each Member State and a national assessment. These national reports can be obtained at: http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_2001-2006&vm=detailed&sb=Title. In addition, there are national summaries (website: http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_summaries&vm=detailed&sb=Title) and "Article 17 national "checklists" (available on: http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2001-2007/ms-reports_checklists&vm=detailed&sb=Title). The European Topic Centre on Biological Diversity also offers a consultation tool on biogeographical assessments of the conservation status of species and habitats, based on the national reports, which can be obtained at: <http://biodiversity.eionet.europa.eu/article17>

5. Costs

The main types of costs arising during the implementation of the Habitats Directive are summarised in the checklist below.

The cost of implementing the Habitats Directive will depend on the extent of existing systems for the classification, protection and management of sites, monitoring of sites and species, the occurrence of habitats and species to be protected, and the availability of Community funding.

The costs for provision of specialist staff to survey and identify the potential SACs should not be excessive and could be assisted by the voluntary sector. Perhaps the greatest potential costs relate to the practicalities of establishing the SAC system, especially if compensatory payments prove necessary in lieu of restricting development. Ongoing costs relate to continuing surveys and research into the nature conservation value of the SACs, preparation of management plans for SACs and implementation of management activities (proactive measures) to maintain and enhance the scientific value of the sites.

Some costs may be relatively minor, when compared to the expenditure required by other legislation that necessitates infrastructure development. However, where compensation or purchase of sites is required, or restoration measures are needed, costs can escalate quite rapidly. In certain cases, expenditures can be off-set by co-financing arrangements with the Commission under Article 8 of the directive.

Checklist of the Types of Cost Incurred To Implement the Directive

Initial set-up costs:

- devising systems and procedures;
- collating baseline data;
- applying criteria for site selection;
- preparation of guidance documents;
- provision of training;
- consultation and communications.

Capital expenditure:

- restoration projects;
- one-off compensation payments to landowners and managers;
- purchase of sites (if necessary).

Ongoing costs:

- continuing research and survey;
- implementation of management activities to maintain or enhance value of sites;
- communications, consultations, production of documents and reports and other public awareness activity;
- reporting to the Commission.

The Commission is trying, through various means, to facilitate the financing of the designation of SCIs and SACs, as well as the management of such areas, and in particular of Natura 2000 sites.

Firstly, it published a guidance handbook, which presents the EU funding options for Natura 2000 sites that are available at the national and regional level in the period 2007 to 2013. This guidance handbook can be obtained in all the existing EU languages at: http://circa.europa.eu/Public/irc/env/financing_natura/library?l=/contract_management/handbook_update&vm=detailed&sb=Title. The Commission has also created a specific IT tool to facilitate access to this information and to create the opportunity to use the information in the framework

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of management planning. The tool can be found at: <http://www.financing-natura2000.moccu.com/pub/index.html>. In addition, there are funding opportunities through LIFE+, which is the EU's financial instrument supporting environmental and nature conservation projects throughout the EU, as well as in some candidate, acceding and neighbouring countries. More information about LIFE+ can be obtained at: <http://ec.europa.eu/environment/life/index.htm> and in an individual fiche in Section 2 of this Handbook.

The Wild Birds Directive

Official Title: Council Directive 79/409/EEC on the conservation of wild birds (OJ L 103, 25.4.79) (as amended by Council Directives 81/854/EEC (OJ L 319, 7.11.81), 86/112/EEC (OJ L 100, 16.4.86) and 94/24/EC (OJ L 164, 30.6.94) and Commission Directives 85/411/EEC (OJ L 233, 30.8.85), 91/244/EEC (OJ L 115, 8.5.91), 97/49/EC (OJ L 223, 13.8.97)) and Council Directive 2006/105/EC¹⁵⁴. A consolidated version of the directive, including changes related to the accession of the 12 new Member States, can be obtained at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1979L0409:20070101:EN:PDF>

1. Summary of Main Aims and Objectives

The aim of the directive is to provide for the protection, management and control of naturally occurring wild birds and their nests, eggs and habitats within the European Union. It serves to ensure that all wild birds receive basic protection from trapping and killing; that sufficient habitat is protected for wild birds, especially to assure the survival of threatened and migratory species; that large-scale or non-selective means of taking birds are prohibited; and that the sale or commercial exploitation of most species is prevented. Certain exceptions are made for legitimate sporting and hunting practices, and to allow governments to take action, under certain specified conditions, including those when birds pose serious risks for human health and safety, crops, livestock, fisheries, forests, water, or other flora and fauna. There is also a requirement for the provision of a sufficient diversity and area of habitats so as to maintain the population of all species. Article 7 of the Habitats Directive 92/43/EEC replaces certain habitat protection obligations arising from this directive.

The enlargement of the European Union with 12 new Member States in 2004 and 2007 brought amendments to the Birds Directive. The negotiation of amendments to the lists of habitat types and species of the above directives originally started simultaneously for all 12 candidate countries and has now been completed for the two most recent Member States. Unlike the 2004 enlargement, the consolidated annexes were not included in the Treaty of Accession to the European Union of 2005 regarding Bulgaria and Romania. Based on the political agreement referred to in the Accession Treaty, the Council adopted Directive 2006/105/EC of 20 November 2006, adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of environment, by reason of the accession of Bulgaria and Romania. Most changes concern the annexes to the directive. In the first place, new typical and endangered species and habitats in the new Member States have been added to the annexes, with a limited number of geographical exceptions.

¹⁵⁴ Council Directive 2006/105/EC of 20 November 2006 adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of environment, by reason of the accession of Bulgaria and Romania.

2. Principal Obligations of Member States

2.1 Planning

- Establish or delegate a competent authority to be responsible for the implementation of the requirements of this directive.
- Identify and designate as Special Protection Areas (SPAs) the most suitable territories, in number and size, for the species of wild birds listed in Annex I (Art. 4 and Annex I) and for other regularly occurring migratory species not listed in Annex I but needing protection on their breeding, moulting, staging and wintering grounds (with particular attention to wetlands, especially wetlands of international importance). Take into account the species' protection requirements in the geographical sea and land area where this directive applies (Art. 4).

2.2 Regulation

- Take measures to ensure that wild bird populations are maintained at a level corresponding in particular to ecological, scientific and cultural requirements, both within and outside protected areas, while taking account of economic and recreational requirements, and take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats (Arts. 2 and 3).
- Take special conservation measures concerning the habitats of the species of wild birds listed in Annex I, and for regularly occurring migratory species of other wild birds especially those dependent on wetlands of international importance to ensure their survival and reproduction in their area of distribution (Art. 4).
- Take steps to avoid the deterioration of habitats in SPAs and the significant disturbance of wild birds using them (Art. 6(2) together with Art. 6(3) and 6(4) of Council Directive 92/43/EEC superseding the obligation under the first sentence of Art. 4(4) of this directive).
- Assess any plan or project that either by itself or in combination with other plans or projects is likely to have a significant effect on an SPA, and ensure that any such plan or project is not approved if it would adversely affect the integrity of the site (Art. 6(3) of Council Directive 92/43/EEC, the Habitats Directive), unless there are "imperative reasons of overriding public interest" as specified in Article 6(4) of Council Directive 92/43/EEC, the Habitats Directive.
- If, in the absence of alternative solutions, a plan or project is approved in spite of a negative assessment (for imperative reasons of overriding public interest) take all necessary compensatory measures to ensure that the overall coherence of Natura 2000 is protected and inform the Commission of the measures adopted (Art. 6(4) of Council Directive 92/43/EEC).
- Establish a general system of protection for wild birds. This protection extends to nests and eggs (even empty ones) and, with regard to the birds themselves, includes prohibition of deliberate taking, capture, keeping or killing; deliberate disturbance which would affect any species adversely, and any activity related to the sale of live or dead birds or any of their parts or readily recognised derivatives with the exception of species listed in Annex III, after consultation with the Commission (Arts. 5 and 6).
- Exceptions to this general protection regime are allowed for:
 - species listed in Annex III/1 which may be subject to commercialisation if legally killed or captured, or otherwise legally acquired (Art 6(2));

- species listed in Annex III/2 which may be commercialised after consultation with the Commission (Art 6(3));
 - species listed in Annex II/1 which may be hunted in all Member States (Art. 7(2));
 - species listed in Annex II/2 which may be hunted only in the Member States specified (Art. 7(3)); and
 - derogations for specific reasons such as public health and safety, prevention of damage to crops, the protection of flora and fauna etc. (Art. 9).
- Set up a system of authorisations for derogations under Article 9 (in the interests of public health, etc.), specifying the species concerned, the means of capture or killing, limits on time and place, etc. (Art. 9(2)).
 - Ensure that any derogations under Article 9 are specified in accordance with the directive, are closely supervised and monitored, and are reported annually to the Commission (Art 9(3)).
 - Ensure that the hunting of species listed in Annex II does not jeopardise conservation efforts in their distribution area and that hunting is carried out in accordance with national legislation and complies with the principles of wise use and ecologically balanced control of the species concerned and is compatible with the requirements of this directive. In particular, ensure that species to which hunting laws apply are not hunted during the rearing season nor during the various stages of reproduction or, in the case of migratory species, their return to their rearing grounds (Art. 7 and Annex II).
 - Prohibit the use of methods and means of hunting, capturing or killing wild birds that are large scale, non-selective or capable of causing the local disappearance of a species and in particular the use of means, arrangements or methods listed in Annex IV (Art. 8).
 - In consultation with the Commission, ensure that the introduction of non-native species of wild birds does not adversely affect local flora and fauna (Art. 11).
 - Ensure that measures taken pursuant to this directive do not lead to a deterioration in the present situation regarding the conservation of wild birds (Art. 13).

2.3 Monitoring and Research

- Monitor:
 - compliance with conditions relating to the marketing of wild birds (Art. 6);
 - the effect of hunting on conservation efforts (Art. 7); and
 - the effect of introducing non-native species (Art. 11).
- Encourage research and any other work required as a basis for the protection, management and use of wild birds paying particular attention to the subjects listed in Annex V (Art. 10 and Annex V).

2.4 Consultation and Reporting

- Consult the public before agreeing to a plan or project that is likely to have a significant effect on an SPA (Art. 6(3) of Council Directive 92/43/EEC).
- Consult the Commission about the introduction of non-native species of birds to ensure that this does not adversely affect local fauna and flora (Art. 11).
- Report to the Commission on:

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- the designation of SPAs, providing all relevant information so that it can take the appropriate initiatives with a view to the co-ordination necessary to ensure that the designated areas form a coherent whole which meets the protection requirements of the directive (Art. 4);
- proposals to authorise certain activities (Art. 6);
- the practical application of hunting regulations (Art. 7);
- cases of derogation from the provisions of the directive (every year, Art. 9);
- research (Art. 10);
- implementation of national provisions under the directive (every three years, Art. 12);
- measures taken to comply with the directive (Art. 18);
- transposition, with texts of the main provisions of national law adopted in the field covered by the directive (Art. 18); and
- compensatory measures adopted pursuant to Article 6 of Council Directive 92/43/EEC.

2.5 Additional Legal Instruments

A number of other legal acts are relevant to the implementation of this directive:

- This directive aims to protect wild bird populations within the European territory of the Member States. It is linked to the Habitats Directive (92/43/EEC), especially through the replacement of site protection obligations under Article 4 of the Birds Directive by those set out in Article 6 of the Habitats Directive (see Article 7 of the Habitats Directive). The Habitats Directive also establishes (in Article 3) Natura 2000, a network of both Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) throughout Europe, designed to maintain the overall viability and integrity of biodiversity across Member States.
- The EIA Directive (85/337/EEC) and its amendment (97/11/EC) are used as a tool to assess the potential effects of projects and plans on SPAs and to devise necessary mitigation or compensatory measures.
- Other major international agreements having a bearing on the Birds Directive and for which the directive is an implementation mechanism are the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971; the Bonn Convention on Conservation of Migratory Species of Wild Animals, 1979; the Washington Convention on International Trade in Endangered Species, 1973; and the Berne Convention on the Conservation of European Wildlife and Natural Habitats, 1979; the African Eurasian Waterbird Agreement, 1995; as well as the Convention on Biological Diversity to which the EU is a signatory.
- Given the history of amending the directive to reflect the changing geographical coverage of the EC (see the sector overview), Annex I (and Annex II) will be amended to take account of any threatened or hunted bird species found in the accession countries not already included in the annex(es).

3. Implementation

3.1 Key Tasks

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The key tasks involved in implementing this directive are summarised in the following checklist, organised in chronological order (where applicable) within each subheading.

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1	Planning
1.1	Establish or delegate a competent authority to be responsible for the implementation of the requirements of the directive.
1.2	The competent authority should develop a system to protect all birds in the wild state.
1.3	On the basis of ornithological criteria, the competent authority should identify and designate as SPAs areas that are important for rare or vulnerable bird species listed in Annex I of the directive and those used by migrating species, with particular reference to wetlands (either inland or coastal, such as estuaries) and especially wetlands of international importance.
1.4	Ensure that the competent authority is consulted under the EIA Directive (85/337/EEC) for proposals affecting SPAs.
2	Regulation
2.1	Take the necessary measures to maintain bird populations at appropriate levels, taking into account scientific and cultural requirements including measures to preserve, maintain or re-establish a sufficient diversity and area of habitats.
2.2	Take special conservation measures for the species listed in Annex I and for regularly occurring migratory species, especially those dependent on wetlands of international importance.
2.3	For each SPA, take actions to ensure appropriate management and to avoid deterioration of sites and their habitats and significant disturbance of species.
2.4	Establish a general system to protect all listed bird species referred to in Article 1, including protection from disturbance, keeping, killing and capture. Prohibit any activities relating to sale, unless for species under Annex III. This protection also extends to eggs and nests.
2.5	Provide under national legislation for hunting of species listed in Annex II and ensure that hunting of species listed in Annex II is carried out in accordance with the provisions of Articles 7 and 8, which aim to ensure humane killing methods and sustainable use of bird populations.
2.6	Ensure that any derogations from Articles 5 to 8 allowed under Article 9 are specified in accordance with the directive, are closely supervised and monitored, and are subject to annual reporting to and review by the Commission.
2.7	Ensure that the introduction of non-native species of birds does not adversely affect local flora and fauna.
2.8	Assess any plan or project that either by itself or in combination with other plans or projects is likely to have a significant effect on an SPA, and ensure that such a plan or project is not approved if it would adversely affect the integrity of the site, unless there are imperative reasons of overriding public interest.
2.9	If a plan or project is approved in spite of a negative assessment, take all necessary compensatory measures to ensure that the overall coherence of Natura 2000 is protected.
2.10	Carry out remedial measures to maintain or enhance the ecological value of SPAs, should monitoring indicate that there has been any deterioration in habitat quality and/or value to bird species listed in Annex I.

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3	Monitoring and Research
3.1	Encourage specific research and scientific study to support the protection of designated sites and bird species. Particular attention should be paid to the subjects listed in Annex V, with Member States sending the Commission any information required to enable it to take appropriate measures for the coordination of research and work referred to in Article 10 of the directive.
3.2	Establish a monitoring system covering the spectrum of activities within the directive. The monitoring should include: assessment of population levels of Annex I species; ecological value and integrity of SPAs; and effectiveness of mechanisms to prevent undue harmful activities to bird species listed in Annex II.
3.3	Monitor compliance with the conditions relating to the marketing of wild birds, the effect of hunting on conservation efforts and the effect of introducing non-native species.
4	Consultation and Reporting
4.1	Consult with the public before agreeing to a plan or project that is likely to have a significant effect on an SPA. Consult with the Commission about the introduction of non-native species of birds.
4.1	Report to the Commission, as appropriate, on the following: <ul style="list-style-type: none">• transposition and implementation of the directive;• designation of Special Protection Areas (SPAs);• granting authorisation for the sale of birds listed in Annex III;• the practical application of hunting regulations for species listed in Annex II;• derogations from the provisions of the directive;• measures taken to comply with the directive;• research activities;• compensatory measures adopted according to Article 6 of the Habitats Directive; and• transpositions of national law adopted in the field covered by the directive.

3.2 Phasing

Experience within Member States suggests that the most demanding and time-consuming tasks associated with this directive are:

- transposing the requirements of the directive into national legislation;
- identifying the suite of sites for designation as SPAs, including rigorous assessment of the scientific and nature conservation value of the sites against the necessary criteria;
- formally designating the SPAs, establishing management plans, and other necessary actions following discussions with landowners and managers and arrangements for site management and, if necessary, compensation for restricting management operations; and
- fixing hunting seasons and managing hunting provisions in accordance with the requirements of the directive.

These tasks should therefore be planned to commence during the initial phase of implementation. Experience also reveals the extensive time required for scientific analysis to identify the location and abundance of the listed bird species and areas of importance for birds, and also the lengthy periods of liaison with site owners prior to designation. Particular consideration should therefore be given to these aspects, which should be programmed carefully into the implementation schedule.

4. Implementation Guidance

New timing provisions are needed for candidate countries. However, the first priority will be an assessment of the appropriateness and the occurrence of species listed in Annex I, as well as migratory species, as these provide the basis for site designation. The next priority is the adoption and application of a methodology to monitor species and habitat conservation status.

The present status, needs and situation in each candidate country will influence implementation of the specific requirements of this directive. However, drawing upon the collective experience of the Member States, a number of general observations and suggestions for implementing this directive are presented below.

4.1 Planning

- Decisions on how to implement the Birds Directive are the responsibility of the Member States. Monitoring of SPAs and other species and habitats could be undertaken at a variety of levels, from local to national, although there will be need for overall co-ordination by the competent authorities. Key actors are usually the ministries responsible for environmental protection and/or nature conservation and other government agencies with nature conservation responsibilities, scientific research organisations and increasingly NGOs, which have often developed an expertise in wildlife or particular elements of wildlife protection, such as birds. Many NGOs are actively participating in nature conservation activities, including the planning and development processes and formulation of conservation policies, in consultation with statutory agencies. In the context of this directive, the most significant NGO is BirdLife International, which has national partners in most countries of Europe. Among other activities, it has specialised in gathering and publishing authoritative information on so-called Important Bird Areas (IBAs) which have been widely recognised in EC Member States and by the European Commission as checklists of potential SPAs. The second edition of the IBA inventory for Europe was published in 2000.
- In addition, there are many organisations involved in conducting research on wildlife, birds and biodiversity, both in the private and public sectors. The designation of land areas as SPAs under this directive also involves landowners, land managers and user groups in the process. This is because, as designations seek to conserve (and enhance where possible) the nature conservation value of sites, this has implications for land management and land-use planning. This success in management of the sites is frequently dependent on engaging owners and managers in the discussions, and in providing incentives for positive management actions. The monitoring and research requirements of the legislation also lead to the involvement of specific scientific and research organisations, since much of the work is of a specialist nature.
- An approach in some Member States is for specialist government agencies to be responsible for nature conservation and all associated legislative issues, such as the Wild Birds Directive. These agencies report directly to the ministry responsible for environmental protection, which in turn reports to the Commission.

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THE WILD BIRDS DIRECTIVE

4.1.1 Protection of Birds Listed in Annex I and Establishment of Special Protection Areas (SPAs)

- Some Member States have reported problems related to the provision of protection for certain bird species, particularly in situations or areas where there is a long tradition of hunting. Hunting is not to be automatically excluded from SPAs. It is a management issue that needs to be considered on a case by case basis, ideally within the framework of a management plan for the site. Likewise for other human activities that have potential to cause significant disturbance to the birds for which the sites have been designated.

4.1.2 Monitor Effectiveness of Measures

- In view of the need to provide site-based (SPA) protection for certain birds, as well as general protection for all species, the monitoring requirements within individual Member States are greater than might appear at first. Monitoring requires systematic and scientifically rigorous methodologies to be applied and the results to be assessed against clearly defined objectives. The authority may undertake the monitoring itself or contract out the work to a scientific research establishment. Expert field and technical staff, analytical facilities and data manipulation skills are required. Before an appropriate monitoring methodology can be designed and implemented, clear objectives must first be set. Indicators are a useful tool and independent experts can contribute substantially to the task of setting objectives and developing methodologies and indicators. Baseline data should be established as quickly as possible. It is likely that there are existing monitoring programmes, e.g. on the conservation status of habitats and species, that can be adjusted to fulfill the requirements of the directive. Any monitoring or inspections which relate to enforcement must follow objective procedures and may need to include facilities for the archiving of samples in the event that subsequent legal action is to be taken.

4.1.3 Conduct Appropriate Assessments

- The requirement for conducting appropriate assessments is included to ensure that SPAs – by definition sites of international importance – are afforded protection from developments or activities that could adversely affect their scientific and nature conservation importance. The meaning of “appropriate assessment” has been interpreted by individual Member States and has been taken to mean an assessment of the potential effects of a development on the scientific or conservation value of the site for which it was designated. Therefore an environmental assessment type approach is used, but this must focus in particular on the key features for which the site is a SPA or SAC.
- As Member States have implemented the EIA Directive (85/337/EEC) and are in the process of implementing its amendment, Council Directive 97/11/EC, planning applications for developments potentially affecting SPAs and SACs are normally subject to EIAs. Therefore potential damage to these sites from developments is assessed and considered at an early stage in the process. In practice, the carrying out of “appropriate assessments” under the Birds and Habitats Directives is largely an additional exercise, with the focus being more on the nature conservation status of the site and with the results being presented separately from the EIA to the decision makers. The requirement to conduct appropriate assessments has strengthened the protection afforded to SPAs.

4.2 Reporting

- The directive requires Member States to report to the Commission on several aspects, including transposition and implementation, the list of sites eligible for designation, derogations, cost estimates for potential Community co-financing and research and scientific work.

5. Costs

The main types of costs arising during the implementation of the Wild Birds Directive are illustrated in the checklist below.

The cost of implementing the Wild Birds Directive will depend on the extent of existing systems for the classification, protection and management of sites, the monitoring of sites and species, and the occurrence in the territory concerned of habitats and species to be protected.

The costs of providing specialist staff to survey and identify the potential SPAs should be relatively low and could be achieved with the assistance of the voluntary sector. Perhaps the greatest potential costs relate to the practicalities of establishing the SPA system, especially if payments are to be made for positive management or land purchases prove necessary in lieu of restricting development.

Checklist of the Types of Cost Incurred to Implement the Directive

Initial set-up costs:

- devising systems and procedures;
- compiling baseline assessments;
- provision of training;
- establishing and applying criteria for site selection;
- preparation of guidance documents;
- consultations and communications.

Capital expenditure:

- one-off compensation payments to landowners and land managers;
- purchase of sites (if necessary).

Ongoing costs:

- continuing research and survey;
- implementation of management activities to maintain or enhance the value of sites;
- ongoing management costs under multi-annual management agreements;
- regulatory and enforcement action;
- communications, consultations, production of documents and reports and public awareness;
- reporting to the Commission.

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THE WILD BIRDS DIRECTIVE

The Skins of Seal Pups Directive

Official Title: Council Directive 83/129/EEC concerning the importation into Member States of skins of certain seal pups and products derived therefrom (OJ L 91, 9.4.83) (as amended by Council Directives 85/444/EC (OJ L 259, 1.10.85) and 89/370/EEC (OJ L 163, 8.6.89))

1. Summary of Main Aims and Provisions

The directive aims to protect certain species of seals from over-exploitation by requiring Member States to prohibit the commercial importation of skins of certain seal pups and products derived from those skins. However, the prohibition does not apply to products resulting from traditional hunting by the Inuit people, as it is recognised that this forms an important part of their traditional way of life and economy and is also carried out without harming seal populations.

2. Principal Obligations of Member States

2.1 Planning

- Establish or delegate a competent authority to be responsible for implementing the requirements of the directive.
- Develop a system whereby the commercial importation of seal products from harp and hooded seals is prohibited, unless they have been traditionally hunted by the Inuit people.
- Ensure that the appropriate staffing arrangements are established and that the correct training is provided to customs officers to allow them to inspect shipments.

2.2 Regulation

- Take or maintain all necessary measures to ensure that the products listed in the annex are not commercially imported into the country (Arts. 1 and 3, and annex).

2.3 Monitoring

- Establish a monitoring system to ensure that the importation of seal products is prohibited and that the requisite import procedures are being followed by the customs departments at border points.

2.4 Reporting

- Report to the Commission on the designation of a competent authority (Art. 1).
- Report to the Commission on measures taken to implement the directive (Art. 1).
- Inform the Commission of the measures taken to ensure that the products listed in the annex are not commercially imported.

2.5 Additional Legal Instruments

A number of other legal instruments are relevant to the implementation of this directive.

- This directive is linked to other legislation that includes provisions for, or focuses on, protection for fauna and flora by restrictions or prohibitions on trade, such as the Habitats Directive (92/43/EEC), the Birds Directive (79/409/EEC), the Endangered Species Regulation (EC) No. 338/97, the Regulation on Leghold Traps (EEC) No. 3254/91 and the Regulation on Imports of Cetacean Products (EEC) No. 348/81.
- Whereas originally the directive was only valid until 1 October 1985, the directive has been amended by Council Directive 89/370/EEC so that it is applicable as of 1 October 1983 for an unlimited period.

3. Implementation

3.1 Key Tasks

The key tasks involved in implementing this directive are summarised in the following checklist, organised in chronological order (where possible) within each subheading. A permitting procedure is not required for the directive because the products listed in the annex must not be imported at all unless they arise from traditional hunting by the Inuit people.

THE SKINS OF SEAL PUPS DIRECTIVE - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Establish or delegate a competent authority to be responsible for implementing the requirements of the directive.
1.2	Develop a system whereby the commercial importation of seal products from harp and hooded seals is prohibited.
2	Regulation
2.1	Take or maintain all necessary measures to ensure that the products listed in the annex are not commercially imported into the country.
2.2	Ensure that the appropriate staffing arrangements are established and that the correct training is provided to customs officers, to allow them to inspect shipments.
3	Monitoring
3.1	Establish a monitoring system to ensure that the importation of seal products is prohibited and that the requisite import procedures are being followed by the customs departments at border points.
4	Reporting

4.1 Report to the Commission on:

- the designation of a competent authority; and
- transposition and progress in implementation.

3.2 Phasing

The establishment of a competent authority and the arrangements for licensing and inspection are the key task to be undertaken at the earliest opportunity.

4. Implementation Guidance

4.1 Planning

- The common practice in Member States is to appoint a ministry as the competent authority. Enforcement is usually undertaken by the customs department, which conducts the day-to-day system of inspections and licensing. When required, customs officers are provided with additional training to enable them to carry out the necessary inspections.

4.2 Monitoring

- The relevant competent authority oversees the implementation of the directive, including the issuing of import licenses and inspections.

4.3 Reporting

- All Member States report to the Commission as required by the directive, notifying it of the designation of the competent authority to issue import licences and regulate import activities.

5. Costs

The main sources of costs arising from the implementation of the Skins of Seal Pups Directive are illustrated in the checklist below.

Checklist of Sources of Cost Incurred to Implement the Directive

Initial set-up costs:

- devising systems and procedures;
- provision of training;
- preparation of guidance documents;
- consultations and communications;
- research.

Capital expenditure:

- inspection equipment and facilities if necessary.

Ongoing costs:

- continuing research;

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THE SKINS OF SEAL PUPS DIRECTIVE

- ongoing inspection and enforcement costs;
- communications, consultations, production of documents and reports and public awareness;
- reporting to the Commission.

Meeting the requirements laid down in this directive will not necessarily require significant expenditure, as the directive is concerned with protection of two species of seals through restrictions in the trade of their products. In addition institutional arrangements for controlling trade in seals and endangered species is also required by other legislation, such as CITES.

The costs for provision of specialist staff to develop import and inspection procedures should not be excessive and could be assisted by the voluntary sector. Ongoing costs relate to enforcement of the import and inspection procedures and communication between Member States, the Commission and the public to maintain awareness of the regulations. A proportion of the costs should fall on the importing or exporting individual or organisation through collection of a fee for import or export licences and import taxes.

The Regulations on Trade in Endangered Species

Official Title: Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.97) (corrected by Corrigendum (OJ L 298, 1.11.97) and amended by Commission Regulations 938/97, 939/97, 2307/97, 767/98 (OJ L 109, 8.4.1998), 1006/98 (OJ L 145, 15.5.1998), 2214/98 (OJ L 279, 16.10.1998), 1476/1999 (OJ L 171, 7.7.1999), 2724/2000 (OJ L 320, 18.12.2000), 1579/2001 (OJ L 209, 2.8.2001), 2476/2001 (OJ L 334, 18.12.2001), 1497/2003 (OJ L 215, 27.8.2003) 155, 834/2004 (OJ L 127, 29.4.2004)¹⁵⁶, and 1332/2005 (OJ L 215, 19.8.2005), . A consolidated version of Regulation (EC) No. 338/97, including all of its subsequent amendments, can be obtained at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R0338:20080411:EN:PDF>

Regulation (EC) No. 865/2006, laying down detailed rules concerning the implementation of Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 166, 19.6.2006) (repealing and replacing Regulation (EC) No. 1808/2001).

Regulation (EC) No. 1037/2007 suspending the introduction into the Community of specimens of certain species of wild fauna and flora (OJ L 238/3, 11.9.2007) (repealing and replacing Regulation (EC) No. 349/2003).

1. Summary of Main Aims and Provisions

Regulation (EC) 338/97, and its supplementary legislation, seeks to implement, in the Community, the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which entered into force in 1975 and currently has 172 parties, although not all of the parties have accepted later amendments to the convention. The aim of the convention is to protect species of wild fauna and flora and to guarantee their conservation by regulating their trade. To achieve this, it regulates international trade in certain species of wild fauna and flora that are, or may be, threatened by trade. It prohibits trade in the most endangered species threatened with extinction and establishes a licensing system to be applied to trade in other threatened species. It is based on a system of permits and certificates that must be presented before specimens of protected species are allowed to leave or enter a country, and

¹⁵⁵ Commission Regulation (EC) No 1497/2003 of 18 August 2003 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein.

¹⁵⁶ Commission Regulation (EC) No 834/2004 of 28 April 2004 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein.

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that can only be issued if certain conditions are met. The regulation introduced a number of measures that are stricter than those provided for in CITES.

Regulation (EC) No. 338/97 has been amended several times, mainly to add new species of protected wild fauna and flora to the list of protected and threatened species. These amendments are mainly based on changes to the appendices of CITES. These appendices are regularly updated to transfer certain species or populations of species between the three appendices and to add new species or to delete species to reflect the current situation in terms of number of populations and the level of protection required. Regulation (EC) No. 338/97 therefore needs to be updated to reflect these developments.

In accordance with Article 19 of Council Regulation (EC) No. 338/97, the provisions of the regulation have been further specified through Commission Regulation (EC) No. 865/2006. This regulation, which replaces former Regulation (EC) No. 1808/2001, sets out detailed provisions for the implementation of Regulation (EC) No. 338/97 and transposes relevant decisions of the Conference of the Parties to CITES. The provisions include:

- detailed conditions and criteria applying to permit and certificate applications and the issuing, validity and use of such documents;
- conditions and criteria applying to the treatment of specimens of animal species that are born and bred in captivity and of plants artificially propagated, in order to ensure consistent implementation of the derogations applicable to such specimens;
- streamlined requirements applying to derogations for specimens that are personal and household effects falling under Article 7(3) of Regulation No. 338/97;
- conditions and criteria for defining the general derogations from the internal trade bans set out in Article 8 of Regulation (EC) No. 338/97;
- procedures for the marking of certain specimens of species to facilitate their identification;
- detailed requirements regarding the content, form and submission deadlines of the periodic reports obligatory under Regulation (EC) No. 338/97;
- implementing a number of resolutions adopted at COP12 concerning simplified procedures for the issuing of permits and certificates, provisions relating to travelling exhibitions, derogations regarding personal effects, alteration of codes used in permits and certificates and the list of standard references.

In addition, Article 4(6) of Regulation (EC) No. 338/97 enables the Commission to establish restrictions to the introduction of certain species into the EU. This provision is implemented through Commission Regulation (EC) No. 1037/2007 suspending the introduction into the Community of specimens of certain species of wild fauna and flora.. This regulation sets out a list of species, listed in Annexes A and B to Regulation (EC) No. 338/97, that would be seriously jeopardised if imports into the EU from certain countries of origin are not suspended. The regulation replaces former Regulation 349/2003 and entered into force on 1 October 2007.

2. Principal Obligations of Member States

2.1 Planning

- Designate management authorities, scientific authorities and other competent authorities, as well as customs offices, to implement the requirements of the regulation; and provide customs offices with properly trained staff. Specify which of the offices are intended to deal with live specimens and create facilities for handling live animals and live plants (Arts. 12 and 13, Regulation (EC) No. 338/97).

2.2 Regulation

- Ensure that the import and export of species listed in the annexes to Regulation (EC) No. 338/97 (as amended) is subject to the presentation of relevant permits and certificates and to the checks and procedures laid down in the regulation (Arts. 4 and 5), taking account of the derogations allowed under Article 7.
- Ensure that the issuance of permits and certificates for the following purposes, is in accordance with the conditions laid down in Regulation No. 338/97 and Regulation No. 865/2006:
 - the importation of specimens of listed species (Art. 4, Regulation No. 338/97 and Arts. 20-24, Regulation No. 865/2006);
 - the export and re-export of specimens of listed species (Arts. 5 and 9, Regulation No. 338/97 and Arts. 26-29, Regulation No. 865/2006);
 - the cross-border movement of traveling exhibitions and pets (Arts. 30-44, Regulation No. 865/2006);
 - the movement of certain live specimens of Annex A species within the Community (Arts. 9 and 10, Regulation No. 338/97 and Regulation (EC) No. 865/06); and
 - to allow exemptions from certain commercial activities (Arts. 8 and 10, Regulation No. 338/97 and Art. 48, Regulation No. 865/2006).

These provisions apply to applications, to specifics relating to the issuing authority, to the issuing of documents, to the documents to be surrendered, the handling of documents by the customs office and procedures relating to the replacement of lost, stolen or destroyed permits and certificates. Applications must be made in sufficient time prior to the date of shipment and documents for specimens of species listed in Annexes A, B and C may only be issued retrospectively in exceptional cases (Arts. 13 and 15, Regulation No. 865/2006).

For artificially propagated plants of species listed in Annexes B and C to Regulation No. 338/97 and artificially propagated hybrids produced from species listed in Annex A, Member States have a choice between issuing phytosanitary certificates or export permits (Art. 17, Regulation No. 865/2006).

- Ensure the possibility to apply a simplified procedure for trade in two cases:
 - trade that has only a negligent impact on the conservation of the species concerned. Such procedure should be based on pre-issued permits and certificates to be used for biological samples in accordance with Annex XI where these samples are urgently required. Such procedures have to be in conformity with the specifications set out in Article 18, amongst others involving the advice of the scientific authority (Art. 18, Regulation No. 865/2006);
 - export or re-export of dead specimens listed in Annexes B and C of Regulation No. 338/97.
- Ensure that applications for import permits concerning specimens that are subject to a restriction in accordance with Commission Regulation (EC) No. 1037/2007 (made pursuant to Art. 4(6) of the Endangered Species Regulation) suspending the introduction of certain species of wild flora and fauna, except where the conditions in Article 71(4) of Regulation No. 865/2006 are satisfied.
- Ensure that imports of specimens from third countries are only allowed where the export or re-export documents are still valid (6 months from the date of issue). Where the shipment concerns artificially propagated plants of species listed in Annexes A, B and C, Member States have to accept either valid export permits or phytosanitary certificates (Arts. 14 and 17, Regulation No. 865/2006).

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- For imports into the EU of specimens of species listed in Annexes C or D, ensure that the import notifications to be surrendered by the importer to the customs office are in conformity with Articles 24 and 25 of Regulation No. 865/2006 in terms of the notification form used and its handling by the customs office.
- Import and export permits, re-export certificates, import notifications and travelling exhibition certificates must be in conformity with Articles 46 to 51 of Regulation No. 865/2006 and with the forms and applications set out in Annexes I, II, III and IV (Art. 2, Regulation No. 865/2006). More specific requirements applying to forms include:
 - the forms and applications for certificates provided for in Articles 5, 8 and 9, Regulation No. 338/1997, shall conform to the model set out in Annex V to Regulation No. 865/2006 (Art. 2(5), Regulation No. 865/2006);
 - forms also have to comply with the technical specifications set out in Article 3 of Regulation No. 865/2006 regarding the paper used, the size of the forms, the colour of the paper, and the languages used (including possible translations);
 - forms must normally be completed in typescript or in certain circumstances in manuscript for applications for import and export permits and certificates referred to in Article 4 of Regulation No. 865/2006;
 - forms referred to in Article 4(2) of Regulation No. 865/2006 that have been altered must be authenticated by the stamp/signature of the issuing competent management authority;
 - where annexes are attached to forms, the requirements in Article 6 of Regulation No. 865/2006 apply.
- Ensure that labels are provided in accordance with Article 7(4) of Regulation No. 338/1997, and with the model contained in Annex VI to Regulation No. 865/2006 and Article 3(6) of the same regulation. In the case of labels for non-commercial purposes, including scientific research and museum uses, the labels should conform to the specifications in Article 52 of Regulation No. 865/2006 (Arts. 2(6) and 52, Regulation No. 865/2006).
- The content of permits, certificates and applications for the issuing of such documents must comply with Article 5 and Annexes VII, VIII and IX to Regulation No. 865/2006 regarding codes describing specimens, the indication of units of quantity and weight, the taxa to which the specimens belong, the nomenclature references, codes indicating the purpose of a transaction, and codes for the sources of specimens (Art. 5, Regulation No. 865/2006).
- When deciding upon the acceptability of permits and certificates issued by third countries for specimens to be introduced into the EU, the requirements regarding the technical specifications of forms shall apply (Art. 7(1), Regulation No. 865/2006). Article 7 also specifies the conditions under which re-export certificates and permits and certificates subject to voluntary or allocated export quotas may be accepted.
- Ensure that documents are issued and used in accordance with the provisions laid down in Regulation No. 338/1997 and Regulation No. 865/2006. The issuing competent management authority may also impose conditions and requirements to ensure full compliance with these regulations by setting out the conditions in the documents concerned (Art. 8(1), Regulation No. 865/2006).
- The competent management authorities must have the capacity to be able to decide on the issuing of permits and certificates within one month of receiving a complete application, unless it is necessary to consult third parties (Art. 8(3), Regulation No. 865/2006).

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- Ensure that separate import permits, import notifications, export permits or re-export certificates are issued for each shipment of specimens where shipped together as part of one load (Art. 9, Regulation No. 865/2006).
- Set the period of validity of import and export permits, re-export certificates, travelling exhibition certificates and personal ownership certificates in accordance with the specifications and time periods set out in Article 10 of Regulation No. 865/2006. For instance, import permits shall not be valid for more than one year, whereas export permits and re-export certificates shall not be valid for more than six months.
- The custom procedures defined in Regulation No. 865/2006 (e.g. Arts. 45 and 53) should be complied with, and the only derogations from the customs procedure that are allowed should be on the grounds set out in Article 53. Ensure that customs offices promptly forward to the competent management authorities of their Member State all documents presented to them and that the competent management authorities send documents issued by other Member States to their relevant competent management authorities (Art. 45, Regulation No. 865/2006).
- Ensure that scientific authorities and management authorities carry out examinations, assessments and consultations in respect of the importation, exportation and movement of protected species, in accordance with the criteria laid down in the regulation (Arts. 4, 5 and 9, Regulation No. 338/97).
- Prohibit certain commercial activities relating to protected species, including purchase and sale, and provide for exemptions thereto in accordance with Article 8, Regulation No. 338/97.
- Take measures to protect live specimens during transport (Art. 9, Regulation No. 338/97).
- Where derogations from the requirements of the regulation are allowed, ensure that these are in accordance with the specified conditions (Arts. 7 and 8, Regulation No. 338/97).
- Ensure that the marking of live animals is carried out in a humane way suitable for the specimen concerned, that it complies with the recognised marking methods referred to in Article 66, and that the details of the marking are provided in the permit or certificate (Arts. 64-68, Regulation No. 865/2006). Member States must comply with marking requirements regarding:
 - the individual marking of specimens for the purposes of import and commercial activities in the EU, which is a precondition for issuing an import permit (Art. 64);
 - the marking of specimens for export and re-export, which is a precondition for the issuing of export permits and re-export certificates (Art. 65).
- Only grant derogations from the prohibition laid down in Article 8(1) and (3) of Regulation No. 338/1997 regarding the purchase, offer to purchase or acquisition of specimens of species listed in Annex A for commercial purposes under the circumstances set out in Articles 48, 59, and 60 to 62. These derogations are mostly granted on a case-by-case basis and require the approval of the competent management authority. Derogations include:
 - exemptions for specimens used for the benefit of scientific institutions aiming at the preservation and conservation of the species concerned;
 - exemptions for specimens referred to in Article 8(3)(a,b,c,d,e,h);
 - general exemptions from Articles 1 and 3, set out in Article 62 of Regulation No. 865/2006 regarding specimens of animals born and bred in captivity belonging to species listed in Annex X to Regulation No. 865/2006, where they are marked in

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accordance with Article 66(1), artificially propagated plants, and worked specimens acquired before 1947;

- where specimens are covered by specimen-specific certificates.
- Ensure that derogations from restriction and control measures for import and reintroduction into the EU or export and re-export from the EU of personal and household effects comply with the conditions set out in Articles 57 and 58 of Regulation No. 865/2006.

2.3 Monitoring and Enforcement

- Monitor the issuing of export permits and take measures to counteract the use of false permits (Art. 5 and Art. 11(2), Regulation No. 338/97).
- Monitor compliance with the regulation and take action in cases of non-compliance, including seizure and confiscation of specimens that are illegally imported or exported. Impose sanctions for specified cases of non-compliance with the regulation (Arts. 11, 14 and 16, Regulation No. 338/97).
- Take appropriate measures to ensure the imposition of sanctions for at least the infringements listed in Article 16, Regulation No. 338/97.
- Ensure that customs offices carry out checks and observe the required procedures for the introduction into and export from the EU of specimens covered by the regulation (Art. 12).

2.4 Information and Reporting

- Inform the public about measures taken to implement Regulation No. 338/97 (Arts. 12(5) and 15(1)).
- Notify the Commission and the CITES Secretariat of the legal and administrative provisions adopted for the application and enforcement of Regulation No. 865/2006 and Regulation No. 338/97 (Arts. 69(5) and 73, Regulation No. 865/2006).
- Inform the Commission, and in the case of species listed in the appendices to CITES, the convention secretariat, of the outcome of investigations following infringements of the convention (Art. 14, Regulation No. 338/97).
- Consult with the management authorities of other Member States in cases where specimens of protected species are re-exported (Art. 5, Regulation No. 338/97).
- Communicate to the Commission the information necessary for implementing this regulation (Art. 15(1)) and provide yearly and biennial information according to the requirements of Article 15(4), Regulation No. 338/97.
- Report to the Commission on:
 - all legal instruments used and measures taken to implement and enforce the regulation (Art. 20, Regulation No. 338/97);
 - the designation of competent authorities (Art. 13, Regulation No. 338/97);
 - measures to limit exports of protected species (Art. 5(7), Regulation No. 338/97);
 - significant cases where an application for a permit or certificate is rejected (Art. 6(1), Regulation No. 338/97);
 - cases where a permit is issued in the light of new evidence, despite a previous rejection (Art. 6(4), Regulation No. 338/97);

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- conditions and requirements which need to be incorporated into the design of permits or certificates (Art. 11(3), Regulation No. 338/97);
 - information required by the Commission with a view to amending the annexes (Art. 15(5), Regulation No. 338/97); and
 - steps taken by the competent authorities in relation to significant infringements, including seizures and confiscations (Art. 14, Regulation No. 338/97).
- The issuing competent management authority must inform the competent management authority of the country of destination and the CITES Secretariat about cases where an export permit or re-export certificate has been cancelled, lost, stolen or destroyed (Art. 12(2), Regulation No. 865/2006).
 - Notify the CITES Secretariat of export permits and re-export certificates issued in accordance with Article 15 of Regulation No. 865/2006.
 - Customs offices must forward to the relevant management authority of their Member State all documents presented to them.
 - Member States must collect data on imports into and exports and re-exports from the EU on the basis of permits and certificates issued by their competent management authorities as well as information on seized and confiscated shipments. This information must be submitted to the Commission for each calendar year for species listed in Annexes A, B and C to Regulation No. 338/97. The information must be communicated in two parts according to Article 69(2) of Regulation No. 865/2006 and must be communicated in a computerised form in line with the guidelines on CITES annual reports. The information must be submitted before 15 June of the following year on a species-by-species basis and per country of export.
 - Every second year, Member States must communicate to the Commission information on legislative, regulatory and administrative measures taken to implement and enforce Regulation No. 338/97. The information communicated must also include the information set out in Article 69(5) of Regulation No. 865/2006 regarding registered persons, scientific institutions and breeders, and the use of phytosanitary certificates (Art. 69, Regulation No. 865/2006).
 - Submit information to the Commission as regards species already listed in the annexes to Regulation No. 338/97 or those eligible for listing as regards their biological and trade status, their usage, and methods for controlling trade in those specimens (Art. 70(1), Regulation No. 865/2006).
 - Maintain records of species listed in Annexes A and B to Regulation No. 338/97 regarding shipments of live animals that were dead when imported into the EU (Art. 69(3), Regulation No. 865/2006).

2.5 Additional Legal Instruments

A number of other legislative instruments are relevant to the implementation of the above regulations and must be borne in mind during implementation.

- The above regulations aim to help protect rare and endangered species by controlling trade and, as such, is linked to other directives and regulations, such as the Habitats Directive (92/43/EEC), the Birds Directive (79/409/EEC), the Skins of Seal Pups Directive (83/129/EEC), and regulations on the import of cetacean products ((EEC) No. 348/81) and on leghold traps ((EEC) No. 3254/91).
- Whilst Council Regulation (EC) No. 338/97 does not specifically include protection of the species protected under the Birds Directive or Habitats Directive, species protected by the Birds Directive and Habitats Directive are listed in Annex A and trade in them is

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therefore controlled. This mechanism ensures compatibility between the different legislation and avoids confusion.

3. Implementation

3.1 Key Tasks

The key tasks involved in implementing these regulations are summarised in the following checklist, organised in chronological order (where possible) within each subheading.

THE ENDANGERED SPECIES REGULATIONS - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Establish one or more management authorities responsible for implementing the requirements of the regulations, including issuing the required permits and certificates, and one or more scientific authorities to carry out the tasks specified in the regulation. Other competent authorities might need to be designated including specialized customs offices.
1.2	The competent authority(ies) must establish an effective organisational structure, as well as mechanisms for documentation and shipment inspection and also arrange for the necessary training of all involved organisations in the relevant disciplines.
1.3	Establish and maintain liaison with other Member States concerning information necessary to implement the legislation.
1.4	Establish arrangements for involvement of representatives in the ongoing discussion and review groups, such as the Scientific Review Group and Enforcement Group, to discuss progress in enforcement and the content of the annexes, including listed species and the introduction of species into the Community.
2	Regulation
2.1	Ensure that the import and export of species listed in the annexes (as last amended by Regulation No. 1332/2005) are subject to checks and procedures laid down in the regulation, taking account of the derogations allowed.
2.2	Ensure that permits and authorisations are issued, in accordance with the conditions laid down in the regulation for the importation and export of species, the movement of live species within the Community and certain commercial activities.
2.3	Where exports from non-CITES countries are concerned, ensure that documentation similar to CITES permits and certificates is submitted; this includes requiring and inspecting accompanying documentation and implementing sanctions where necessary.
2.4	Customs offices are required to carry out the necessary checks of all documentation related to imports and exports of CITES species. In addition, they are required to undertake inspections of material, either by full inspection or appropriate sampling of the shipment. Member States must therefore make the necessary organisational arrangements for these inspections.
2.5	Transport of live specimens must be in accordance with the CITES Guidelines for Transport or the IATA Live Animals Regulations and live animals must be conveyed to their destination as soon as possible. Member States must therefore make the necessary provisions for complying with these regulations.
2.6	Management authorities must make arrangements to control all commercial activities related to the import and export of CITES species, with the emphasis

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	being on the prohibition of commercial activities for the most threatened species.
2.7	Management authorities of Member States may grant exemptions for certain situations, but these must comply with the requirements of other EC legislation, such as the Birds Directive and Habitats Directive.
2.8	Allow for a simplified procedure for trade in two cases: <ul style="list-style-type: none"> • trade that has only a negligent impact on the conservation of the species concerned. Such procedure should be based on pre-issued permits and certificates to be used for biological samples in accordance with Annex XI where these samples are urgently required; • the export or re-export of dead specimens listed in Annexes B and C of Regulation No. 338/97.
3	Public Information
3.1	Member States are required to inform the public to ensure they are sufficiently informed of the provisions regarding implementation of CITES and Community regulations.
4	Monitoring
4.1	Member States are required to monitor trade to achieve the aims of the CITES Convention. As such, scientific authorities are to monitor export permits granted for species and the export thereof set out in Annex II (as last amended by Regulation No. 1332/2005). This advice should include suitable measures to limit the issue of export permits whenever they determine that the export should be limited to maintain a species at suitable levels, consistent with the particular ecosystem.
4.2	All parties are required to maintain trade records, which should be reported to the CITES Secretariat on an annual basis.
4.3	Monitor compliance with the regulations.
4.4	Conduct monitoring of the effectiveness of the permitting system in controlling the import and export of endangered species within the Member State.
4.5	Participate in information exchange and discussion with other Member States and the Commission in relation to the overall effectiveness of the legislation in protecting endangered species and in amendments to the legislation, following ongoing research.
5	Reporting

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5.1	Report to the Commission, as appropriate, on the following: <ul style="list-style-type: none">• designation of competent authorities (including at least one management authority and one scientific authority) and of customs offices;• measures taken to implement the regulations;• conditions and requirements which need to be incorporated into the design of certificates;• derogations;• limitations on export;• steps taken by the competent authorities in relation to significant infringements, including seizures and confiscations;• cases of rejection of permit applications;• cases of issuance of a permit despite previous rejection;• information necessary for CITES reports; and• information necessary for implementing the regulations and for amending the annexes (as last amended by Regulation No. 1332/2005).
5.2	Member States must collect data on imports into and exports and re-exports from the EU on the basis of permits and certificates issued by their competent management authorities, as well as information on seized and confiscated shipments. This information must be submitted to the Commission for each calendar year for species listed in Annexes A, B and C to Regulation No. 338/97.
5.3	The issuing management authority must inform the competent management authority of the country of destination and the CITES Secretariat about cases where an export permit or re-export certificate has been cancelled, lost, stolen or destroyed.
5.4	Notify the CITES Secretariat of export permits and re-export certificates issued in accordance with Article 15 of Regulation No. 865/2006.
5.5	Customs offices must forward to the relevant competent management authority of their Member State all documents presented to them.

3.2 Phasing

Experience within Member States suggests that the most demanding and time-consuming tasks associated with these regulations are:

- establishing the necessary organisational arrangements, including setting up the management authorities and scientific authorities;
- establishing the system of documentation, including the permit and certification arrangements, and ensuring that these documents are issued in accordance with Regulation No. 865/2006, including applicable forms and specifications;
- establishing the working arrangements, including mechanisms to inspect documentation and licences, issue export licences and inspect shipments by customs departments.

These tasks should therefore be planned to commence during the initial phase of implementation.

Experience also reveals that extensive time inputs are required to keep up to date with the amendments to the legislation, such as the listed species, as well as the reporting arrangements to the Commission, and discussions involving management authorities, the scientific authorities and the CITES Secretariat.

4. Implementation Guidance

The above regulations can be implemented effectively by a single national management authority, which needs at least a close relationship with central government if it is not part of the government machinery. One or more bodies must be appointed as the scientific authority and the tasks could be performed by a network of individuals. The regulations also require close co-operation between the management authorities and the enforcement agencies, particularly customs. Co-ordination and training structures may be useful and ideally should include the agencies responsible for domestic enforcement, e.g. the police, wildlife inspectorate etc.

The present status, needs and situation in each candidate country will influence the implementation of the specific requirements of this regulation. However, drawing upon the collective experience of the Member States, a number of general observations and suggestions for implementing this regulation are presented below.

4.1 Planning

- The key actors are ministries responsible for foreign affairs and trade, environmental protection, customs authorities and government agencies. Due attention should be given to the establishment of the management authorities and scientific authorities, with personnel recruited from appropriate government departments or other organisations.
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is managed by a secretariat and a conference of the parties, which convenes every two and a half years. The provisions of the convention set out procedures for amending the convention and its appendices. The listing of species in Appendices I and II of the convention requires a two-thirds majority decision by the Conference of the Parties, whilst parties can list native species in Appendix III on their own initiative. Each party must designate one or more management authorities responsible for issuing permits and certificates, subject to advice from one or more scientific authorities designated for that purpose.
- As the subject of endangered species protection has a high international profile, several organisations are involved in this field. Amongst these are some of the large international non-governmental organisations, such as the World Wide Fund for Nature (WWF) and TRAFFIC (the wildlife trade monitoring programme of WWF and IUCN - The World Conservation Union). At a national level, a range of scientific and research organisations are involved and there is close liaison with specialist wildlife groups and statutory wildlife agencies and government departments.
- The World Customs Organisation and Interpol play key roles in the enforcement of the legislation.

Examples of Institutional Arrangements and Regulatory Controls

In the United Kingdom, Defra (the Department for Environment, Food and Rural Affairs) is responsible for determining the overarching policy framework for CITES in the UK and for ensuring that UK authorities comply with its requirements. Defra and its executive agency, Animal Health, are the UK CITES management authority and are responsible for ensuring that the convention is properly implemented in the UK. Their tasks include issuing permits and certificates for the import and export, or for the commercial use, of CITES specimens. The processing and issuing of CITES permits and certificates are carried out through the Animal Health's Wildlife Licensing and Registration Service (see: <http://www.defra.gov.uk/animalhealth/CITES/>). This service is part of the UK CITES management authority responsible for dealing with CITES applications. Furthermore, registerable endangered species are subject to inspections by the Wildlife Inspectorate.

There is now also a permanent body in the country, the Partnership for Action Against Wildlife

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Crime (PAW). It is guided by a steering group, whose members include the police, Defra (which took on the responsibilities of the former DETR), HM Revenue and Customs, the Home Office, the Crown Prosecution Service, TRAFFIC International, the Royal Society for the Protection of Birds, the Royal Society for the Prevention of Cruelty to Animals, representatives of sustainable users (wildlife traders, keepers and hobbyists), and representatives of sporting groups (e.g. the Association for Shooting and Conservation). In June 1997, the DETR signed a memorandum of understanding with the CITES Secretariat to facilitate the flow of information between the secretariat's enforcement personnel and individual police and customs officers. PAW has also ensured that the country is represented at Interpol wildlife crime sub-group meetings where possible. These meetings are attended by police officers and other enforcement bodies from across the world, and provide an opportunity to discuss common problems associated with the enforcement of legislation on wildlife.

In addition, there are some frameworks for liaison at national level. First, the UK CITES Officers Group meets twice a year to discuss technical issues relating to UK implementation of CITES and EU regulations. The group includes representatives from the UK CITES management authority, scientific authorities and HM Revenue and Customs. Secondly, the Joint Liaison Group, comprising UK CITES officers and representatives from trade and conservation organizations, meets twice-yearly to discuss CITES issues relevant to trade and conservation.

In the UK, a consultation was held between February and March 2008 with a view to introducing full recovery of the administrative costs for CITES licences. The Control of Trade in Endangered Species (Fees) Regulations 1997 (SI 1997/1421) prescribes fees to be paid in connection with the issue of CITES licences, and these range between £5 and £10. The income generated by these fees recovered less than 5% of the cost of providing the service in 2007/08. Hence, there is an increasing need to introduce a full recovery charging system. One impact of this system could be a progressive steering away from the use of and trade in CITES-regulated species and products. However, the consultation failed to identify sufficient evidence to accurately quantify the impacts of the proposed charges. Therefore, Defra is only planning to introduce the new charging regime from 6 April 2009.

In another Member State (SE), EU membership led to the introduction of stricter legislation on flora and fauna trade. The EU CITES Regulation (EC) No. 338/97 is applied directly in Sweden as a legal ordinance. The national legislation is the "Species Protection Ordinance". This ordinance has its legal basis in the Environmental Code. The ordinance includes regulations stated by the Birds and Habitat Directives, and also the Zoo Directive. It supplements the EU CITES Regulation (EC) No. 338/97 and also the legislation concerning hunting. In addition, there is the Swedish Environmental Protection Agency's regulation (NFS 1999:7) on species protection, issued by the Swedish EPA to supplement the ordinance. The competent authorities in Sweden with respect to the EU CITES Regulation and species protection include:

- the Swedish Board of Agriculture (Jordbruksverket), acting under the Ministry of Agriculture. It is the competent authority to decide in CITES matters concerning import and export of CITES-listed species. The Swedish Board of Agriculture also issues CITES certificates for commercial activities on the legal basis in the EU CITES Regulation No. 338/97. The Swedish Board of Agriculture also makes decisions on the legal basis of the national legislation (the Species Protection Ordinance) on bans on the storage, transport, import and export of endangered species listed in the appendices to the national legislation.
- The 21 county administrative boards in Sweden (Länsstyrelsen) issue operation licences for trade and exhibitions and the keeping of species of wild animals (in zoos etc.). They also issue licences for keeping wild animals in other circumstances than as zoo exhibits.
- The Customs Department is in the frontline of enforcement. To ensure effective operation, there are dedicated points of entry for plant and animal materials.
- The Swedish Environmental Protection Agency (Naturvårdsverket), as a scientific authority on CITES, issues recommendations on referrals coming from the Swedish Board of Agriculture. The Swedish EPA also issues certificates regarding exceptions from the national legislation concerning trade bans. The Swedish EPA co-ordinates and gives

guidance to the 21 county administrative boards concerning CITES enforcement matters. The EPA is also the competent authority for the Hunting Act, the Hunting Ordinance and Hunting regulations.

The competent authorities meet in an informal constellation twice a year. In addition to the above-mentioned authorities, the prosecutor, the Swedish Museum of Natural History and the Coast Guard also participate. TRAFFIC/WWF also participates.

Sanctions for violations of the ordinances are prescribed in the Environmental Code (Chapter 29, Para. 2) and the Act on Sanctions for Smuggling (2000:1225). Chapter 29 includes fines and imprisonment for up to 2 years, unless the violation is very serious, in which case the term of imprisonment can be a maximum of 6 years.

4.2 Inspection and Enforcement

- Enforcement of the legislation demands an effective system of inspection of both documentation and actual shipments by customs officers as well as inspections in-country by police or wildlife inspectorates. Member States have made considerable efforts to establish the organisational and documentation arrangements and there is an ongoing time and manpower requirement for the inspection of licences and shipments.
- The Commission adopted Recommendation 2007/425/EC of 13 June 2007 identifying a set of actions for the enforcement of Council Regulation (EC) No. 338/97. Actions identified by this recommendation should be carried out by Member States in order to facilitate the enforcement of Regulation No. 338/97.

Examples of Enforcement

In one Member State (UK), the UK CITES management and scientific authorities work closely with HM Revenue and Customs and the police to enforce CITES controls within the UK.

Also, the Partnership for Action against Wildlife Crime (PAW) is a multi-agency body comprising representatives of the organisations involved in wildlife law enforcement in the UK. This partnership provides opportunities for state and non-state organisations to join forces to combat wildlife crime. Its main objective is to promote the enforcement of wildlife conservation legislation (including CITES-related legislation), particularly through supporting the networks of police wildlife crime officers and HM Revenue and Customs officers.

The HM Revenue and Customs is responsible for enforcing CITES controls at external frontiers, and works closely with the police and wildlife inspectors. Every police force now has specialist police officers with expertise in wildlife matters, who are appointed as wildlife liaison officers (WLO) and who take a lead in enforcing wildlife laws within the country. The Department for Environment, Food and Rural Affairs (Defra) views good enforcement as the key to an effective convention and works closely with The HM Revenue and Customs and the police to enforce CITES controls. For example, there have been recent raids on oriental pharmacies, which were found to have material from endangered species, resulting in heavy fines for those involved.

Registerable endangered species are subject to inspections by the Wildlife Inspectorate. The Wildlife Inspectorate (see <http://www.defra.gov.uk/animalhealth/CITES/wildlifeinspect.htm>) consists of a small team based in Bristol and a panel of approximately 80 part-time fee-paid and home-based inspectors located throughout the UK. Its role is to undertake inspections of traders of CITES species and Schedule 4 birds to ensure that the appropriate wildlife legislation is being complied with. All inspections are generated, monitored and controlled by the headquarters staff within an overall inspection strategy, which is reviewed annually.

In Sweden, the Ministry of Agriculture is responsible for the policy, execution and enforcement of CITES. The enforcement service of this ministry is the General Inspection Service (GIS), which is a policing service with all the competencies and powers of the regular police service. As the majority of trade in this area goes through the border customs, co-operation with customs was initiated years ago. A system of teaching and training customs officers was initiated, which has

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proved to be a very effective mechanism for checking and controlling CITES violations. The system was initially introduced at the main airport, before being extended to other airports and ports. Training for customs officers included on-the-job training and is guided by a steering group involving prosecutors, the GIS, customs and the police force. Statistics indicate that a container enters or leaves the country's main port every nine seconds, therefore it was necessary to introduce an efficient system of enforcement, as physical inspection of such vast numbers of shipments is not possible.

4.3 Public information

- Article 15 of Regulation (EC) No. 338/97 requires the Commission and the Member States to ensure that the public is sufficiently informed of the provisions regarding the implementation of CITES and Community regulations. Article 12 specifically provides that Member States shall ensure that the public is informed of the provisions of the regulations at border crossing points.

4.4 Monitoring

- Before an appropriate monitoring methodology can be designed and implemented, clear objectives must first be set. Indicators may be a useful tool and independent experts should contribute substantially to the task of setting objectives, and developing methodologies and indicators. Baseline data should be established as quickly as possible. It is likely that there are existing monitoring programmes, e.g. on the conservation status of habitats and species that can be adjusted to fulfil the requirements of the Habitats Directive. Any monitoring or inspections that relate to enforcement must follow objective procedures and may need to include facilities for the archiving of samples in the event that subsequent legal action is to be taken.
- Both the management authority and the scientific authority will have to carry out monitoring in accordance with the regulation.

4.5 Reporting

- Member States are required to collect data on imports, exports and re-exports on the basis of permits and certificates issued by their management authorities, irrespective of the actual place of introduction or (re)export. Article 39 of Commission Regulation (EC) No. 1808/2001 stipulates that Member States have to communicate this information to the Commission annually in a computerised form and in accordance with the guidelines for the preparation and submission of CITES annual reports issued by the CITES Secretariat.
- The information required has to be presented in two separate parts:
 - 1) imports, exports and re-exports of specimens of species listed in the appendices to the convention; and
 - 2) imports, exports and re-exports of specimens of other species listed in Annexes A to C to Regulation (EC) No. 338/97 and on the introduction into the Community of specimens of species listed in Annex D. With regard to imports of shipments containing live animals, Member States have to, where possible, maintain records of the percentage of specimens of species listed in Annexes A and B to this regulation which were dead at the time of introduction into the Community.
- The reports have to include information on seized and confiscated shipments.
- Biennial reports: every second year Member States must communicate to the Commission information on legislative, regulatory and administrative measures taken to

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implement and enforce Regulation No. 338/97. The information communicated must also include the information set out in Article 69(5) of Regulation No. 865/2006 regarding registered persons, scientific institutions and breeders and the use of phytosanitary certificates (Art. 69, Regulation No. 865/2006).

5. Costs

The main types of costs arising during the implementation of the Endangered Species Regulations are set out in the checklist below.

The costs for the implementation of these regulations may not be significantly greater than those that will apply to all signatories of CITES, irrespective of whether they are members of the EU, since the two control systems are compatible. However, since Regulation No. 338/1997 goes beyond CITES in some regards, it is likely to entail some additional costs.

There will be costs for providing specialist staff to draft the national legislation and to develop guidance and procedures. Technical assistance could be provided by the voluntary sector. The training and provision of customs staff in this specialist area is a recognised cost, but should not be significant. Ongoing costs relate to the implementation of the import and export documentation system and inspections of shipments and documentation accompanying transported materials.

A proportion of the cost could be recovered from the importer or exporter by collecting a fee for licences and import taxes.

Regulation No. 865/2006, introducing more specific requirements regarding the technical specifications for forms for permits, certificates, notifications, continuation sheets and labels, will entail additional costs mainly for providing the relevant forms in the national language and for establishing a computerised permit/certification issuing process for the preparation and printing of forms and labels. Also, the revised provisions on the marking of species, ensuring a more humane marking method, will also entail some costs in terms of making changes to current marking procedures.

Checklist of the Types of Cost Incurred to Implement the Regulation

Initial set-up costs:

- devising systems and procedures;
- establishing one or more management authorities;
- establishing one or more scientific authorities;
- provision of training;
- preparation of guidance and procedure documents;
- consultations and communications;
- studies and research.

Capital expenditure:

- any inspection or analytical equipment that may prove necessary.

Ongoing costs:

- continuing inspections and enforcement;
- monitoring the effectiveness of procedures;
- liaison with related government agencies and other Member States, internal communications, consultations, production of documents and reports and public

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awareness;

- reporting to the Commission.

The Regulation on Imports of Cetacean Products

Official Title: Council Regulation (EEC) No 348/81 on common rules for imports of whales or other cetacean products (OJ L 39, 12.2.81)

1. Summary of Main Aims and Provisions

The regulation aims to contribute to the conservation of cetaceans by controlling the import of certain cetacean products into the Community. These are listed in the annex, which in fact includes about 95% of all secondary whale products but excludes, for instance, cosmetics and lubricating oils containing small quantities of whale products. Import licences are required to import these products into the Community, and Member States must ensure that no import licences are issued where the product is to be used for commercial purposes. The regulation was subsumed and the controls extended by Council Regulation 3626/82 on the implementation in the Community of CITES, which came into force on 31 December 1982 (and was repealed and replaced by Commission Regulation (EC) No. 338/97, the “Endangered Species Regulation”).

2. Principal Obligations of Member States

2.1 Planning

- Designate competent authorities to issue licences for the importation of cetacean products (Art. 1).

2.2 Regulation

- Ensure that none of the cetacean products listed in the annex are imported into the Community unless this is authorised by an import licence (Art. 1 and annex).
- Ensure that no import licences are issued in respect of cetacean products to be used for commercial purposes (Art. 1).

2.3 Reporting

- Report to the Commission on the designation of competent authorities (Art. 1).

2.4 Additional Legal Instruments

A number of other legislative instruments are relevant to the implementation of this regulation:

- This regulation aims to help conserve certain cetacean species by prohibiting the import of these listed species or their products. Member States must ensure that importation of material derived from those species listed in the regulation is not for commercial use. The regulation is therefore closely linked to the Berne Convention of 1979 on the Conservation of European Wildlife and Natural Habitats, which was approved on behalf of the European Community by Council Decision 82/72/EEC and which aims to conserve European wildlife and prohibit all large-scale or indiscriminate capture methods for certain wild animal species. It also relates to the Bonn Convention on Migratory Species of Wild Animals, 1979 (CMS), in particular to the cetaceans listed in Annex I to CMS, and two of its dependent agreements, namely the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas, 1992 (ASCOBANS); and the Agreement on the Conservation of Cetaceans of the Black Sea and Mediterranean Sea, 1996 (ACCOBAMS).
- The regulation is similar in nature to the Endangered Species Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein, as “protection” is provided primarily through trade controls. It can also be viewed as similar in approach to the regulation on the use of leghold traps (EC No. 3254/91), which prohibits the use of (non-discriminatory) leghold traps and controls the import of species caught using this method.
- The regulation is related to the earlier Council Regulation (EEC) No. 136/66 concerning marketing of oils and fats, later amended by Regulation No 1917/80/EEC.
- Moreover, the regulation was passed prior to the enactment of legislation implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), of 1 January 1984, and introduced into European Community legislation the concept of import permits as a form of nature conservation.

3. Implementation

3.1 Key Tasks

The key tasks involved in implementing this regulation are summarised in the following checklist, organised in chronological order (where applicable) within each subheading.

THE REGULATION ON IMPORTS OF CETACEAN PRODUCTS - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Establish or delegate a competent authority to be responsible for implementing the regulation. The competent authority could be a government ministry, department or specialist agency and should be given sufficient powers to enforce the legislative requirements.
1.2	The competent authority should be responsible for issuing of import licences.
2	Regulation
2.1	The competent authority should ensure that the importation of products listed in the annex is subject to the production of an import licence.
2.2	Ensure that import licences are not granted where products are to be used for commercial purposes.

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3	Monitoring
3.1	Establish a system review and issue licenses to regulate the import of certain cetacean products, including prohibiting the import of certain products for commercial use.
3.2	Establish the organisational and operational arrangements to review applications for importing of cetacean products.
3.3	Establish the organisational and operational arrangements to inspect shipments of material containing certain cetacean products.
3.4	Establish arrangements for the organisations involved to participate in discussions between Member States and the Commission regarding ongoing research into the subject of cetacean conservation and recent initiatives in this field.
4	Reporting
4.1	Report to the Commission on designation of the competent authority.

3.2 Phasing

Experience within Member States suggests that the most demanding and time-consuming tasks associated with this regulation are:

- establishing the necessary organisational arrangements, including setting up the competent authority;
- establishing the system of documentation, including the licensing arrangements;
- establishing the working arrangements, including mechanisms for inspection of documentation and licences, and inspection of shipments by customs departments.

These tasks should therefore be planned to commence during the initial phase of implementation.

4. Implementation Guidance

The present status, needs and situation in each candidate country will influence implementation of the specific requirements of this regulation. However, drawing upon the collective experience of the Member States, a number of general observations and suggestions for implementing this regulation are presented below.

4.1 Planning

- The key actors are ministries responsible for foreign affairs and trade, environmental protection, customs authorities and government agencies. Each Member State must designate a competent authority to be responsible for issuing permits to regulate imports of cetacean products. This often involves a ministry as the competent body and a customs department as the enforcement agency, responsible for issuing licences and undertaking the necessary inspections. The competent authority could conveniently be the same one appointed under the Skins of Seal Pups Directive and the Regulation on Leghold Traps.
- Due attention should be given to the establishment of the competent authorities, with personnel recruited from appropriate government departments or other organisations.
- As the subject of cetacean species protection has a high international profile, there are many organisations involved in this field. Amongst these are some of the large international non-governmental organisations, such as the World Wide Fund for Nature (WWF), the International Union for the Conservation of Nature (IUCN - The World

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Conservation Union) and TRAFFIC (Trade Records and Analysis of Fauna and Flora in Commerce, an NGO that monitors trade in endangered species in order to ensure that it is in accordance with CITES). At a national level, a range of scientific and research organisations could be involved. It may be necessary to establish liaison with specialist wildlife groups and statutory wildlife agencies and government departments, particularly for accurate identification of materials that may be covered by the regulation.

- Experience from Member States has also revealed some problems with regard to organisational arrangements, as historically the various ministries involved with trade seldom included environmental ministries. This has therefore required considerable liaison between ministries and government departments.
- Laboratory facilities are needed to test materials (e.g. items seized by customs) that may be covered by the regulation. Testing may require DNA analysis to determine the species of cetacean from which the samples originated.

4.2 Enforcement and Monitoring

- Enforcement of the regulation requires licensing documentation and a system of inspection of both documentation and actual shipments by customs officers. Member States have made considerable efforts to establish the correct organisational and documentation arrangements and there is an ongoing time and manpower requirement to inspect licences and shipments.

4.3 Reporting

As such there are no direct reporting procedures required of Member States other than those listed in Section 3 above.

5. Costs

The main types of costs arising during the implementation of the Regulation on Imports of Cetacean Products are illustrated in the checklist below.

Checklist of the Types of Cost Incurred to Implement the Regulation

Initial set-up costs:

- devising systems and procedures;
- provision of training;
- preparation of guidance documents;
- consultations and communications;
- research.

Capital expenditure:

- materials and equipment for inspection, if necessary.

Ongoing costs:

- continuing research;
- ongoing inspection and enforcement costs;
- communications, consultations, production of documents and reports and public awareness;

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THE REGULATION ON IMPORTS OF CETACEAN PRODUCTS

- reporting to the Commission.

The costs for specialist staff to design and enforce the national legislation should not be excessive and could be assisted by the voluntary sector. These costs will be lower for countries which already have such import controls in place, e.g. as a consequence of being a signatory to CITES. Ongoing costs relate to enforcement through the issue and inspection of import documentation. A proportion of the costs could fall on the importing or exporting individual or organisation through the collection of a fee for import or export licences and import taxes.

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THE REGULATION ON IMPORTS OF CETACEAN PRODUCTS

The Regulation on Leghold Traps

Official Title: Council Regulation (EEC) No. 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards (OJ L 308, 9.11.91)

1. Summary of Main Aims and Provisions

The regulation aims to contribute to the conservation of certain species of wild animals and contribute to animal welfare by banning the use of leghold traps and limiting imports into the Community of the pelts and related goods from animals caught by leghold traps. The regulation also seeks to avoid distortion of competition by ensuring that external trade measures relating to this issue are applied uniformly throughout the Community. The Regulation on Leghold Traps is implemented by Commission Regulation (EC) No. 35/97, which prescribes the form of the certificate that must be presented in order to introduce into the Community pelts whose import is permitted.

2. Principal Obligations of Member States

2.1 Planning

- Establish or delegate a competent authority to be responsible for inspecting import licences for wild animal products, to ensure that imports comply with the requirements of the regulation.
- Develop a regulatory system to ensure that the import of all wild animal products from the list of animals in Annex I of the regulation complies with the requirements of the regulation.

2.2 Regulation

- Prohibit the use of leghold traps (Art. 2).
- Prohibit the importation of pelts of animal species listed in Annex I, and other goods listed in Annex II in so far as they incorporate these pelts, unless the products are subject to one of the exceptions specified in the regulation (Art. 3 and Annexes I and II).

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- Ensure that none of the goods listed in Annex II (in so far as they incorporate the pelts of animal species listed in Annex I) are imported unless a certificate (in the form prescribed by the Commission) is produced by the exporting country to show that the pelts originate in a country to which one of the exceptions specified in the regulation applies (Art. 4 and Arts. 1 and 2 of Commission Regulation (EC) No 35/97, implementing the Regulation on Leghold Traps).

2.3 Additional Legal Instruments

Two other legislative instruments are relevant to the implementation of this regulation.

- This regulation is linked closely with the Berne Convention of 1979 on the Conservation of European Wildlife and Natural Habitats (Council Decision 82/72/EEC), which aims to conserve European wildlife and prohibit all large-scale or indiscriminate capture methods for certain wild animal species; and
- The regulation uses a similar mechanism for nature conservation as that used by the Endangered Species Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein, as “protection” is provided primarily through trade controls.

3. Implementation

3.1 Key Tasks

The key tasks to implement this regulation are summarised in the following checklist:

THE REGULATION ON LEGHOLD TRAPS - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Establish or delegate a competent authority to be responsible for inspecting import licences for wild animal products, to ensure that imports comply with the requirements of the regulation.
1.2	Develop a regulatory system to ensure that the import of all wild animal products from the list of animals in Annex I of the regulation complies with the requirements of the regulation.
2	Regulation
2.1	Prohibit the use of leghold traps.
2.2	Prohibit the importation of pelts of animal species listed in Annex I, and other goods listed in Annex II in so far as they incorporate these pelts, unless the products are subject to one of the exceptions specified in the regulation.
2.3	Ensure that none of the goods listed in Annex II (in so far as they incorporate the pelts of animal species listed in Annex I) are imported unless a certificate in the form prescribed by the Commission is produced by the exporting country to show that the pelts originate in a country to which one of the exceptions specified in the regulation applies.

3.2 Phasing

Experience from Member States suggests that the establishment of the competent authority often takes some time and therefore this activity should be undertaken as soon as possible. Arrangements should be less time-consuming where institutional systems are already in place for the Washington Convention on International Trade in Endangered Species (CITES), 1973.

The establishment of the competent authority should be followed by establishing a licensing system and day-to-day working arrangements, covering staffing and logistics.

4. Implementation Guidance

Implementation of the specific requirements of this regulation will be influenced by the present status, needs and situation in each candidate country. However, drawing upon the collective experience of the Member States, a number of general observations and suggestions for implementing this regulation are presented below.

4.1 Planning

- The key actors are ministries responsible for foreign affairs, trade and environmental protection, customs authorities and government agencies. Due attention should be given to the establishment of the competent authority, with personnel recruited from appropriate government departments or other organisations. As the subject of cruelty to animals and endangered species protection has a widespread international profile, there are several organisations involved in this field. Amongst these are some of the large international non-governmental organisations, such as the World Wide Fund for Nature (WWF) and TRAFFIC (Trade Records and Analysis of Fauna and Flora in Commerce, an NGO that monitors trade in endangered species in order to ensure that it is in accordance with CITES). At a national level there are a range of scientific and research organisations involved and there is close liaison with specialist wildlife groups and statutory wildlife agencies and government departments.
- For many years there has been continued research into humane trapping methods, particularly in countries such as Canada, and as techniques are refined they are incorporated into the decision-making process. This ongoing research includes consideration of economics and trade, particularly the effects on indigenous people such as the Inuit of Canada. For example, in July 1997, Canada's European General Affairs Council approved the Agreement on International Humane Trapping Standards with the European Union. This was seen as accommodating both environmental and trade considerations. The agreement laid down stringent and scientifically based standards for all trapping methods involving mechanical devices used to catch 19 species of wild mammals, regardless of the reasons for their capture, whether for pest control, conservation, fur or food. Member States should therefore keep up to date with ongoing research and be ready to participate in discussions on the subject with the Commission and other Member States.
- Administrative arrangements will be simpler to implement in candidate countries where systems for implementing CITES are already in place.

5. Costs

The main types of costs arising during the implementation of the Leghold Traps Regulation are illustrated in the checklist below.

Meeting the requirements laid down in this regulation should not require significant expenditure, as the regulation is concerned with administrative measures to protect certain animal species through prohibiting the use of leghold traps and restricting importation of animals or their products captured by these devices.

The costs of enforcement should also not be significant and should relate to the establishment of inspection procedures and import documentation systems. They can also be interfaced with those related to implementation of other EU trade legislation and CITES. A proportion of the cost

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should fall on the importing or exporting individuals or organisations through the collection of a fee for import or export licences and import taxes.

Checklist of the Types of Cost Incurred to Implement the Regulation

Initial set-up costs:

- devising systems and procedures;
- provision of training;
- preparation of guidance documents;
- consultations and communications;
- research.

Capital expenditure:

- any inspection equipment that may be required, such as laboratory or testing apparatus.

Ongoing costs:

- continuing research;
- regulatory and enforcement activities;
- communications, consultations, production of documents and reports and public awareness;
- reporting to the Commission.

Council Decision on Amendments to the Bonn Convention

Official Title: Council Decision 98/145/EC on the approval, on behalf of the European Community, of the amendments to Appendices I and II to the Bonn Convention on the conservation of migratory species of wild animals as decided by the fifth meeting of the Conference of the Parties to the convention (OJ L 046, 17/02/1998 P.0006-0007)

1. Summary of Main Aims and Objectives

The purpose of the decision is to approve the additions made to the appendices to the Bonn Convention on the Conservation of Migratory Species of Wild Animals at the fifth meeting of the Conference of the Parties, since the EC is a party to the convention in its function as a “regional economic integration organisation” under Article 1(k).

2. Principal Obligations of Member States

2.1 General

Take into account the amended appendices of the Bonn Convention when implementing obligations arising from the Bonn Convention on the Conservation of Migratory Species of Wild Animals of 19 September 1979, which was approved on behalf of the European Community by means of Council Decision 82/461/EEC.

2.2 Additional Legal Instruments

A number of other legislative instruments concerning the protection of fauna are relevant to the implementation of this decision, in particular Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (the Birds Directive), Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive), and the Ramsar Convention on Wetlands of International Importance, 1971. The latter two both involve the protection of habitats that are important for birds. The Habitats Directive establishes a European network of ecological sites called Natura 2000, which includes both Special Protection Areas

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COUNCIL DECISION ON AMENDMENTS TO THE BONN CONVENTION

(SPAs, designated under the Birds Directive) and Special Areas of Conservation (SACs, designated under the Habitats Directive).

3. Implementation

3.1 Key Tasks

The implementation of this Council decision requires ensuring that species listed in the amendments to Appendices I and II of the Bonn Convention are afforded protection in accordance with the Bonn Convention.

Appendices I and II of the Bonn Convention were amended to include the additional animal species, as listed in the text of the Council decision. At the fifth meeting of the Conference of the Parties, held in Geneva on 10 to 16 April 1997, 21 threatened migratory species were added to Appendix I of the convention and 22 species were added to Appendix II of the convention.

4. Implementation Guidance

The main actor will be the competent authority responsible for implementing the requirements of the convention. This will commonly be the ministry of environment or other such government department, or appointed government agency.

If necessary, candidate countries will be required to make the appropriate alterations to their national legislation to reflect the changes to the list of species afforded protection under the appendices of the Council decision.

5. Costs

No significant additional costs are likely, with costs relating only to staff time required to make the necessary legislative changes.

The Zoos Directive

Official Title: Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos (OJ L 094, 09.04.1999)

1. Summary of Main Aims and Provisions

This directive was adopted in order to address concerns that many animals in European zoos were being kept under unacceptable conditions. In addition, these animals are regarded as part of the EU's environmental heritage and natural resources. It was therefore considered desirable that the keeping of animals in zoos should be regulated to ensure the preservation of species while maintaining the role of zoos in education and scientific research.

The directive aims to protect wildlife and preserve biodiversity by providing for the adoption of measures by Member States for the licensing and inspection of zoos. Zoos are defined to include all permanent establishments where live animals of wild species are kept for exhibition to the public for seven or more days per year. The directive does not cover circuses and pet shops, which are expressly excluded. Nor does it cover establishments which Member States have exempted on the grounds that they do not exhibit a significant number of animals or species to the public and that the exemption does not undermine the objectives of the directive.

The directive requires the enforcement of the licensing regime using appropriate measures which include the closure of all or part of a zoo in breach of the licensing requirements and the imposition of effective, proportionate and dissuasive penalties.

2. Principal Obligations of Member States

2.1 Planning

- Designate a competent authority or authorities to grant, refuse and amend licences, to inspect zoos, and to enforce compliance with licences (Art. 7).

2.2 Regulation

- Ensure that all zoos implement the conservation measures set out in Article 3:
 - participating in research, providing conservation training, exchanging information on conservation and, where appropriate, captive breeding, repopulation or reintroduction of species into the wild;

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- promoting public information and awareness in relation to the conservation of biodiversity (particularly information about species exhibited and their natural habitats);
 - keeping animals under conditions which satisfy the biological and conservation needs of the species;
 - preventing the escape of animals and the intrusion of outside pests and vermin;
 - keeping up-to-date records of the zoo's collection.
- Ensure that all zoos have a licence by 9 April 2003 or, in the case of new zoos, before they open to the public (Art. 4(2)). Each licence shall contain conditions to enforce the conservation requirements set out in Article 3 (Art. 4(3)).
 - Ensure that before granting, refusing or amending a licence, the competent authorities carry out an inspection to determine whether actual or proposed licensing conditions are being met (Art. 4(4)).
 - Member States may be exempted from the licensing requirements of the directive if they satisfy the Commission that the objectives of the directive and the conservation requirements in Article 3 are being met and maintained by a system of regulation and registration that contains provisions for the inspection and closure of zoos equivalent to those in the directive (Art. 5).

2.3 Monitoring and Enforcement

- Monitor the compliance of zoos with licences and conservation requirements by taking appropriate steps including regular inspection of zoos (Art. 4(3)).
- Enforce the licensing regime by closing part or all of a zoo when it is not licensed or when the licensing conditions are not being met. Alternatively, the competent authority may impose requirements to ensure that licensing conditions are met within a period not exceeding two years (Art. 4(5)).
- Where part or all of a zoo is closed, the competent authority shall ensure that the animals are treated or disposed of under appropriate conditions that are consistent with the purposes and provisions of the directive (Art. 6).
- Member States shall ensure that there are effective, proportionate and dissuasive penalties for breaches of national provisions implementing the directive (Art. 8).

2.4 Information and Reporting

- Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by the directive (Art. 9).
- Where Member States seek to be exempted from the licensing requirements of the directive, they must satisfy the Commission that the objectives of the directive and the conservation requirements in Article 3 are being met and maintained by a system of regulation and registration which contains provisions for the inspection and closure of zoos equivalent to those in the directive (Art. 5).

3. Implementation

3.1 Key Tasks

The key tasks involved in implementing this directive are set out below:

- designate an authority responsible for drafting implementing legislation. Usually, this would involve the ministry/department of the environment;
- designate a competent authority or authorities to issue licences, carry out inspections and enforce licences;
- draft legislation establishing a licensing and inspection system and enforcement mechanisms, including the closure of zoos and the imposition of penalties;
- communicate national implementing legislation to the Commission;
- monitor operation of licensing, inspection and enforcement regimes.

3.2 Phasing

Implementation should be carried out in the following phases:

Phase 1: Designate authority responsible for drafting implementing legislation.

Phase 2: Draft implementing legislation.

Designate competent authority or authorities to carry out licensing, etc.

Phase 3: Communicate national implementing legislation to the Commission.

Phase 4: Monitor operation of licensing, inspection and enforcement regimes.

4. Implementation Guidance

The nature and extent of the measures necessary to implement the directive will depend upon the systems already in place in candidate countries. In the event that a candidate country already has a system of regulation and registration in place that makes equivalent provision for inspection and closure of zoos, it may be possible to rely on the existing system, provided that permission from the Commission is obtained for this. It is more probable, however, that candidate countries will have to establish new licensing systems in order to comply with the provisions of the directive.

5. Costs

The initial burden of establishing the licensing and inspection regime will be borne by candidate countries. However, the size of the ensuing costs will depend upon the nature and extent of existing regimes for the regulation and registration of zoos. Some of the costs may be recouped by charging fees for the submission of licensing applications and/or for the issue of licences. Funds recouped as a result of the imposition of penalties for breach of a licence might also help fund the licensing and inspection regime.

Further costs will be incurred by the owners of zoos in order to satisfy the conditions of their licences and to meet the directive's conservation requirements. The extent to which such costs will also have to be borne by the state will depend upon whether most zoos are owned by private individuals/corporations or by the state.

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