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European Commission
Commissioner Directorate-General Environment
Mrs Margot Wallstroem
Rue de la Loi 200

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29/09/2003

Open letter: Concerns on the lack of transparency with regards to EU decisions on wildlife trade

Dear Mrs. Wallstroem,

The European Union, as one of the largest wildlife importers in the world, has a special responsibility to ensure that international trade does not endanger wildlife species. The EU imports a vast number of animal and plant species, many of which are protected through CITES, the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Besides habitat destruction, exploitation of wild specimens for trade is a main reason for the decline of biodiversity. International wildlife trade is estimated to be worth billions of dollars annually and includes hundreds of millions of plant and animal specimens. CITES is one of the most crucial and effective instruments to counter the depletion of wildlife species for trade: It accords varying degrees of protection to more than 30,000 species of animals and plants that are threatened by overexploitation through international commercial trade. With 163 Parties now bound by the Convention, CITES is among the largest conservation agreements in existence.

The EU, with its collective power, has the ability to considerably influence the far-reaching decisions of CITES. The EU Commission coordinates policies at Conferences of the Parties to CITES (CoP) and during relevant EU internal meetings of the Environment Council, the Scientific Review Group and the CITES Committee. At CITES CoPs EU member states act on the basis of a common position and vote as a block. Decisions taken at the last two CoPs (CoP11 in April 2000 and CoP12 in November 2002) illustrate that the EU is a powerful force in deciding the fate of proposals on many species such as elephants, whales, dolphins, sea turtles, parrots, sharks and mahogany but also for other issues discussed. This influence is bound to increase even further beginning at CoP13 in October 2004, when the EU will have 25 members and would hold at least 15% of the votes at CITES if all 163 Parties were present and voting. In addition, the EU and Eastern European countries are increasingly cooperating in the environmental field and past experience has illustrated that the EU can strongly influence the positions of other Parties at CITES.

However, the member organisations of the *Species Survival Network (SSN)*^{*} and *Wildlife and Countryside Link*^{*} are concerned that the process of EU decision-making, leading up to and at CITES meetings and at

^{*}The **Species Survival Network (SSN)**, is an international coalition of over seventy non-governmental organisations (NGOs) from more than 30 countries, committed to the promotion, enhancement, and strict enforcement of CITES. The SSN represents several million citizens worldwide and its member organisations work in several EU member states, as well as on a global level. Through scientific and legal research, education and advocacy, the SSN is working to prevent over-exploitation of animals and plants due to international commercial trade. The SSN has more than 10 years experience working within the CITES framework and members regularly participate at CoPs, and other CITES meetings. The SSN provides expert analysis of CITES proposals and resolutions as well as material of a technical and legal nature.

Wildlife and Countryside Link (Link) is a coalition of the UK's major environmental non-governmental organisations, united by their common interest in the conservation and enjoyment of the natural and historic environment. Between them, Link's members turn over more than £700 million per annum, have the support of approximately seven million people, and the help of 81 000 volunteers in the UK. Members of Link's Wildlife and Trade Working Group share a wealth of experience on CITES issues, and participate in CITES Conferences of Parties and Committee meetings. The group enjoys regular engagement with the UK Government on domestic and international wildlife trade issues, and a Link representative was included on the UK delegation to CITES CoP12 in 2002.

other meetings where the EU has competency, does not take adequate account of the crucial role that the EU should play in the conservation of endangered, threatened and vulnerable species.

To summarize our concerns: The EU makes decisions on CITES policies almost entirely behind closed doors. The positions adopted by the Council are not publicized and all decisive EU coordination meetings, including during the COP, are generally closed to observers. Often during COP's, the EU's position on many crucial issues either remains undecided right up until the vote or, if it has been decided, it is subject to last-minute changes. Moreover, positions taken by the EU do not always seem consistent with the EU's stated principles. Last but not least, member state delegates are not publicly accountable for the way they vote. Our concerns and resulting recommendations are summarised in the attached aide-memoir.

With the forthcoming increase in EU membership in 2004, the process by which the EU negotiates on CITES issues will become more complex and will have even more serious implications. However, the accession of ten more countries to the European Union could be regarded as presenting an opportunity to revise the EU decision-making process in time for the next CITES CoP in October 2004. We request the Commission to use this opportunity to establish a more open and transparent decision-making process on CITES related issues and to provide increased opportunities for NGOs to contribute valuable information.

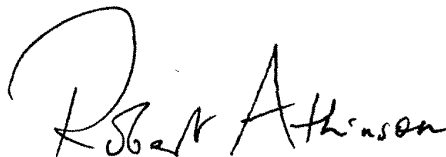
We would also like to request a meeting, in which the concerns and recommendations expressed in the attached summary could be discussed.

Yours sincerely,



Will Travers

President, Species Survival Network



Robert Atkinson

Chair, Wildlife and Countryside Link's Wildlife & Trade Working Group
on behalf of:

The Herpetological Conservation Trust, Buglife - the Invertebrate Conservation Trust, Royal Society for the Prevention of Cruelty to Animals, Royal Society for the Protection of Birds, Whale and Dolphin Conservation Society, Environmental Investigation Agency, IFAW - International Fund for Animal Welfare, World Society for the Protection of Animals, Greenpeace, Shark Trust

Cc:

Environment ministers of EU members and accession countries

Chair of the Environment Committee of the EU Parliament

Concerns and recommendations of the Species Survival Network and Wildlife and Countryside Link on the lack of transparency with regard to the EU decision-making process on wildlife trade

The Species Survival Network and Wildlife and Countryside Link believe that EU citizens and the general public have a right to be informed about the EU's policies on wildlife trade and species conservation and that in the interest of transparency, EU decisions should be subject to a degree of public scrutiny. Moreover, non-governmental organisations should be given an adequate opportunity to contribute valuable information.

By signing the Aarhus Convention in 1998 the Community recognized that it should aim to strengthen rights of the public to participate in environmental decision-making. The importance of public participation and transparency is also stressed by the Amsterdam Treaty. This introduced Article 255 into the EU Treaty, giving citizens a right of access to documents and included among the constitutive principles of the Union that decisions must be "*taken as openly as possible and as closely as possible to the citizen*". In addition, in recent years the Commission has published a number of documents stressing the need for increased transparency and public access, including a Communication paper "*towards a reinforced culture of consultation and dialogue*" containing "*general principles and minimum standards for consultation of interested parties by the Commission*".

Recent decisions at the 12th meeting of the Conference of the Parties to CITES (CoP12) on the trade in ivory may serve as an example to illustrate the far-reaching implications of the EU's decision-making process for key proposals debated at CITES:

Whereas the EU, with its 15 votes, blocked the adoption of proposals by Zimbabwe and Zambia requesting trade in ivory, it abstained on three similar proposals by Botswana, Namibia and South Africa. This resulted in the acceptance of the proposals and of potential future ivory trade, for which the EU has to take joint responsibility. However, the EU had not made a final position known to the public, and did not unequivocally announce how it would vote, before votes were actually cast. In a non-governmental organisation (NGO) hearing prior to the decisions on ivory trade and in response to individual requests, EU representatives did not disclose details on how the Community would vote on these proposals. They were also not prepared to debate positions on likely amendments to these proposals with NGOs and other experts present.

Moreover, written EU statements on this decision, such as the Commission Proposal adopted by the Environment Council before CoP12 and a press release, do not adequately reflect the position the EU took on the ivory trade and at best served to cause confusion. A press release on the results of CoP12 by the Danish Presidency of November 15th 2002 states: "*The Community would have preferred that any decision on sale of ivory should be taken at CoP13.*" This statement is disingenuous since the EU with its 15 votes could have ensured that the decisions were deferred to a later CoP instead of letting a decision in favour of ivory trade pass. Similarly, the Commission Proposal adopted by the Environment Council on October 17th, prior to CoP12, implied that the EU would take measures to prevent acceptance of future ivory trade at this stage, by stressing: "*The Community is unwilling to agree to resumption in commercial ivory trade unless it is satisfied, following consultation with range States, that there will be no resulting increase in illegal killing of elephants*". It is noteworthy that the CITES Parties in 1997 decided to develop a system called MIKE, the purpose of which is to monitor the illegal killing of elephants, including potential increases in poaching. The Commission Proposal continues "*the current state of MIKE and other safeguards must be taken into account*". However, it was known before CoP12 and stressed again during the conference by the director of MIKE that this system is not yet able to provide the relevant data and that it is still unclear when this will be the case. The EU's position was totally inconsistent in that, while it has made a major financial commitment to MIKE, by allowing three ivory trade proposals to be adopted, it has completely undermined the scientific integrity of MIKE and turned it into a "political football" (as a member of the MIKE Technical Advisory Group described it).

This example illustrates some of our concerns regarding the EU's decision-making process and its lack of transparency with regard to CITES, which has also impacted other key proposals at CoPs.

Our concerns include the following points:

A. Lack of transparency with regard to EU policies at meetings of CITES CoPs:

1. Inadequate consultation of NGOs

- At CoPs NGOs have very limited opportunities to make their views heard in the EU: They have no access to EU coordination meetings despite the vital role that NGOs can play in the provision of new information and expertise on technical issues.
- We appreciate that the EU invited interested NGOs for a hearing prior to the last two CoPs. However, we are concerned that during CoPs, NGOs were only once invited to attend a meeting with the Commission and the EU Presidency. This compares unfavourably with the USA, which holds daily briefings for NGOs during CoPs and even with some European countries, notably the UK and Germany, who hold regular briefing sessions with their NGOs.
- Moreover, at its sole meeting with NGOs during the two-week conference, EU representatives at CoP12 began by stating that they were not prepared to give answers on details or to enter into a discussion but to have "just an exchange of views".
- NGOs also have very limited access to meetings of the CITES European Region. The first European regional meeting at CoP12 was entirely closed to observers. At the second meeting NGOs were again prevented from attending during the Parties' discussions and were permitted merely to present comments after a closed session. No feedback was received on these comments.

2. Lack of feedback

- No feedback was given to NGOs before or during the CoP as to whether or not our comments had been taken into consideration in EU decisions or documents (including the Commission's proposal on a Council decision on CoP12).
- Hearings prior to and during CoP12 did not allow for real discussion and exchange of background information and Commission representatives and the EU Presidency were not prepared to answer questions on details. Despite NGO requests no formal records were taken of these meetings.

3. Non-Disclosure of policies or voting decisions

- The EU often takes decisions on vital conservation issues only in last minute coordination meetings at CoPs. As a result of this procedure the position of the EU, with its current 15 votes, was in some cases (e.g. African elephants, sea turtles) not even disclosed to the public before the vote was actually taken. This has caused considerable confusion among both CITES Parties and observers.
- The Commission proposal on a Council decision for CoP12 (dated 17th September 2002) was only published in the EU's Official Journal on 31st December 2002, six weeks after CoP12.
- During CoPs, even when taking the floor, the EU often does not state unequivocally how it will vote, causing confusion or even creating the wrong impression. For instance, on the proposal to transfer the Black Sea bottlenose dolphin from Appendix II to I at CoP11, the EU representative only stated that "*the EU cannot support this proposal*". Then at CoP12, in Committee I, the EU made a negative statement about the same proposal. Although these statements seemed to signal opposition to the proposal, in reality the EU had in both cases agreed to abstain.

4. Member state delegates are not publicly accountable for the way they vote at CoPs

On a national level, member states are, in general, accountable for their positions and may disclose them, including those on specific CITES proposals. However, due to the lack of public scrutiny at CoPs and the fact that the EU decides on a common position in closed sessions, delegates from EU member states cannot be made accountable for the positions ultimately taken. Also, in general, meeting minutes do not record the positions taken by member states. The EU's practice of making last minute decisions during CoPs further adds to the lack of accountability.

5. Lack of accountability and credibility of EU policies

As mentioned above, substantial explanations or justifications of EU positions were not specified in meetings with NGOs before or during CoP12. The same is true for the Commission's proposal on a Council decision, which contains only brief comments. Because of the perceived lack of adequate explanation or credible scientific justification for positions taken, the EU positions sometimes seem rather arbitrary. For example, in the Commission proposal, South Africa's proposal to transfer the

endemic Cape parrot from Appendix II to I was objected to with the following comment: "*Habitat destruction is main threat and will not be solved by Appendix I listing*". Habitat destruction is indeed a threat for many species but this does not prevent an Appendix I listing. In fact, the Cape parrot (with its very small wild population of 634 birds and a high value in the international trade) clearly meets the criteria adopted by the CITES Parties for amendment of the CITES Appendices.

6. Lack of coherence and consistency

- At past CoPs the EU ignored the existence of stricter regulations within the Community when taking decisions on certain proposals. In the EU wildlife trade regulations (Regulation (EC) 338/97), bottlenose dolphins are afforded the highest level of protection and are listed in Annex A, which prohibits commercial trade. Nevertheless, at two consecutive CoPs the EU did not support a proposal which would have afforded the Black Sea bottlenose dolphin the same level of protection by all CITES Parties. Instead, the EU argued against transferring the species from Appendix II to I and finally abstained when votes were cast at CoP11 and CoP12.
- Although EU representatives publicly stated they would take into consideration range States' positions, the wish of range States to list species or transfer them to Appendix I was often ignored by the EU. At the last two CoPs several proposals submitted by range States failed, were withdrawn or amended as a consequence of lacking support from the EU. In addition, at CoP12 most of these proposals were aimed at protecting endemic species that only occur in the one range State that had submitted the proposal. The species concerned were: two genera of New Zealand geckos (several endemic species in New Zealand; proposal failed), Mycrohylid frogs (three endemic species in Madagascar; proposal withdrawn), the Cape parrot (endemic species in South Africa; proposal withdrawn) and the Black Sea bottlenose dolphin (proposal by one range State; uplisting failed, proposal was only carried after amendment in accordance with EU suggestions).
- At CoPs, the EU Commission has stressed to the public the Community's wish to act as a "mediator" on controversial issues. It also emphasized the importance of range States' views, particularly with regard to future ivory trade. On this issue, range States clearly had differing views before and during the CoP. It is therefore hard to understand how, well in advance of CoP12, the EU adopted a policy that clearly opposed a proposal by the elephant range States of Kenya and India to transfer all African elephant populations on Appendix II to Appendix I and, at the same time, maintained an open position on three proposals by African countries to permit trade in ivory. This prejudiced position seems inappropriate for a mediator. In addition, the EU stated that its "open position" on ivory trade from Botswana, Namibia and South Africa was contingent upon its receipt of information regarding the likelihood of increased poaching. Its subsequent abstention, however, was justified on the grounds that it had listened to the views of range States. This was baffling, since the Communiqué issued after the range States meeting showed that there had been no substantive discussion of enforcement measures designed to prevent increased poaching. Therefore the EU could not have been in a position to evaluate the likelihood of increased poaching. In short, the EU moved the goalposts.

7. Unclear mandate

- At CoPs the EU member state holding the EU Presidency usually states the common position on behalf of the Community. However, at CoP12 after Denmark had spoken on behalf of the EU it immediately provided the opportunity to its autonomous region Greenland to express a differing view with regard to proposals on cetaceans. Such a procedure can cause considerable confusion about the EU's actual position and moreover gives significance to the view of a minority that may not be justified.
- At CoP11 Cuba submitted a controversial proposal to transfer migratory sea turtles (Hawksbill turtle) in "Cuban waters" from Appendix I to Appendix II in order to allow for trade in stockpiled turtle shell. The Environment Council had decided to abstain on this proposal. Nevertheless during CoP11 the Commission initiated a compromise and proposed that the Member States support the transfer of the species to Appendix II with a zero quota for exports. This Commission proposal was obviously backed by EU delegates at CoP. However, Cuba rejected the EU initiative and it was therefore not voted on in plenary.

B. Lack of transparency with regard to EU internal decisions on wildlife trade

1. Currently, there is no public consultation process with regards to the EU's internal decisions on wildlife trade, which are implemented by Council Regulation (EC) No 338/97 "*on the protection of species of wild fauna and flora by regulating trade therein*". Draft amendments to EU regulations and directives concerning wildlife trade are not available for public comment.
2. In meetings of the CITES Committee or the Scientific Review Group (SRG), which were established under EU Regulation 338/97 and are chaired by the Commission, EU Member State representatives regularly debate the implementation of wildlife trade regulations. Again, these meetings are closed to NGOs and Member State representatives are not held publicly accountable.
3. NGOs have limited opportunities to provide information or comment to these meetings. Agendas have, in the past, mostly been published on the EU's website after meetings have taken place. However, the Commission has stated that it would give more advance notice of these meetings in future. In addition, documents discussed at these meetings are not generally available to the public. The Commission will consider, on request, whether certain documents can be made available. Without advance notice on meeting dates and agenda points and provision of relevant documents prior to meetings it would be impossible for NGOs and other experts to provide expertise or comments at a stage when this can still have an impact.
4. Information on proceedings of Scientific Review Group and CITES Committee meetings is limited. On its website, the Commission publishes very brief "short summaries of conclusion" that list results on agenda points without giving explanations for, or details of, decisions taken. In the past these summaries, particularly for the CITES Committee, have been published only after a long delay.

C. Recommendations

In the interest of good governance and in the public interest, we make the following recommendations:

- 1. Public access and transparency should be improved.**
In the process leading to the development of policies on wildlife trade, NGOs and other interested parties should be provided increased access to documents and EU coordination meetings (both in Brussels and at CoPs). The EU should also promote more transparency and the participation of NGOs at European regional meetings that are held during and between CITES CoPs.
- 2. EU positions on CITES proposals and resolutions should be decided and publicized as early as possible.**
In the public interest and in order to prevent confusion, the EU should aim at defining an unambiguous negotiating position as early as possible.
- 3. EU policies should be clear, well justified, based on credible evidence and consistent with Community legislation.**
Policies and actions taken by the EU should be unambiguous and coherent. Detailed explanations and scientific justifications for positions taken with regard to wildlife trade should be made available. Moreover, the EU should endeavour to ensure that decisions adopted at CITES are consistent with existing stricter measures in the relevant Community legislation.
- 4. Consultation with NGOs with regard to EU policies on wildlife trade should be increased.**
NGOs should be consulted regularly and as early as possible. This should include both the decision making process leading up to CITES CoPs and EU internal decisions on wildlife trade (e.g. new regulations, amendments of existing regulations, consultation on agenda items discussed by the CITES Committee and the Scientific Review Group).
- 5. The EU should enable timely input by interested parties on wildlife trade and conservation issues.**
To be effective, consultation should start as early as possible and interested parties should therefore be involved in the development of policy at a stage when they can still have an impact (as pointed out in the Commission's Communication on "General Principles and minimum standards for consultation of interested parties"). Moreover, meeting agendas and other documents should be made publicly available well before meetings to enable the provision of information and comments.

To enable NGOs to provide expert information to all Member States, the Commission should be prepared to distribute documents submitted by NGOs to Scientific Review Group and CITES Committee members. In addition, the list of contacts of CITES Scientific and Management Authorities posted on the Commission's website should be kept up to date.

6. The EU should provide feedback on comments received.

The Commission should provide results of consultations with interested parties or on comments received on wildlife trade related issues and provide explanations about whether and how comments were taken into account in the development of policies.

7. The mandate of EU representatives at CoPs should be clearly defined.

Generally at CoPs, the EU Presidency or a representative of the Commission speaks on behalf of the EU and engages in negotiations with other Parties. The mandate of both should be clearly defined by the Council of Ministers and should only be used to express the established common position of the Community in negotiations and during CITES meetings.