



30.11.2018

NOTICE TO MEMBERS

Subject: Petition No 0853/2017 by Matthew Spiegl (American), on behalf of the Free Morgan Foundation, bearing 5 signatures, on alleged noncompliant implementation and infringement of Council Regulation (EC) 338/97

1. Summary of petition

The petitioner, who acts on behalf of a Dutch registered NGO (Free Morgan Foundation), claims that the European Commission has failed to accurately transpose and implement some provisions of Regulation (EC) 338/97 on the protection of the species of wild fauna and flora by regulating trade therein. In particular, the petitioner claims that the provisions relating to the control of commercial activities concerning the protected species (Article 8(1) and Article 8(3) of Regulation (EC) 338/97) have not been properly transposed in the two implementing Regulations (EC) 865/2006 and (EU) 792/2012. As a result, the petitioner claims that all specimens of species listed in Annex A of Regulation (EC) 338/97 have been exposed to potential unauthorised commercial exploitation, in contravention of Article 8(1) and 8(3) of the Regulation. The petitioner therefore requests that the Commission issues a “Guidance Document” and adopts a new standardised “Exemption Certificate” as foreseen in Article 8(3) of Regulation (EC) 338/97.

The petitioner also refers to alleged cases of infringements of Regulation 338/97 by two Member States, in relation to wild-born orca Morgan which would have been subject to unauthorized commercial exploitation, in contravention of Articles 8(1) and 8(3) of Regulation (EC) 338/97.

2. Admissibility

Declared admissible on 13 December 2017. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 29 June 2018

The Commission notes, first of all, that the provisions in question do not relate to the

implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in the EU, but to stricter domestic measures agreed by the EU in relation to trade *within* the EU, which is not regulated by CITES. Hence, unlike the petitioners suggest, the issue at stake is not about EU compliance with CITES.

The Commission also notes that, as pointed out by the petitioners, the provisions in question have been in place in EU law since 2001 (initially through Annex III of Regulation 1808/2001, which was subsequently replaced by Annex V of Regulation 792/2012¹). The Commission has not been made aware of any major problems with the implementation of these provisions during the last seventeen years. Also, no relevant issues were raised in the very extensive study on the effectiveness of the EC wildlife trade regulations carried out for the Commission by Traffic, the wildlife trade monitoring network, in 2007². Nor have such issues been raised in the regular reports by EU Member States on the implementation of the EU wildlife trade regulations³. Nor, finally, has the Commission so far been alerted by any other stakeholders about the issue raised by the petitioners. Nevertheless, the Commission is currently consulting Member States to get additional feedback on the application of the provisions in question.

The petitioners are referring to one case where these provisions have, according to them, led to an incorrect implementation of Regulation 338/97. The Member States involved in this case, Spain and the Netherlands, both consider that they have properly implemented the Regulation. The Commission has been in contact with the petitioners and with the Dutch and Spanish authorities on several occasions on this case in the last seven years, as regards the compliance with the EU wildlife trade regulations.

Conclusion

The Commission would like to recall that thousands of permits and certificates are issued every year by EU Member States pursuant to Council Regulation 338/97 and its Implementing Regulation. Overall, there seems to be no evidence at this stage that the implementing provisions challenged by the petitioners or their practical application are undermining the effective implementation of Council Regulation 338/97 at any significant scale. While the Commission is proactive in promoting the implementation of EU rules on wildlife trade by Member States, it is usually not following individual cases or situations, but rather focusing its attention on structural shortcomings in implementation. As regards the issue raised by the petitioner, the available evidence does not support the existence of any significant structural shortcomings in the implementation of the EU wildlife trade regulations.

4. Commission reply (REV), received on 30 November 2018

The petition refers to a specific provision of EU law (point (d) in box 19 of Annex V of

¹ Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No 865/2006 (OJ L 242, 7.9.2012, p. 13–45)

² See http://ec.europa.eu/environment/cites/pdf/studies/effectiveness_study.pdf

³ Cf. analysis of the latest reports: http://ec.europa.eu/environment/cites/pdf/analysis_2013-2014.pdf

Commission Regulation 792/2012). As laid down in Article 2 of Regulation 792/2012, Annex V sets out inter alia a model for the forms to be used for the certificates issued by the Member States for authorising trade within the EU of specimens of species included in Annex A of Council Regulation 338/97. The petitioners suggest that the way in which point (d) of box 19 in Annex V of Commission Regulation 792/2012 has been drafted results in an incorrect application of the provisions in Article 8 of Regulation 338/97, which sets out the general prohibition regime for trade in Annex A specimens within the EU, as well as the exemptions to this prohibition.

The Commission's observations

In their latest submission ("Motivations to Keep Open Petition 0853/2017"), the petitioners claim that the individual case of the orca specimen held at a Spanish facility, which triggered their petition, only serves as an example to illustrate more general problems with the above-mentioned model certificate (para. 3). However, they still do not provide any evidence whatsoever as to other specific cases where use of the model certificate would actually have created problems.

The petitioners have identified one sentence in a 243-page report drawn up by consultants for the Commission (the 2007 "Effectiveness Study") which addresses a point similar to the one they have been raising. Yet the study does not "fully support" that particular point (para. 5), nor does it suggest a reaction like the one called for by the petitioners.

The petitioners also misinterpret other claims and references made by the Commission in its initial set of observations, in a way which makes them seem to support their case or to otherwise cast doubt on the effectiveness of the current implementing rules. Thus the Commission of course never suggested that "Council Regulation (EC) 338/97 and Commission Regulation (EC) 865/2006 have nothing to do with CITES" (para. 9); rather it was clarified that relevant EU rules *are not limited to* implementation of CITES.

Unlike the petitioners suggest, the Commission did not make any claims as to the number of certificates using Annex V of Commission Regulation 792/2012 (para. 10) but merely pointed to the large overall number of permits and certificates issued by Member States' authorities. The biennial implementation report was referred to as 'an opportunity for Member States to raise any relevant issues', and the Committee was informed that the issues actually raised in that report do not include the one perceived by the petitioners. The Commission firmly rejects the petitioners' accusation of having attempted to mislead the members of the Committee in that context.

Conclusion

The petitioners have not provided any evidence of significant structural shortcomings in the implementation of the rules currently in place. Regular review of those rules and of their application is in any case assured by the competent EU bodies, in particular the CITES Management Committee/Expert Group and the Wildlife Trade Enforcement Group.