

Proposal for the Finnish Nature Conservation Law in view of CITES and the EU Wildlife Trade Regulatory Framework

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CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora)

- “Washington Convention” agreed on 3 March 1973
- International agreement between governments
- Entry into force on 1 July 1975
- Now 184 Parties – including Finland, the other EU States and the EU
- Aim is to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species
- Protects more than 37,000 species of animals and plants
- Import, export and re-export of hunting trophies is defined as “trade”

CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora)

- All CITES countries outside the EU apply the rules of CITES when authorising the export of hunting trophies to the EU from animals listed in the appendices to CITES
- **Appendix I** includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances
- **Appendix II** includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilisation incompatible with their survival
- Appendices I and II are updated regularly **based on agreed biological criteria**
The most recent update occurs at CoP19 in Panama 14 - 25 November 2022
- **Appendix III** contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling trade

EU CITES Regulatory Framework

- Due to the **European Single Market** and the absence of systematic border controls within the EU, the provisions of CITES have to be implemented uniformly in all EU Member States
- The EU has implemented CITES **stricter** than the convention text through:
 - *Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (the **Basic Regulation**)*
 - *Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 (the **Implementing Regulation**)*
 - *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 the trade therein and amending Regulation (EC) No 865/2006 (the **Permit Regulation**).*
 - *Commission Implementing Regulation (EU) 2019/1587 of 24 September 2019 prohibiting the introduction into the Union of specimens of certain species of wild fauna and flora in accordance with Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (the **Suspension Regulation**)*

EU CITES Regulations – Import into the EU

Annex A of the EU CITES Basic Regulation (EC) No 338/97 includes:

- All CITES Appendix I species (except where EU Member States have entered a reservation)

Examples of Annex A species: **Black rhino, Leopard, Cheetah, Markhor, Arabian oryx, European otter, Southern white rhinoceros** (except from South African and Eswatini), **African elephant** (except from Botswana, Namibia, South Africa and Zimbabwe)

- Some CITES Appendix II and III species and other species for which the EU has adopted stricter domestic measures

Examples of such Annex A species: **Eurasian lynx, European Brown bear, most Grey wolf populations**

An import permit is required for Annex A hunting trophies - issued only if the EU Member State of destination is satisfied that:

- import would not harm the conservation of the species or decrease the population
- the hunter has provided documentary evidence that the trophy was obtained legally

Imported hunting trophies from Annex A species cannot be commercially traded

EU CITES Regulations – Import into the EU

Annex B of the EU CITES Basic Regulation (EC) No 338/97 includes:

- All other CITES Appendix II species (except where EU Member States have entered a reservation)

Examples of Annex B species: **Giraffe, Common hippopotamus, Argali, Polar bear, Southern white rhinoceros** from South Africa and Eswatini, **African elephants** from Botswana, Namibia, South Africa and Zimbabwe

- Some CITES Appendix III species and non-CITES species

An **export permit** from the country of export is required based on a Non-Detriment Finding (NDF) by the Scientific Authority of the country of export (meaning that export is not deemed detrimental to the survival of the species) and a legality assessment by the Management Authority of that country

In addition, an **import permit** is required for hunting trophies of the following Annex B species:

Southern white rhinoceros, Common hippo, African elephant, Argali sheep, Lion and Polar bear - issued only if the EU Member State of destination is satisfied that:

- import would not harm the conservation of the species or decrease the population
- the hunter has provided documentary evidence that the trophy was obtained legally

EU CITES Regulations – Import into the EU

Annex C of the EU CITES Basic Regulation (EC) No 338/97 includes:

- All other CITES Appendix III species (except where EU Member States have entered a reservation)

Examples of Annex C: Honey badger (Botswana) and Golden jackal (India)

Annex D of the EU CITES Basic Regulation (EC) No 338/97 includes:

- Some CITES Appendix III species for which the EU holds a reservation, ex. Meller's duck
- Some non-CITES species in order to be consistent with other EU regulations on the protection of native species, such as the Habitats Directive and the Birds Directive

An **import notification** is required for Annex C and D species

Non-listed species can be imported without any specific CITES permits, ex. Wild boar, African buffalo, Gemsbok and Kudu

EU CITES Regulations – Import into the EU

EU Scientific Review Group (SRG)

- The SRG consists of representatives from the Member States' Scientific Authorities
- It meets four times a year in Brussels
- The SRG can issue **Negative Opinions** blocking the imports of certain hunting trophies based on conservation and legality concerns until new information becomes available

Examples of negative opinions in force: Hunting trophies from **African elephant from Mozambique** or **Markhor trophies from certain conservancies in Tajikistan** cannot be imported into the EU

- The EU can also restrict the introduction of certain hunting trophies through the **Suspension Regulation**. Most recent (2019/1587) was adopted on 24 September 2019

Examples of suspended imports: **Hunting trophies from grizzly bear from British Columbia, Lynx trophies from Russia and Wolf trophies from Belarus, North Macedonia, Mongolia, Serbia, Tajikistan and Turkey** cannot be imported into the EU

EU CITES Regulations – Trade within the EU

- **Internal trade** = Trade within one EU Member State and between Member States
- **EU single market:** Hunting trophies can be moved and traded freely inside the EU, subject to the restrictions imposed by the EU Wildlife Trade Regulations
- Certain **commercial activities** involving Annex A specimens are prohibited

The Management Authority of a Member State can grant a specific exemption by means of a certificate, for example if a hunting trophy was acquired before the relevant legislation became applicable or the animal was legally hunted in a Member State (ex. Bear trophies in the Nordics)

- Article 8(2) of Regulation (EC) No 338/97 provides that Member States may prohibit the holding of specimens, in particular live animals of the species listed in Annex A. The European Commission has clarified however that:

“Measures of this kind must be justifiable under the Treaty.” *Reference Guide to the Wildlife Trade Regulations produced by the European Commission, 2007*

Article 8(2) is not widely used. The purpose of this provision, which is primarily conceived for threatened live animals, is not to render nugatory the CITES system by discriminatory, unjustified and disproportionate blanket bans

The regulation of hunting in the EU

- **The sustainability of hunting for bird and mammal species of Community interest in the EU Member States is regulated by the EU Nature Directives:**
 - *Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds*, covers all wild bird species
 - *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora* lists certain mammal species of community interest as “subject to exploitation” or “strictly protected”
- These directives provide strict rules to ensure the sustainability of hunting trophies originating from animals within the EU, such as the wolf, bear, lynx, beaver, otter and other species of Community interest

In other words:

CITES, the EU Wildlife Trade Regulatory Framework, which implements CITES stricter, and the EU Nature Directives provide a solid, adaptive and sufficient framework to ensure the sustainability and legality of hunting trophies being imported into Finland from both outside and inside the EU

Internal Market Dimension

- The EU CITES Regulations are directly applicable in all EU Member States, including Finland
- The EU Single Market implies no regular border controls inside the EU, and generally wildlife goods can be moved and traded freely inside the EU
- The EU Treaties limit the possibility to enact stricter national measures impeding the free movement of goods within the EU, including a total or partial ban on imports or measures having equivalent effect
- Exceptions must be justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants
- **However: Such prohibitions or restrictions shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States**
- By way of example, **the European Court of Justice has ruled that a Member State can adopt a stricter national measure restricting trade only to the extent that it is necessary for effectively achieving the objective of the protection of animals and nature**
- **In view of the effectiveness of the EU Wildlife Trade Regulatory Framework and EU Nature Directives, the proposed Finnish measures cannot be deemed necessary**

EU Trade Policy

- EU Trade Policy shall be based on uniform principles
- The EU itself is a party to CITES along with all the individual Member States
- The EU Wildlife Trade Regulations provide a common legal framework for the implementation of CITES across the EU
- The Member States act and vote as one block at the international CITES meetings, where they are represented in the negotiations by the European Commission and the Presidency of the EU

EU Trade Policy

At CITES CoP17 in Johannesburg in 2016 the EU and its Member States, including Finland, proposed and unanimously supported CITES Resolution Conf. 17.9 “Trade in hunting trophies of species listed in Appendix I or II” providing inter alia:

- “RECOGNIZING that well-managed and sustainable trophy hunting is consistent with and contributes to species conservation, as it provides both livelihood opportunities for rural communities and incentives for habitat conservation, and generates benefits which can be invested for conservation purposes;”
- “CONSIDERING the need for uniform interpretation of the Convention with regard to hunting trophies;”
- “FURTHER RECOMMENDS that Parties consider the contribution of hunting to species conservation and socio-economic benefits, and its role in providing incentives for people to conserve wildlife, when considering stricter domestic measures and making decisions relating to the import of hunting trophies;”

Conclusion:

It appears apparent that the proposed restrictions on the importation of hunting trophies into Finland are not compatible with the EU Treaties