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ECONOMIC AND SCIENTIFIC POLICY **A**

Economic and Monetary Affairs

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**Environment, Public Health  
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# Wildlife Crime in Spain

In-depth Analysis for the ENVI Committee



**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY**

# **Wildlife Crime in Spain**

## **IN-DEPTH ANALYSIS**

### **Abstract**

This paper provides an in-depth analysis of wildlife crime and efforts to combat it in Spain. It identifies best practices by law enforcement agencies: the Spanish Administrative Authority of CITES, the special police for the protection of nature (SEPRONA) and the Special Prosecutor's Office. In addition, it reports on shortcomings in enforcement and resources. The analysis was commissioned by Policy Department A at the request of the Committee on the Environment, Public Health and Food Safety.

This document was requested by the European Parliament's Committee on the Environment, Public Health and Food Safety.

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## LIST OF ABBREVIATIONS

- CITES** Convention on International Trade in Endangered Species of Wild Fauna and Flora
- IUU** Illegal, Unreported and Unregulated Fishing
- NGO** Non-governmental Organisation
- SEPRONA** Special Police Force for the Protection of Nature

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## EXECUTIVE SUMMARY

Spain is a relevant entry point to Europe as well as a country of origin and transit of wildlife crime with trade routes introducing illegal timber from Latin American and Barbary Macaques and elephants and rhino trophies from African countries as well as trade routes of eels, raptors and ivory to the Middle East and Asia. Recent police operations point to the existence of criminal groups, with organized crime infrastructures and their *modus operandi*. The internet is increasingly used for selling rare species outside the legal market.

As examples of good practice, the Spanish Environmental Police, (**SEPRONA**), is one of the few specialized forces in Europe fighting environmental crime as well as its **CITES Management Authorities** which implement CITES and EU legislation. SEPRONA has developed and implemented day-to-day strategies against wildlife crime. Its agents have engaged in significant major wildlife crime operations, some of which have been perpetrated by organized criminal groups, however, the examined case law shows a limited number of convictions and lenient punishments due to difficulties in providing the required evidence and the resistance of judges to consider environmental crime as serious. Spain also has a specialized Prosecutor's Office that cooperates closely with CITES Management Authorities and SEPRONA. Both SEPRONA and the Spanish CITES Management Authorities cooperate with authorities of other Member States and third countries on a regular basis as well as in coordinated operations that show the importance of institutional contacts of the CITES Authorities as well as the institutional networks and agencies, such as EUROPOL and INTERPOL. This cooperation contributes to overcoming the limits of the CITES Convention and EU Regulation that in the opinion of the experts interviewed are fragmented and lack clarity. Moreover, the legal instruments at domestic and European level to fight against organized crime do not envisage environmental crime or wildlife crime, and can hardly be applied to fight them since they are destined to fight serious crimes. It is the opinion of the Spanish Management Authorities as well as the Prosecution Office that a specific legal instrument to fight wildlife crime would be most useful to overcome these problems<sup>1</sup>.

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<sup>1</sup> This report has been prepared on the basis of extensive interviews with the Spanish CITES Management Authorities, Mercedes Nuñez and Antonio Galilea, SEPRONA and Captain Salvador Ortega. Without their generous help this report could not have been written in such detail. However, all faults and inaccuracies are mine.



## 1. INTRODUCTION

This in-depth analysis presents insights on wildlife crime and efforts to combat it in Spain. This in-depth analysis was written as part of a larger project of producing for the European Parliament a 'Study on Wildlife Crime' which compiles insights into wildlife crime in the EU as well as efforts to combat it (Sina et al. 2016); the study also presents conclusions on how to enhance EU and Member State action on wildlife crime. The present in-depth analysis has informed the main study, but contains a more detailed description of the situation in Spain than the main study. In addition, to this in-depth analysis, similar analysis has also been prepared on Germany, the Netherlands, Poland and the UK.

The present analysis is based on desk-based research, a limited number of interviews with experts on the topic of wildlife crime as well as the analysis of available data on wildlife crime. Generally, it should be noted that data on wildlife crime (as on other forms of environmental crime) have significant gaps; the data that exist are not necessarily coherent across time or between countries.

The text is structured as follows: Section 2 presents evidence on wildlife crime in Spain. Section 3 presents efforts at addressing wildlife crime, including, among others, a description of relevant actors and the legislative framework. Section 4 presents the conclusions on wildlife crime in Spain; recommendations can be found in the main study on wildlife crime.

## 2. WILDLIFE CRIME IN SPAIN

### KEY FINDINGS

- Spain is a relevant entry point to Europe as well as a country of origin and transit of wildlife crime with trade routes coming from Latin American and African countries and also trade routes to Asia.
- Recent operations point to the existence of criminal groups operating from Spain revealing organized crime infrastructures and *modus operandi*.
- The internet is also increasingly used to sell rare species.

### 2.1. Species and trade routes

Due to its geographical situation as the **gateway to and from Africa** and its trade relations with Latin America, Spain is a relevant **entry point to Europe** as well as a transit country of wildlife crime with **trade routes coming from Latin American and African countries, as well as trade routes to the Middle East and Asia**. Spain is also a **country of origin** of wildlife given its outstanding biodiversity, in particular, of **raptors, amphibians** and species with a high value in the Asiatic market such as **falcons and eels**. In recent years, there have been several operations regarding them: Operations *Rapiña*, *Horus* and *Munin* on raptors and *Suculenta* and *Suculencias* on eels. These operations point to the existence of criminal groups based in Spain and operating in other EU Member States such as Belgium, Bulgaria, Hungary or Portugal revealing organized crime infrastructures and *modus operandi*. Wildlife crime is also undertaken using the **Internet** as a tool to sell on a **small scale** all over the world and to conceal the footprints of criminals that sell animals from zoos or poached from the wild outside the legal market.

In recent years, major police operations have targeted **a wide spectrum of wildlife and related crimes**: Operations *Rapiña*, *Horus* and *Munin* on birds of prey, *Suculenta* on eels, *Sparrow* on Patagonian toothfish, *Cobra III* finding lions, Indian cobras and hundreds of other specimens in a 2-month operation to control potential Spanish wildlife illegal traders and customers in 2015.

From 2009 to 2011, Operations *Horus* and *Rapiña*<sup>2</sup> unveiled a network selling **raptors** inside the European Union to the highest bidder paying up to EUR 7 000<sup>3</sup>. The network involved experts, collectors, individuals working at conservation NGOs, police members supplying modified and faked rings and official documents, poachers who looted nests, and retailers and other authorities in conservation centres who used their posts to commit these crimes.

In 2012, in Operation *Suculenta*, SEPRONA dismantled an international network dedicated to the illegal trade in **eels** between the European Union and several Asian countries. More than 1 500 kilos of eel were seized, valued at over EUR 1.5 million. It was estimated that the annual volume of illegally exported eel might exceed 5 000 kilos<sup>4</sup>. The trade route

<sup>2</sup> See Guardia Civil. "Desarticula una red dedicada al expolio de aves rapaces protegidas", 30 June 2011, <http://www.guardiacivil.es/es/prensa/noticias/historico2/3140.html>.

<sup>3</sup> See Fiscalía de Medio Ambiente. "La Fiscalía de Medio Ambiente ha coordinado una operación conjunta de la Guardia Civil y de la Policía en relación con el tráfico ilegal de especies amenazadas", press release of 13 May 2009, [www.fiscal.es](http://www.fiscal.es).

<sup>4</sup> See Guardia Civil. "La Guardia Civil desarticula una red internacional dedicada al comercio ilegal de angulas", 24 March 2012, <http://www.guardiacivil.es/es/prensa/noticias/4047.html>.

started in Spain and through Bulgaria and the Philippines the products would have reached China and other Asian countries.

In March 2013, 111 pieces of **ivory** were seized by SEPRONA from two auction houses. The pieces had been artificially aged in order to conceal their origin; most probably, the products were poached in Botswana, Zimbabwe, Namibia and South Africa and destined for the Chinese market (Mitsilegas et al. 2015, 26-37).

In 2015, Operations *Sparrow I* and *II* targeted Spanish companies that had been poaching Patagonian toothfish in Southern Antarctic waters for more than a decade. In consequence, fines of over EUR 17 million were imposed for **illegal, unreported and unregulated fishing** (IUU) in the Southern Ocean<sup>5</sup>. These operations show how the EU IUU Regulation<sup>6</sup> can be applied to sanction EU nationals who engage in, or support IUU fishing anywhere in the world, under any flag, with administrative sanctions proportionate to the economic value of their catch.

In June 2015, in **Operation Cobra III**, SEPRONA participated in this campaign to control the illegal trade of flora and fauna nation-wide. Among the most important results were the seizure of 4 lions (*Pantera leo*), a head of a Bengal tiger (*Pantera tigris tigris*), an Indian cobra (*Naja naja*) and numerous specimens of endangered tortoises (*Testudo graeca* and *Testudo hermanni*)<sup>7</sup>.

In February 2016, in Operation *Munin* developed since 2013, SEPRONA dismantled a criminal network dedicated to the illegal purchase of specimens of hybrids of peregrine falcon (*Falco Peregrinus*) and gyrfalcon (*Falco rusticolus*) for the United Arab Emirates, without fulfilling the requirements established by CITES legislation<sup>8</sup>. SEPRONA has estimated that in recent years more than 500 specimens could have been exported for a value of over EUR one million<sup>9</sup>. These specimens were intended for races of raptors popular in some Middle Eastern countries.

Greenpeace reported operations *Palo* and *Tarima* on mahogany (*Swietenia macrophylla*) and Brazilian rosewood (*Dalbergia nigra*) in which SEPRONA unveiled **networks of illegally logged timber** from Latin American countries; however, these operations did not lead to convictions<sup>10</sup>.

Seizures of Barbary Macaques are also reported, involving tourists coming back from Morocco where this species is dramatically endangered. SEPRONA also reports about German nationals collecting amphibians in Spain, due to the absence of these species in other European countries<sup>11</sup>.

Operations such as *Rapiña*, *Suculenta* and *Cobra III* indicate the existence of two routes from Latin American and African countries to EU Member States and Asian countries, with some degree of organization and infrastructure in Spain as a transit and origin country.

<sup>5</sup> See Ministerio de Agricultura, Alimentación y Medio ambiente. "El Ministerio de Agricultura, Alimentación y Medio ambiente notifica a los interesados la propuesta de resolución sancionadora de la primera Operación Sparrow", press release of 11 December 2015, <http://www.magrama.gob.es/es/prensa/noticias/-el-ministerio-de-agricultura-alimentaci%C3%B3n-y-medio-ambiente-notifica-a-los-interesados-la-propuesta-de-resoluci%C3%B3n-sancionadora-de-la-primera-ope/tcm7-405387-16>.

<sup>6</sup> See Beke, M. and Blomeyer, R., Illegal, Unreported and Unregulated Fishing: Sanctions in the EU Study for the European Parliament's Committee on Fisheries, 2014.

<sup>7</sup> See SEPRONA. "La Guardia Civil interviene 178 especímenes de animales y plantas en el marco de la Operación Cobra III de INTERPOL", 20 June 2015, <http://www.guardiacivil.es/es/prensa/noticias/5376.html>.

<sup>8</sup> See SEPRONA. "La Guardia Civil desarticula una red criminal dedicada al tráfico ilegal de halcones", 11 February 2016, <http://www.guardiacivil.es/es/prensa/noticias/5642.html>.

<sup>9</sup> Ibid.

<sup>10</sup> See Greenpeace. "Comercio ilegal de maderas y Aplicación del Convenio CITES en España", 2009, <http://www.greenpeace.org/espana/es/reports/090423/>.

<sup>11</sup> Interview with SEPRONA representatives, 2 November 2015.

According to the interviewed experts, **Spain is not a primary country of destination**. This is mostly due to the fact that Spanish collectors and customers are not able to pay the high prices demanded. **Internet** is also increasingly used for selling rare species.

## 2.2. National Crime Statistics

Statistics on environmental crime are limited and fragmented due to **limited resources** (Fajardo et al. 2015). SEPRONA provides data on CITES-related crime. A distinction is made between different types of crime; in the case of CITES, administrative infringements and crimes are distinguished.

In 2013 and 2014, there were no confiscations considered important by Spanish authorities. In 2013, a total of 1 665 specimens were confiscated in the 308 administrative and 28 criminal procedures. In 2014, 781 specimens were confiscated in 10 criminal proceedings and 344 administrative procedures. In some of the cases, administrative proceedings were also initiated for alleged infringements of laws against smuggling. The number of cases concerning the administrative offence of smuggling initiated in 2013 amounted to 318, and to 317 in 2014. The number of solved administrative cases concerning smuggling amounted to 150 in 2013, and to 146 in 2014 (see Table 1 below).

**Table 1: SEPRONA data on wildlife trafficking prosecutions**

Years	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 Sep
Arrests	13	1	5	19	10	5	2	1	2	2
Prosecutions		5	6	10	3	8	7	9	6	18

**Source:** Table compiled by author on the basis of data provided by SEPRONA.

SEPRONA has undertaken confiscations during the period 2006-2015 as shown in Table 2:

**Table 2: SEPRONA data on wildlife confiscations**

Years		2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 <sup>12</sup>
Live fauna											
Mammals		161	122	161	141	71	101	75	59	81	60
Birds		849	239	796	113	225	302	395	480	239	218
Reptiles		468	601	818	444	440	239	255	355	350	395
Amphibians		2	1	0	0	0	0	1	0	0	1
Fish	Kg	0	7 000	0	7	950	0	20 000	17 040	0.6	0
	Pieces	0	0	0	0	7	0	0	6	7	9
Coral	Kg	10 590	0	18 000	0	0	0	290	1 013	2 955	704 246
	Pieces	189	7	0	75	17	25	13	25	7	7
Mollusc	Kg	0	0	0	0	0	0	0	16 971	0	0
	Pieces	0	0	0	13	12	8	5	89	0	0
Spiders		0	10	47	7	2	3	3	3	4	1

<sup>12</sup> Number until September 2015.

Years	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 <sup>12</sup>
Butterflies	0	0	0	0	0	0	0	0	0	0
Insects	0	0	0	0	0	0	1	1	0	0
Flora										
Pieces	100	0	0	0	0	210	0	23	6	0
Parts and derivatives	Fauna: elephant hair, ivory, paws, heads, skins, trophies, etc. Flora: wood and cacti.									
Kg	2 900	500	0	0	9 933	0	785	30.000	0	2 500
Pieces	1 280	1 019	335	1 427	41	105	285	624	91	3

**Source:** Table compiled by author on the basis of data provided by SEPRONA.

### 3. EFFORTS TO COMBAT WILDLIFE CRIME IN SPAIN

#### KEY FINDINGS

- As an example of good practice, Spain can offer its **Environmental Spanish Police**, (SEPRONA), which has developed day-to-day strategies against wildlife crime and its **CITES Management Authorities** which implement CITES and EU legislation. Both cooperate with the authorities of other Member States and third countries on a regular basis.
- Spain has a **specialized Prosecutor's Office** that cooperates closely with CITES Management Authorities and SEPRONA.
- Even though SEPRONA has participated in major wildlife crime operations, case law still shows a **limited number of convictions and lenient sanctions** due to difficulties to provide the required and highly technical evidence.
- More resources – human, operative and economic – are needed to improve enforcement.
- **Adapted and specific forensics and DNA tests are needed** to provide required evidence.
- Judges are reluctant to consider wildlife crimes as serious, even though some of them are perpetrated by organized criminal groups.

#### 3.1. Authorities responsible for combating wildlife crime

##### 3.1.1. CITES Management Authority

In Spain, the CITES Management Authority is the *Dirección General de Comercio Internacional e Inversiones* (the General Direction of Foreign Trade and Investment) in the Ministry of Economy and Competitiveness<sup>13</sup>. Spain reported that it had increased the number of staff at the Management Authority from 24 to 30 to support the regional management authorities in 2012 (Crook 2014, p. 20). Among the 30 people, 7 work in the **headquarters** of the main CITES Management Authority; the others work in **regional offices** as other competent authorities to issue documents, permits and certificates provided for in Regulation (EC) 338/1997 and Regulation (EC) 865/2006.

<sup>13</sup> This was previously the *Secretaría General de Comercio Exterior* at the *Ministerio de Industria, Turismo y Comercio*.

**Table 3: Spanish CITES Management Authority's Actions 2011-2014**

	2011	2012	2013	2014
Examining CITES applications	10 565	11 747	12 329	12 912
Granting CITES permits	9 474	10 635	11 855	12 622
Providing expertise in administrative sanction proceedings for smuggling	312	349	349	317

**Source:** Table compiled by author on the basis of the Annual Reports of the Regional Administration of the Spanish Government<sup>14</sup>.

In the case of **certificates for EU use**, their issuance involves inspections, review of documents and physical monitoring of **specimens bred in captivity** and their parents, as well as those artificially propagated. Specimens whose regularization is sought are subject to inspection, study and evaluation. These **activities of regularization** are carried out by the CITES Centres of Reference of the Territorial Trade Network, with support from a number of Collaborating Centres.

The following Table 4 shows the number of **registered breeders and specimens monitored and inspected** since 2011.

**Table 4: Data of breeders and specimens bred in captivity in Spain 2011-2014**

	2011	2012	2013	2014
Controlling CITES registered breeders	1 548	1 800	1 724	1 926
Controlling specimens bred in captivity	147 308	121 289	211 360	12 758

**Source:** Table compiled by author on the basis of the Annual Reports of the Decentralised Administration of the Spanish Government<sup>15</sup>.

The following Table 5 shows the different applications and permits granted by CITES Management Authorities since 2011.

<sup>14</sup> See Ministerio de Hacienda y Administraciones Públicas: Informes de evaluación sobre el funcionamiento de los servicios de la Administración Periférica del Estado en 2011, 2012, 2013, 2014), [http://www.seap.minhap.gob.es/web/delegaciones\\_gobierno/informe-evaluacion.html](http://www.seap.minhap.gob.es/web/delegaciones_gobierno/informe-evaluacion.html).

<sup>15</sup> See Ministerio de Hacienda y Administraciones Públicas: Informes de evaluación sobre el funcionamiento de los servicios de la Administración Periférica del Estado en 2011, 2012, 2013, 2014), [http://www.seap.minhap.gob.es/web/delegaciones\\_gobierno/informe-evaluacion.html](http://www.seap.minhap.gob.es/web/delegaciones_gobierno/informe-evaluacion.html).



**Table 5: Certificates and permits granted by CITES Management Authorities in Spain 2011-2014**

	2011		2012		2013		2014	
	Appli- cation s	Permit s granted	Appli- cation s	Permit s granted	Appli- cation s	Permit s granted	Appli- cation s	Permit s granted
Import permits	2 739	2 322	2 493	2 295	2 459	2 424	2 422	2 400
Prior import permits	123	116	122	101	85	79	169	85
Export permits	750	636	1 048	882	1 198	1 035	1 161	1 140
Re-export certificates	1447	1379	2029	1864	1 971	1 942	2 438	2 419
Re-export pre-issued certificates	227	175	203	100	282	190	16	12
EU use certificates	4 902	4 501	5 398	4 974	6 094	5 960	6 483	6 371
Import notifications	83	80	96	86	91	82	85	80
Personal belongings	293	265	358	333	149	141	128	115

**Source:** Table compiled by author on the basis of the Annual Reports of the Regional Administration of the Spanish Government<sup>16</sup>.

All information related to CITES is available on a **website**<sup>17</sup>. It includes permits and certificates – including an **e-permitting system**<sup>18</sup>. A list of points of entry or export is also available<sup>19</sup>. Spain issues all permits and licences according to the CITES Convention and EU Regulations and, moreover, has introduced **permits for breeding in captivity and artificial reproduction**, because these activities require control to avoid laundering of poached specimens.

Spain has computerized CITES information and a **species database** containing information on the levels of protection, distribution, etc. Its Electronic Information System provides information on CITES species, but is not available to the public<sup>20</sup>. All information on CITES is available on the internet for the competent authorities: Management Authorities, Scientific Authority and SEPRONA.

Even though the Spanish Management Authorities have **expertise in biology and also in economics/trade and law**, they lack the necessary analytical support to control breeding in captivity and to determine parentage of animals, lacking the possibility to conduct

<sup>16</sup> These reports are available on the website of the Ministry of Public Administration and Finance at [http://www.seap.minhap.gob.es/web/delegaciones\\_gobierno/informe-evaluacion.html](http://www.seap.minhap.gob.es/web/delegaciones_gobierno/informe-evaluacion.html).

<sup>17</sup> Available at <http://www.cites.es/es-ES/Paginas/default.aspx>.

<sup>18</sup> Available at <http://www.cites.es/es-ES/Paginas/default.aspx>.

<sup>19</sup> Available at [http://ec.europa.eu/environment/cites/pdf/list\\_points\\_of\\_entry.pdf](http://ec.europa.eu/environment/cites/pdf/list_points_of_entry.pdf).

<sup>20</sup> It provides information on the level of protection, import restrictions adopted by the European Union (paragraph 6 of Article 4 of Regulation (EC) No 338/97), negative or positive reports of the Scientific Review Group and the Spanish CITES Scientific Authority (articles 4.1.a) i) and 4.2.a) of Regulation (EC) No 338/97), recommended trading suspensions, etc.

research designed to show the genetic patterns of populations, their genetic variability markers, etc. They wanted to contribute to a research project on DNA data banks to establish the identity of specimens of birds of prey. They pointed out the importance of having access to technology to provide accurate information on DNA to address very complex issues regarding evidence, in particular, to identify the paternal origin of specimens as well as their populations of origin and status of conservation<sup>21</sup>. However, the project did not receive funding in the end. This **analytical support** is an important demand.

The **Scientific Authority** is independent of the Management Authorities and is based in the Ministerio de Alimentación, Agricultura y Medio ambiente (Ministry of Food, Agriculture and Environment), in the Dirección General de Medio Natural y Política Forestal (General Direction on Nature and Forestry Policy). It is composed of three persons with expertise in botany and zoology who work for CITES upon request.

The CITES Management Authority provides **information on mortality in transport** in trade with third countries in its annual reports; the reports also contain information on the quantities of specimens actually sold. These data are provided by the CITES authorities controlling shipments and they are consigned in CITES permits by border customs authorities.

**Spain has rejected CITES permits from other countries** based on suspicions of fraud and insufficient justification of the non-detrimental effects of extractions. Moreover, for example, in 2013 two applications were rejected due to **misinformation** (CITES Appendix and source of the specimen) and one application was rejected due to the **absence of marking**. In 2014, one permit was rejected because the CITES export permit was false, two were rejected due to lack of marking and four for using export quotas of the previous year; moreover, one application for an export permit with a validity in excess of 6 months was also rejected<sup>22</sup>.

Other practices reported as creating problems are the different approaches used across the EU for marking/identification, such as in the case of small tortoises and parrots. They also criticized that **some actions remain unpunished**, such as not returning the documents of specimens of Annex A, once the documents cease to be valid, so that they are available for laundering wild specimens. Customs controls based on current EU integrated tariff (TARIC) positions<sup>23</sup> are ineffective and difficult to apply; they are susceptible to deception by a false statement of the TARIC code.

The Spanish CITES Management Authorities consider that the complexity of implementing CITES lies mainly in the **diversity of various documents** (certificates of various types of transfer documents, etc.) that make it legal to possess a specimen covered by CITES.

Given these **shortcomings**, the Spanish CITES Management Authorities have reported some important problems regarding the implementation of CITES and the EU Regulations, in particular, difficulties in controlling EU-internal movements and in determining the legality of specimens. Particularly, it is difficult to control trade in certain Annex B specimens that are purportedly bred in captivity in the EU and change owners; this practice

<sup>21</sup> Interview with the Spanish Management Authorities, 29 October 2015.

<sup>22</sup> See Spanish CITES Biennial Report 2013-2014, <https://cites.org/sites/default/files/reports/13-14Spain.pdf>.

<sup>23</sup> TARIC, the integrated Tariff of the European Union, is a multilingual database in which all measures relating to EU customs tariff, commercial and agricultural legislation are integrated. By integrating and coding these measures, TARIC secures their uniform application by all Member States and gives all economic operators a clear view of all measures to be undertaken when importing into the EU or exporting goods from the EU. One of the categories of TARIC is: import and/or export controls of certain categories of goods, e.g. products subject to CITES, information, [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/tariff\\_aspects/customs\\_tariff/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/customs_tariff/index_en.htm).

can be used to launder Annex B specimens poached in their countries of origin and smuggled into EU Member States. For example, the Spanish authorities report practices of laundering species that cannot be bred in captivity; therefore, experts point out the need to take into account the biology of these species and that EU authorities should apply a common approach in order to avoid inconsistency in the practice of EU countries when controlling breeding in captivity<sup>24</sup>. In their view, re-exporting African hawk-eagles (*Aquila spilogaster*) or Galapagos land iguanas (*Conolophus subcristatus*) as bred in captivity should not be allowed because these species have never been bred in captivity outside their habitats. As a consequence, Spanish authorities will not accept the claim of another EU CITES authority that there is no evidence of the illegality of these specimens that the owners have declared as captive-bred in their territory. The authorities criticise that in the European internal market it is very easy to launder specimens of CITES Appendix B, because in most Member States there are no controls on breeding in captivity of these species. These problems multiply due to fairs. Therefore, these experts warn that the European market is being used to launder specimens and facilitate wildlife trafficking as a result of **lax controls by EU Member State authorities over European breeders**. This may result in illegal trade being diverted to EU countries with more lenient controls.

To control these practices, the Spanish Management Authority has consolidated cooperation with CITES Management Authorities in the countries of origin and EU Member States. This cooperation is of great importance as shown by the case law. Some cases show that in acquittals, specimens are given back to offenders because of lack of evidence proving the illegal origin of the specimens; however, they are returned without CITES permits. The CITES Management Authorities have not been obliged by judicial order to provide these permits in case of lack of documents and doubtful origin of the specimens.

Experts interviewed consider it of great importance that the fight against wildlife crime has **to avoid reserving the European market to European breeders**. A market reserved for commercial breeders should be avoided in any case because of the negative impact in countries of origin that rely on legal trade to promote their development. In the view of these experts, CITES institutions and CITES authorities of third countries are against policies promoting breeding in captivity outside countries of origin<sup>25</sup>.

The experts interviewed also consider that sanctions imposed on countries of origin by the **CITES control mechanisms must avoid suspending trade**, due to the negative effects of these measures on emerging sectors dedicated to sustainable wildlife trade that can be legitimate and contribute to sustainable development in the countries of origin. Suspensions can jeopardize future sustainable production in these countries and livelihoods. They propose that the European Union support conservation projects there.

**Spain has recommended simplifying some procedures:**

- **Permit issuance procedures.**
- **Derogations/exemptions** (Article VII of CITES Convention), in particular, for hunting trophies, personal belongings and plants which are very difficult to implement in practice. Experts have highlighted the importance of the income that some countries of origin obtain from hunting trophies and legal licences granted to hunters. For example, Tanzania gets more money through trophies than through tourism. For this reason, they recommend simplifying procedures for granting

<sup>24</sup> Interview with Mercedes Nuñez and Antonio Galilea, Spanish Management Authorities, 29 October 2015.

<sup>25</sup> They cite the example of *Prunus Africana*, a species used successfully to fight against prostate cancer. It has been synthesized in Germany. They promote training programmes in countries of origin to teach local communities how to harvest the bark without damaging the trees.

permits and, at the same time, recommend promoting programmes that can serve to enhance controls in the country of origin.

In its CITES Biennial Reports, Spain has declared that its authorities have not assessed compliance with CITES Convention and EU Regulation and refer to reports prepared by the European Commission and NGOs such as Traffic to present a general overview of the status of compliance. However, the answers to the CITES questionnaires used to elaborate the Biennial Reports and the interviews with the Spanish CITES Management Authorities suggest that the CITES legal framework is too complex and fragmented and that a clearer and better harmonized legislation at European Union level could improve the efficiency of procedures and outcomes. The **lack of economic resources** also hinders the enforcement of CITES and EU Regulations in Spain. The Spanish authorities interviewed are **in favour of establishing a minimal number of inspections** based on risk assessments of the sector; they favour minimal and specific common sanctions for wildlife crime. Moreover, they warn that otherwise criminal activities may move to those countries with the lowest number of controls and inspections.

### 3.1.2. Customs services

There is limited information on customs services that work for the CITES Management Authorities. Spanish customs authorities have declined to answer questionnaires or to be interviewed for this report.

**The Department of Customs** of the Tax Agency identifies and seizes CITES protected species. 100 % of CITES imports in Spain are submitted to obligatory inspections. Non-declared CITES imports are detected through random inspections based on the Tax Agency risk analysis on eventual movements of protected species outside licit circuits<sup>26</sup>. At borders, the customs authorities use risk analysis systematically, based on the type of goods and companies' records. The CITES Management Authority communicates **relevant data of companies involved in or suspicious of irregular CITES imports**. Customs authorities will filter their goods movements using the fiscal identification number of the company. Inside the country there is no risk analysis, only recommendations based on experience and alerts.

Spain carries out **general inspections of producers and traders facilities** and also in **breeding facilities and nurseries**. **Pet shops and other commercial outlets** are checked randomly or as a result of an investigation/tip-off (Crook 2014, 18).

Experts interviewed cooperating with customs services on a regular basis have pointed out that a minimum number of inspections for environmental sectors – wildlife, hazardous waste, waste of electric and electronic equipment – should be established for EU Member States' inspectorate services. To support this proposal, they mentioned that they observed that after one day of increased inspections at one of the main points of entrance into Spain, the flows were redirected to Portugal in less than 24 hours. Moreover, they point out that one of the reasons explaining the lack of effective cooperation among the EU Member States' custom authorities is that they are competing for market shares because they are driven, primarily, by commercial interests and the desire to increase the volume of goods entering their territories as well as Customs revenues. They also criticized that there is a general impression that some important harbours in Europe neglect wildlife crime as they focus on other environmental crimes such as export of electrical and electronic equipment

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<sup>26</sup> See Annual Report of the Tax Agency, 2013, p. 510, available at [www.agenciatributaria.es](http://www.agenciatributaria.es).

(WEEE) or hazardous waste. The EUROPOL Threat Assessment 2013 on Environmental Crime in the EU confirms this criticism<sup>27</sup>.

### 3.1.3. The Compliance Authority: SEPRONA

**SEPRONA** is the special section of the Spanish Guardia Civil dedicated to the protection of the environment and, in particular, compliance with CITES<sup>28</sup>. Some Autonomous Communities such as the Basque Country or Catalonia have also powers regarding environmental crime. The *Ertaintxa* (Basque Country) and the *Mossos d'Esquadra* (Catalonia) have special sections working on environmental crimes including wildlife crime. However, none of these above-mentioned police forces has exclusive jurisdiction in these matters, so at times national and local police or forest guards can initiate proceedings.

SEPRONA and the CITES Management Authorities have access to expertise and technology that allow the identification and genetic characterization of species protected by CITES; however, the task of identifying the affected population of species as well as determining beyond doubt the age of confiscated ivory is very difficult and demanding.

Even though Spain has replied affirmatively to questionnaires on equipment, expertise and resources, it has also noted that **more human resources and funds are needed** (Crook 2014, 17). In practice, official vehicles are not properly equipped to transport primates, mammals, birds or reptiles, among them some highly venomous snakes<sup>29</sup>. Together with the Management Authorities, SEPRONA has suggested that trained dogs, such as those used by Germany, Italy and the UK to detect primates and reptiles, would be most valuable to improve detection in the most important points of entry into Spain: Madrid-Barajas, Barcelona and Algeciras.

In 2015, in response to the request of Europol and INTERPOL to develop a coordinated global action to combat illegal activities, SEPRONA reported a total of 720 inspections in zoological centres, circuses and animal markets, among others during the two months period of Operation Cobra III. However, as SEPRONA has pointed out, **these inspections were part of its regular activities**. With 1 800 agents in Spain, SEPRONA has developed a *modus operandi* that combines daily controls on the ground collecting information on activities and actors – breeders, poachers, transport companies, pet shop owners with criminal records – related with wildlife crime. This *modus operandi* provides the required intelligence to inform and complement risk assessments and to plan actions; these assessments are based on records of listed activities and persons targeted due to the possibility of their involvement in illegal activities.

**The permanent infrastructure of SEPRONA ensures that inspections and operations are not based on a cost-benefit decision** as described in the IPEC Report as a problem in other Member States (EnviCrimeNet 2015), but are part of **its permanent chain of action**.

<sup>27</sup> According to a EUROPOL report, major harbours such as Antwerp, Hamburg and Rotterdam are the main entry points of protected timber to EU, see EUROPOL 2013, p. 14.

<sup>28</sup> SEPRONA stands for Servicio de Protección de la Naturaleza de la Guardia Civil – Special Forces for the Protection of Nature. «This police force is in charge of protection of soil, water and air, animal welfare and the conservation of fauna and flora. It is also concerned for example with dumps, environmental pollution, illegal trade of protected species, illegal hunting and fishing, defence of natural areas and the prevention, investigation and extinction of fires. Long before the official establishment of the SEPRONA, there were spontaneous initiatives led by local police services that considered the opportunity to create 'groups or sections' specially trained to investigate environmental cases. They have achieved a high quality of the investigation leading later to the official establishment of this section of the civil guard; see Fajardo, T. et al. 2015, pp. 58-59.

<sup>29</sup> 127 reptiles were found in a flat in Getafe, near Madrid, among them 40 of the most poisonous reptiles in the world that were transported in non-equipped vehicles by SEPRONA agents.

In 2015, the Guardia Civil, to which SEPRONA belongs, has increased its staff with specialized units in order to maximize investigations and prosecutions in the areas of organized crime, money laundering and fighting corruption. Their aim is to boost the number of operations and arrests in these areas<sup>30</sup>.

#### 3.1.4. Special Prosecutors

In Spain, there are special prosecutors in every judicial area. The Spanish Prosecutor's Office at the Supreme Court has **a coordinator for environmental crime** (*Fiscal de Medio Ambiente y Urbanismo*) who is responsible for the coordination and supervision of all public prosecutors in relation to environmental crimes and has a special Police Unit attached.

The Chief Prosecutor's Office for the Environment has carried out an assessment of CITES legislation, criticizing some aspects and flaws of the legislation on permits. For example, the documents do not have an expiry date and there is no post-grant monitoring, a flaw that facilitates laundering of illegal specimens through the replacement of individuals born in captivity by others from the wild, or replacing dead specimens with poached ones<sup>31</sup>.

The Chief Prosecutor's Office for the Environment also presented its position in the consultation led by the European Commission on an action plan to fight wildlife crime in 2014. In his statement, the Chief Prosecutor for the Environment acknowledges that transnational environmental crime is frequently linked to organized groups<sup>32</sup>.

### 3.2. Legal framework to fight against wildlife crime

The Spanish legal framework to fight against wildlife crime is composed of Articles 332 to 334 of **the Criminal Code**, **the Act on Smuggling** stipulating administrative and criminal sanctions for illegal trade of species of wild flora and fauna, and **the Act on Biodiversity and natural heritage** that contains administrative sanctions. The interviewed experts criticize this very complex and overlapping legal framework that can cause confusion among non-expert practitioners and requires a high level of expertise of enforcers, a requirement met by the CITES Management and Scientific authorities, SEPRONA and the prosecutors, but not by judges who lack specific knowledge/training in this field. These experts would prefer Spain to have a comprehensive statute for CITES wildlife trafficking.

Spain reformed its legal framework in 2015, introducing changes to its Criminal Code as well as its laws regarding the administrative regime for illegal trade of wildlife. This reform has already been criticised by academic observers. They state that it over-criminalizes wildlife trade (Muñoz Conde et al. 2015). Experts of the CITES Management Authority held that it makes the CITES-related legislation more difficult to implement.

The reform has introduced changes to Article 332 of the Criminal Code that now prescribes **a penalty of six months to two years in prison** and a fine of eight to twenty-four

<sup>30</sup> See SEPRONA. "La Guardia Civil refuerza con 259 agentes la plantilla de las unidades dedicadas a la lucha contra la delincuencia organizada", 12 April 2015, [http://www.guardiacivil.es/es/prensa/noticias/5306\\_00.html](http://www.guardiacivil.es/es/prensa/noticias/5306_00.html).

<sup>31</sup> Conclusiones de las VI y VII Reuniones Anuales de la Red de Fiscales de Medio Ambiente y Urbanismo, Madrid, 2013 y 2014, [fiscal.es](http://fiscal.es).

<sup>32</sup> See Vercher Noguera, Antonio. "Respuesta al Cuestionario incorporado a la Comunicación de la Comisión Europea al Consejo y al Parlamento Europeo sobre estrategia de la UE contra el tráfico de especies silvestres", contained in: Commission Staff Working Document: Summary of the Responses to the Stakeholder Consultation on the EU Approach against Wildlife Trafficking, 2014, [http://ec.europa.eu/environment/cites/pdf/responses\\_consultation\\_WildlifeTrafficking.pdf](http://ec.europa.eu/environment/cites/pdf/responses_consultation_WildlifeTrafficking.pdf).



months<sup>33</sup> and **disqualification from profession or trade** for a period of six months to two years for anyone who traffics protected species of wild flora. Moreover, Article 334 of the Criminal Code prescribes a penalty of six months to two years in prison and a fine of eight to twenty-four months and disqualification from profession or withdrawing the right to hunt and fish and disqualification for between two to four years for anyone trafficking protected wildlife fauna.

The reform of the Spanish Criminal Code (CrimC) by Act 5/2010 added several provisions establishing the criminal liability of legal persons; however, these provisions do not cover all the crimes against the environment contained in Directive 2008/99/CE on the protection of the environment through criminal law. Criminal liability for legal persons exists only for a limited number of crimes and there is no provision for wildlife crimes (Art. 345 CrimC). The Chief Prosecutor for the Environment has pointed out the importance of extending the legislation on criminal liability to legal persons involved in wildlife crime mostly because of the role they play in organized crime<sup>34</sup>.

The reform of the Criminal Code by Act 1/2015 has introduced a controversial change: instead of referring to endangered species, Article 332 now refers to **protected species**, widening the scope of the protection.

These provisions cover illegal catching and poaching in Spain. As interviewed experts pointed out, illegal catching and poaching of local endemic species affect different populations in different areas. SEPRONA has stated that German collectors come to Spain to hunt and poach amphibians<sup>35</sup>. However, the experts assume that poaching is particularly problematic in third countries of origin and, especially, for specimens laundered in European countries where they can pass as bred in captivity.

The new Spanish provisions on poaching are now being applied to fight against illegal captures of Bluefin tuna by sport fishers. Prosecutors adopt a criminal or an administrative approach depending on the area and the populations affected, once the legal fishing quota has been exhausted. In the most serious cases, poaching of Bluefin tuna will be prosecuted as a crime against nature under Articles 334 and 335 of the Spanish Criminal Code. The prosecutors' offices have adopted guidelines in order to guarantee that the required evidence is provided: law enforcement agencies need to send the pieces of fish to the Spanish Oceanographic Institute that will prepare a report certifying the species, the method of capture and the biological situation of the species and the specific population. At the same time, another report will be requested from the Fishing Inspectorate Service of the Department of Agriculture, Fisheries and the Environment of the competent Autonomous Community to certify the information on the situation of the species.

The Criminal Code provisions are complemented by the **Act on Smuggling** that contains rules on administrative infringements of smuggling and crimes of smuggling. The imposition of an administrative penalty for smuggling involves the confiscation of the seized smuggled specimens, a monetary fine and closure of the establishment where smuggling has been committed over a period of time. The following table (Table 7) summarizes both fines and duration of the closure of the establishment based on certain parameters.

<sup>33</sup> The fine is a certain amount of money that has to be paid over a period of time, the larger the fine the longer the period.

<sup>34</sup> See Vercher Noguera, Antonio. "Respuesta al Cuestionario incorporado a la Comunicación de la Comisión Europea al Consejo y al Parlamento Europeo sobre estrategia de la UE contra el tráfico de especies silvestres", contained in: Commission Staff Working Document: Summary of the Responses to the Stakeholder Consultation on the EU Approach against Wildlife Trafficking, 2014, [http://ec.europa.eu/environment/cites/pdf/responses\\_consultation\\_WildlifeTrafficking.pdf](http://ec.europa.eu/environment/cites/pdf/responses_consultation_WildlifeTrafficking.pdf).

<sup>35</sup> Interview with SEPRONA officers, 2 November 2015.

**Table 6: Sanctions of the Act on Smuggling**

Value of the asset	Nature of the infraction	Fines	Period of closure of the establishment
Less than EUR 1 000	Minor	From 200 % to 225 % of the value of the seized goods	From 4 days to 3 months
From EUR 1 000 to 4 507	Serious	From 225 % to 275 % of the value of the seized goods	From 3 months and one day to 9 months
From EUR 4 507 to 12 000			
From EUR 12 000 to 13 000	Very serious	From 275 % to 350 % of the value of the seized goods	From 9 months and one day to 12 months
From EUR 13 522 to 18 030			
From EUR 18 030 to 50 000			

**Source:** Compilation by author.

As for the crime of smuggling, the penalties are confiscation of the seized goods, imprisonment between one and five years, additional monetary fines between 100 and 600 % of the assets seized, and further suspension for a period of six months to two years of the activities of import, export or trade in the category of goods being smuggled. The system of fines takes into account the EU Annex listings, conservation status and market value.

Recent changes in criminal law have introduced stricter domestic measures such as the new Article 332 of the Criminal Code which criminalises the possession of wild flora and fauna and contains rules on possession and national marketing of exotic invasive species.

The reform has generally lowered prison sentences, but not in the case of wildlife crime. Moreover, **Spain foresees complementary sanctions in the form of seizures and confiscations of equipment, closures of premises, and disqualification from professional activity.** Muñoz Conde et al. (2015) criticize the sanction of disqualification, considering it excessive. The same criticism but for different reasons is made by the Management Authorities: **the closure of breeding facilities can have a detrimental effect on the conservation of specimens**, in particular, those whose hatching happen during the period of closure.

Regarding CITES and EU Regulations, Spain has stricter domestic measures regarding the trade, taking, possession and transport of endangered species. In addition, there are stricter regulations at the regional level enacted by the Autonomous Communities for the



taking and possession of some native species<sup>36</sup>. Possession of exotic species is restricted, including those listed in the Annexes to Regulation (EC) No 338/97<sup>37</sup>.

The Law of 21 September 2015 reforming the Act on Biodiversity and Natural Heritage established administrative offences concerning wildlife crime in Article 80.

The Act on Smuggling has been reformed by the Law of 25 September 2015 to introduce possession to the crime of smuggling. Experts of the CITES Management Authority interviewed for this report have criticized this reform because it leads to confusion and they assume that this change will create difficulties for customs authorities in enforcement.

### 3.3. Administrative and criminal proceedings

In Spain, **the conviction rate for environmental crime is low**; in the case of crimes against flora and fauna, it was just 17 % of the total convictions for environmental crimes in 2012. This conviction rate is well below the one obtained in cases of urban planning, which was 52.9 % in the same year (Fajardo et al. 2015, 68). The last Annual Report of the Prosecutors Office of 2014 indicates the necessity for more resources devoted to providing accurate data and statistics<sup>38</sup>.

The interviewed experts pointed out that **administrative sanctions are more effective and dissuasive in certain cases of wildlife crime** where prompt action is needed to stop illegal activities, since criminal charges entail long and costly proceedings over many years.

**Table 7: Criminal prosecution of crimes against nature**

Crimes against nature	2008	2009	2010	2011	2012	2013	2014
Charges	551	676	786	719	696	837	759
Convictions	84	80	96	80	119	145	171
Acquittals <sup>39</sup>	43	45	23	61	55	64	57

**Source:** Annual reports of the Office of the Prosecutor Coordinator on Environment and Urban Planning - author's compilation<sup>40</sup>.

In its biennial reports to CITES, Spain has not provided details of violations and administrative sanctions and details on criminal sanctions and results of prosecutions. Some data are available on the SEPRONA website<sup>41</sup>. The following maximum penalties were reported for the period 2012 to 2014<sup>42</sup>:

<sup>36</sup> Experts have pointed out that these stricter regulations lead to shifting activities to other Autonomous Communities. For example, the Catalanian legislation banning the breeding in captivity of land tortoises led to a shift of these activities to the neighboring Autonomous Community of Castilla La Mancha.

<sup>37</sup> See Royal Decree 630/2013 regulating the Spanish list of exotic invasive species (Real Decreto 630/2013, de 2 de agosto, por el que se regula el Catálogo español de especies exóticas invasoras. (BOE 03/08/2013)).

<sup>38</sup> See: Fiscalía coordinadora de medio ambiente y urbanismo, Memoria 2014, September 2015, p. 23, [http://www.actualidadjuridicaambiental.com/wp-content/uploads/2015/09/2014\\_MEMORIA\\_FISCALIA-MEDIO-AMBIENTE.pdf](http://www.actualidadjuridicaambiental.com/wp-content/uploads/2015/09/2014_MEMORIA_FISCALIA-MEDIO-AMBIENTE.pdf)

<sup>39</sup> The difference between the number of charges brought and those dealt with by convictions or acquittals is made up of cases which are adjourned sine die, normally due to the lack of evidence.

<sup>40</sup> See: Fiscalía coordinadora de medio ambiente y urbanismo. Memoria 2014, September 2015 [http://www.actualidadjuridicaambiental.com/wp-content/uploads/2015/09/2014\\_MEMORIA\\_FISCALIA-MEDIO-AMBIENTE.pdf](http://www.actualidadjuridicaambiental.com/wp-content/uploads/2015/09/2014_MEMORIA_FISCALIA-MEDIO-AMBIENTE.pdf)

<sup>41</sup> See SEPRONA Website at [http://www.guardiacivil.es/es/institucional/especialidades/Medio\\_ambiente/](http://www.guardiacivil.es/es/institucional/especialidades/Medio_ambiente/).

<sup>42</sup> See Spanish CITES Biennial Report 2013-2014, p. 38.

- The maximum penalty for an administrative offence of smuggling in 2013 was EUR 70 800, which related to a seizure of four crocodile specimens in the Customs Unit of Valencia.
- The maximum penalty for an administrative offence of smuggling during 2014 amounted to EUR 56 675 for the seizure of four specimens of 'Cock-of-the-Rock' (*Rupicola peruviana*) at Tenerife Airport.
- In 2013, there was a court ruling resulting in the seizure of six elephant tusks and 69 elephant ivory carvings. This also led to convictions for a crime against natural resources; the sanctions imposed were three months imprisonment, a fine of six months at EUR 5 per day, a prohibition to hunt and fish for a year, and disqualification to be elected for political office during the period of the sentence. Moreover, sanctions were imposed for the crime of smuggling; these were five months of imprisonment, a fine of EUR 200 000, forfeiture of assets, compensation to the State amounting to EUR 28 610.89 in tax and customs debt, and disqualification from voting for the period of the sentence.
- In 2013 a court ruling resulted in the confiscation of two bags containing animal remains from more than 130 specimens (birds, mammals, porcupines and primates) from South America, plus a prison sentence of four months for a smuggling crime and a fine of EUR 225 000.
- In 2014, a judgment imposed a sentence of 22 months imprisonment, fines, confiscation of specimens, and the prohibition from exercising activities related to the environment, fishing or hunting for 18 months. This case involved 61 turtles of the species *Testudo marginata*, *Testudo graeca* and Hermann's Tortoise *Geochelone radiata*.

In Spain, **there is a dependency of criminal law on administrative law**. The decision of whether criminal or administrative law is applied depends on the value of the specimens. However, interviewed experts criticized that when judges dismiss criminal charges they do not remit the case to the administrative authority.

**Administrative proceedings are faster and shorter**; often imposed fines and forfeiture measures are more deterrent and effective than the lenient sanctions that are frequently imposed in criminal proceedings. But the most important argument in favour of the administrative approach in cases of wildlife crime is that the burden of proof is on the defendant.

Experts interviewed also have pointed out that judges without expertise have adopted questionable decisions in the past. These included imposing disproportionately high fines for Annex B specimens and, on other occasions, adopting lenient judgments and acquittals because defendants had no previous convictions or because there had been undue delay in the process. However, the most important problem is the high rate of dismissals and acquittals because of insufficient evidence.

In some cases that resulted in dismissals, there were very complex problems of proof, and operations and prosecutions took place before the creation of the specialised Prosecutor's Office. Thus, in the case of police operations Palo (2002-2005) and Tarima (2006) on illegal logging, Greenpeace had denounced that species of mahogany (*Swietenia macrophylla*) and Brazilian rosewood (*Dalbergia nigra*) entered illegally in Spain and were exported to other countries outside and within the European Union<sup>43</sup>. Greenpeace criticised that companies

<sup>43</sup> Greenpeace. "Comercio ilegal de maderas y aplicación de CITES en España", April 2009, <http://www.greenpeace.org/espana/Global/espana/report/bosques/090423.pdf>.

smuggling these species only had to introduce them under another name to save customs controls. SEPRONA exposed the illegal networks but none of the companies involved were convicted. The CITES Management Authorities and SEPRONA had found the timber stored with other species that could be traded legally and with which the companies have tried to launder them since they belonged to the same family. This was sufficient to create reasonable doubt which the defendant's lawyer used successfully to defend his client. In a different case, the prosecutor selected an expert who provided an inconclusive report. This resulted in failure to prove the case, although NGOs such as Greenpeace had expected the case to have a great prospect of success<sup>44</sup>. Only one of the several defendants was convicted. Greenpeace subsequently accused Spanish authorities of a lack of cooperation and negligence<sup>45</sup>. However, this is one of the cases showing that good cooperation among Management Authorities and law enforcement agencies is not enough to provide robust evidence that cannot be put in doubt by an inconclusive DNA test. The Barcelona Ivory Auction also became a well-known case because of the media attention it received; it was also dropped because the judge accepted the defence of the Antiques Federation that provided antique certifications issued by experts, even though the Management Authority doubted the reliability of these documents. Again inconclusive DNA tests and lack of proof of the artificial aging of the ivory tusks, which served to show that they were harvested before any ban came into force, led to a dismissal.

**The Spanish CITES Management Authority experts also assume that CITES and EU legislation have major shortcomings that hinder more effective implementation.**

Criminal provisions to be applied to illegal wildlife trade activities often ignore biological characteristics of the affected specimens. Sometimes, available sanctions are also found to be inadequate for the targeted activities: in the case of breeder or pet shop retailers, barring them from the activity and withdrawing their permits for an extended period of time can create significant problems of conservation of the specimens kept in their establishments that CITES authorities can neither solve nor ignore. Another crucial problem is how to calculate the value of specimens without the existence of a legal market. In Spanish law, the value of the assets determines whether the administrative or the criminal jurisdiction is to be applied and the penalty to be imposed. Thus, without an agreed estimated value it is not possible to determine whether the alleged crime is subject to a criminal trial or to an administrative procedure and which penalty should be imposed.

Given the shortcomings of CITES and EU legislation and the problems in practice to provide adequate evidence or to calculate the value of specimens without a legal market, it would be desirable to revise and complement Commission Recommendation No 2007/425/EC identifying a set of actions for the enforcement of Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, to take into account some of the mentioned issues. Given the problems with the judges' approach to wildlife crime, it would be advisable to ask the networks of prosecutors (ENPE, the European Network of Prosecutors for the Environment) and judges (EUFJE, the EU Forum of Judges for the Environment) to prepare guidelines on sentencing in wildlife crime cases with an addendum on the most common problems of proof arising in endangered flora and fauna cases.

<sup>44</sup> Greenpeace presented a claim before the European Commission against Spain for infringement of CITES legislation; however, this claim was filed. See Greenpeace. "El contrabando de especies amenazadas en España queda impune con el visto bueno de la Comisión Europea. Tras casi dos años de tramitación, la Comisión Europea archiva la queja en la que Greenpeace denunciaba el contrabando de especies de maderas CITES en España", 21 December 2010, <http://www.greenpeace.org/espana/es/news/2010/December/El-contrabando-de-especies-amenazadas-en-Espana-queda-impune-con-el-visto-bueno-de-la-Comision-Europea/>

<sup>45</sup> Ibid.

### 3.4. Other measures

#### 3.4.1. National Action Plan

Spain does not have an action plan and has declared that 'a national enforcement action plan is not perceived to be necessary because the administrative and enforcement authorities are in constant communication with each other'<sup>46</sup>. This was also confirmed by the CITES Management Authorities and law enforcement agencies interviewed for the present analysis.

#### 3.4.2. Measures addressing demand

Various measures addressing the demand side are taken by the CITES Management Authorities and different law enforcement agencies.

The CITES Management Authorities are in contact with wildlife-related stakeholders on a regular basis, clarifying CITES regulations. Raising awareness on illegal trade practices among stakeholders and collectors is part of their daily work. They state that **limiting the demand side is not an adequate solution**. They believe that **legal trade is a tool to promote sustainable practices in the countries of origin** and should not be discouraged.

There are exhibitions of confiscated assets in the focal points of activity of the CITES Management Authorities.

SEPRONA, that has mostly a repressive function for wildlife crime, plays an important role regarding public awareness activities. SEPRONA gives media interviews on national and regional TV and radio programmes and journals. Furthermore, it issues press releases on every significant intervention, and reports widely on major operations such as Operation Suculenta (on the illegal trade in glass eels) and Operation Chrysalis (on exotic fauna). Spain does not use incentives for compliance or for whistle-blowers. Concerned citizens and NGOs are the main source of information for SEPRONA. SEPRONA has set up an e-mail address – [seprona@guardiacivil.org](mailto:seprona@guardiacivil.org) – to which both questions on environmental issues and complaints can be sent; all information sent is examined, even if sent anonymously. Well-founded complaints will trigger further inquiries.

As the **internet is an increasingly important hub for illegal wildlife trade**, SEPRONA has started to cooperate closely with websites dedicated to second-hand trade that have had to withdraw offers of protected species. One of the most problematic websites in Spain is Milanuncios.com that offers endangered species on a daily basis<sup>47</sup>. This website has also incorporated a link to complain about and denounce advertisements of endangered species.

#### 3.4.3. The assets of wildlife crime

In Spain, when the devolution to the country of origin is not possible, the authorities proceed giving away the specimens and derivatives to zoos and botanic gardens, approved rescue centres, private facilities and NGOs. Euthanasia is not applied. The Spanish authorities explain that when species cannot be sent back to their country of origin, this is mostly due to the lack of information on the country of origin, the impossibility of reintroducing specimens into the wild successfully, and the lack of resources of the country

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<sup>46</sup> See Spanish CITES Biennial Reports 2011-2012, 2013-2014.

<sup>47</sup> See <http://www.milanuncios.com/reptiles-en-granada/>.

of origin to take care of the species<sup>48</sup>. Besides, CITES authorities of countries of origin can also refuse the devolution based on sanitary reasons, fearing that specimens may transmit diseases.

Spain has declared that even though there are available facilities for the temporary keeping of seized or confiscated live specimens, these are often insufficient and can only cater for certain animals in small quantities (Crook 2014, 18). **The CITES Management Authorities have signed agreements with NGOs to keep confiscated specimens.** However, they declare that there are species that NGOs do not want, sometimes because they are dangerous, such as in the case of highly poisonous reptiles or due to the costs like in the case of big mammals.

The CITES Management Authorities are permitting confiscated specimens of parrots to be used in therapies for patients with disabilities in a project led by the Faculty of Psychology of the Autonomous University of Madrid.

In the case of crime or administrative offences of smuggling (depending on the value of the animals and plants seized) as well as administrative fines, the specimens will be sold and the money given to the Spanish Treasury. Only 10 % of the total sums collected will be destined to CITES Management Authority activities. According to CITES experts, a higher proportion of the proceeds of wildlife crime should be used for managing seized and confiscated specimens. They also suggest that judges take into account the costs of maintenance of smuggled specimens when imposing criminal fines. They propose that if specific legislation is adopted to sanction wildlife crime, customs authorities should be empowered to impose fines for the cost of the maintenance of specimens in rescue centres. They also propose that the offender shall bear the cost of maintaining living animals seized.

NGOs have criticised that the lack of resources has led to the controversial practice under which specimens remain with their owner who was accused of having committed administrative infractions<sup>49</sup>. One risk that the NGOs see is that exotic animals that are left with their owners end up being abandoned since it is difficult to obtain the necessary legal documents or keep the animals in accordance with the law<sup>50</sup>. This situation has been addressed recently through the provision of more resources for the conservation of confiscated specimens by the Management Authorities. The protection centres in some of the Autonomous Communities of Spain have made it clear that they are unable to take confiscated animals into care<sup>51</sup>.

### 3.5. Organized crime in wildlife

Law enforcement authorities in Spain that have been interviewed state that **wildlife crime is committed in an organized manner, although without some of the traditional elements of organized crime**. 'Normal' wildlife crime may involve a long string of actors: poachers, smugglers, forgers and corrupt law enforcement agents. However, the experts express the view that violence and other elements of organized crime are found only in transnational wildlife crimes and, in particular, in the countries of origin in Latin America and, especially, in African countries. They also express the view that generally criminal groups are more and more attracted to wildlife crime due to a low risk of detection and

<sup>48</sup> The CITES Management Authorities referred to the case of *Amazona Cubana*, a species of Appendix I of CITES, that were confiscated in the Canary Islands when Russian sailors tried to resell them. The Cuban authorities refused to take them back because it was impossible to reintroduce them into the wild.

<sup>49</sup> CITES World. Official Newsletter of the Parties, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Issue Number 16, December 2005.

<sup>50</sup> See the website of SEPRONA, the Spanish authority in charge of the protection of the environment, at [http://www.guardiacivil.es/en/institucional/especialidades/Medio\\_ambiente/index.html](http://www.guardiacivil.es/en/institucional/especialidades/Medio_ambiente/index.html).

<sup>51</sup> Interviews with SEPRONA and CITES Management Authorities, 29 October and 2 November 2015.

high profit. Mafia type drug dealers are increasingly connecting their activities with wildlife crime.

Even though major police operations such as *Rapiña* and *Horus* show an involvement of organized groups in wildlife crime, case law reveals that prosecutors and judges favour bringing charges for more traditional crimes because they are easier to prove. None of these cases was considered to be a case of organized crime; the legal provisions invoked by prosecutors were general ones on crimes against nature, forging documents, and smuggling. However, the facts showed the existence of a criminal organisation whose *modus operandi* involved two levels: on the first level, professionals looted nests, stole eggs and chicks and captured adults, and in the second level, those in charge of selling the specimens in the national and international markets (Fajardo del Castillo 2015, p. 30-31). Significant judgments such as those in the *Rapiña* and *Horus* cases illustrate how the prosecution presented the charges in order to facilitate conviction. However, this also meant losing the opportunity of higher sanctions and avoiding charges of organized crime that would have been more difficult to prove.

A recent case involving four eggs of hyacinth macaws (*Anodorhynchus hyacinthinus*), a parrot native to Central and Eastern South America, valued at more than EUR 100 000, exemplifies the high degree of organisation of the members of the criminal groups in countries; it also shows the expertise of recipients in Europe that will try to present these specimens as having been bred in captivity.

Operations *Suculenta* and *Suculencias II* on the illegal trade of eels show the complexity of the required infrastructure to send eels by air transport to Asia through Hungary, Bulgaria or Russia, to be recovered in the Philippines before arriving at the final destination. This requires keeping the animals alive for up to 22 hours.

The Spanish Chief Prosecutor for the Environment suggested in the consultation by the European Commission on the Communication on an Action Plan to Fight against Wildlife Trafficking in 2014 that a directive should be adopted to address specific aspects of wildlife crime. In his view, the directive should contain specific offences as well as provision applicable to legal persons because the organizational context in which wildlife is committed may mean that legal persons are also involved in the crimes<sup>52</sup>. This directive should include both administrative and criminal approaches, and harmonised criminal sanctions.

He also recommended that the directive should contain provisions on enhanced cooperation with countries of origin. This could include specific tools to solve the problems raised by the relations between the European Union and countries of origin of trafficked species. Some of the **suggested measures** are:

- The establishment of inspectorates from the European Union in the most important cities in countries of origin and transit of illegal traffic.
- Bilateral or multilateral task forces involving EU Member States and the countries to assess problems *in situ* and on a case-by-case basis.
- To promote joint investigation teams with countries of origin, transit and destination.
- To establish dispute settlement systems to address difficulties appearing when enhancing cooperation and enforcement agreements with these countries.

<sup>52</sup> See Vercher Noguera, Antonio. "Respuesta al Cuestionario incorporado a la Comunicación de la Comisión Europea al Consejo y al Parlamento Europeo sobre estrategia de la UE contra el tráfico de especies silvestres", contained in: Commission Staff Working Document: Summary of the Responses to the Stakeholder Consultation on the EU Approach against Wildlife Trafficking, 2014, [http://ec.europa.eu/environment/cites/pdf/responses\\_consultation\\_WildlifeTrafficking.pdf](http://ec.europa.eu/environment/cites/pdf/responses_consultation_WildlifeTrafficking.pdf).



The Spanish Chief Prosecutor also recommends enhancing cooperation among the authorities of the EU Member States through official channels in order to coordinate activities and exchange information that could be presented as evidence in court.

The lack of data does not mean that there are no cases of organized crime and money laundering but that there have been no investigations or charges so far. The current Spanish legislation on money laundering does not foresee environmental crime as a predicate offence<sup>53</sup> as it is foreseen in the Recommendations of the Financial Action Task Force (FATF/OECD) that Spain has accepted.

### 3.6. Cooperation

#### 3.6.1. Cooperation with NGOs

Experts of the law enforcement agencies and the CITES Management Authority have declared that they consider **NGOs an important ally in the fight against wildlife crime**. NGOs are one of the most important sources of information. They also are very important in the context of managing and conserving confiscated specimens. In 2013, the first cooperation agreement between the Spanish CITES Management Authority and an NGO to take in seized animals was signed for a period of five years; it can be extended to another five years. This NGO houses primates and, since 2015, felines<sup>54</sup>. Moreover, NGOs give evidence in trials to support prosecutions on illegal wildlife trade.

#### 3.6.2. Cooperation with other Member States, the European Commission, the CITES Secretariat and Third Countries

Regarding other CITES Parties, Spain provides technical assistance on a regular basis regarding CITES, in particular, IT support.

Regarding monitoring and compliance operations with other Member States and third countries, Spain has participated in the following operations in 2013-2014:

- During Operation *Suculenta* relating to the smuggling of eels (*Anguilla anguilla*), Spain contacted the authorities of Portugal and Hungary because it had learned that illegal operators in Spain were attempting to illegally export eels to third countries from Portugal and Hungary<sup>55</sup>.
- Exchange of information between the regional police of Catalonia and the UK Police in an investigation of the Prosecutor Office on a counterfeiting ring for raptors<sup>56</sup>.
- Exchange of information and provision of samples for performing a DNA paternity test as part of an investigation by the Prosecutor Office on raptors<sup>57</sup>.
- Exchange of confidential information and technical support to authorities of other European States in the context of the EU-TWIX network: Bulgaria, Romania, Portugal, Serbia<sup>58</sup>.

<sup>53</sup> A predicate offence is a crime that is a constituent component of another criminal offence. In the context of money laundering, the predicate offence is the offence the proceeds of which can become the subject of money laundering offences. Accordingly, if illegal income was gained from wildlife crime and the profit was subsequently laundered by being invested in legal businesses, wildlife crime would be the predicate offence.

<sup>54</sup> See the Spanish Biennial Report on CITES 2013-2014 and the interview with the Spanish Management Authorities, 29 October 2015.

<sup>55</sup> See SEPRONA. "La Guardia Civil desarticula una red internacional dedicada al comercio ilegal de angulas", 24 March 2012, <http://www.guardiacivil.es/es/prensa/noticias/4047.html>.

<sup>56</sup> See Spanish CITES Biennial Report 2013-2014, p. 10.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

Regarding assistance provided to other countries, Spain has led a twinning project with Turkey, funded by the European Commission in the light of its future accession<sup>59</sup>.

Spain has participated in **COBRA III** in June 2015, the biggest ever coordinated international law enforcement operation targeting the illegal trade in endangered species, led by Interpol and coordinated in Europe by Europol<sup>60</sup>. Over 90 kg of coral and more than 50 kg of animal parts (including heads and horns) were seized in Spain.

**International police cooperation is ongoing in this area**, especially with Portugal. SEPRONA attends meetings to coordinate actions, such as those relating to an operation called OAKLEAF, dedicated to the fight against illegal trafficking on rhino horns.

### 3.6.3. Cooperation with international organizations

The Spanish Chief Prosecutor for the Environment is responsible for international judicial cooperation on environmental issues and participates on a regular basis in the meetings and projects of the committees of CITES. He also represents Spain in the European Network of Prosecutors for the Environment (ENPE).

**SEPRONA and other specialized police forces of the Autonomous Communities cooperate with Interpol and Europol.** Spain has sent **ECOMESSAGES** to Interpol in 2013 and 2014, using the format established by the agency for the international exchange of police information on the enforcement of CITES. Interviewed experts have pointed out that the cooperation with EUROPOL is most efficient and useful and that forthcoming measures to enhance its institutional support to the law enforcement agencies of the Member States, such as the creation of a register of Member State experts, would be very positive.

SEPRONA has **bilateral agreements** with the authorities of neighbouring countries (France, Portugal and Morocco) to facilitate cooperation in the fight against wildlife crime.

Since 2012, Spain has been one of the parties of the agreement between the Conference of Ministers of Justice of Ibero-American Countries encompassing the Ibero-American Network of International Judicial Cooperation (IberRed), and INTERPOL, which serves to promote judicial and police cooperation at the national, regional and international level.

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<sup>59</sup> The Management Authority has participated by providing expertise and a computer program for managing applications and issuance of CITES permits and technical advice for implementation and management. As part of the project, guides and cards have been translated to Turkish.

<sup>60</sup> See Europol. "Europol supports largest ever coordinated operation against wildlife crime", 18 June 2015, <https://www.europol.europa.eu/content/europol-supports-largest-ever-coordinated-operation-against-wildlife-crime>.



## 4. CONCLUSIONS

Due to its geographical situation as the gateway to and from Africa and its trade relations with Latin America, Spain is a relevant entry point to Europe as well as a transit country of wildlife crime with trade routes coming from Latin American and African countries and as well as trade routes to Asia. Spain is also a country of origin of wildlife crime given its outstanding biodiversity.

In recent years, Spain has undertaken several operations regarding wildlife crime that point to the existence of criminal groups operating from Spain in other EU Member States and revealing organized crime infrastructures and *modus operandi*. To confront this type of ever growing criminality, Spain has brought into being law enforcement agencies that can be regarded as examples of good practice. SEPRONA is a specialized force fighting environmental crime that has developed and implemented day-to-day strategies against wildlife crime that involve all actors taking part in the enforcement of CITES and EU Regulations. SEPRONA agents have pursued and participated in significant major wildlife crime operations, dismantling organized criminal groups controlling trafficking by Spanish nationals, EU citizens and nationals of third countries. Spain also has a specialized Prosecutor's Office that cooperates closely with CITES Management authorities and SEPRONA to gather the required evidence to succeed in prosecution.

The Spanish CITES Management Authorities are also an example of good practice because their approach to the implementation of the CITES and the EU legislation takes into account the biology of the species. This approach hinders the trafficking of endangered species and helps detect very serious problems of laundering illegally imported specimens with captive bred specimens in the European market. Moreover they have identified shortcomings in the CITES and EU legislation which could be rectified.

The examined case law shows a limited number of convictions and lenient punishments due to difficulties in providing the required evidence and due to the resistance of judges to consider environmental crime as serious. The prosecution has often failed to obtain convictions due to problems of proof, in particular, difficulties with DNA tests, showing the problems in obtaining evidence beyond all reasonable doubt with the advanced forensic tools needed. Because of the contradictory results of the tests presented by defence and prosecution, judges have acquitted or adjourned the majority of criminal charges *sine die*. As a result, it is often more effective to deal with wildlife trafficking by way of administrative sanctions since administrative proceedings are faster and shorter; often administrative fines and forfeiture measures are more deterrent and effective than the lenient sanctions that are frequently imposed in criminal proceedings.

The Spanish authorities cooperate with other Member States and third countries on a regular basis as well as in coordinated operations that show the importance of institutional contacts of the CITES Authorities as well as the institutional networks and agencies, such as EUROPOL and INTERPOL. This cooperation contributes to overcoming the limits and gaps of the CITES Convention and EU Regulations that in the opinion of the interviewed experts are fragmented and lack clarity.

It is the opinion of the Spanish Management Authorities as well as the Prosecution Office that a specific legal instrument to fight wildlife crime would be most useful to overcome these problems.

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## **ANNEX: LIST OF INTERVIEWS CONDUCTED**

The following persons were interviewed for the present analysis:

- Mercedes Nuñez and Antonio Galilea, Spanish Management Authority, 30 October 2015
- Captain Salvador Ortega, SEPRONA, Central Unit, 2 November 2015

In addition, SERPRONA staff wishing to remain anonymous was interviewed.

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