

**THEMIS 2019 SEMI-FINAL A**

EU and European Criminal Procedure

## **WILDLIFE TRAFFICKERS AND WHERE TO FIND THEM**

**ASPECTS OF DETECTION AND INVESTIGATION IN ILLICIT  
WILDLIFE TRAFFICKING CASES**



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## I. INTRODUCTION

By a single glance taken at the world map it can be concluded that the borders of countries and geographical units do not coincide. However, the same natural treasures must be treated as single units, which also implies that we are obliged to act with the same tools and methods and on the same level of intensity for their protection. Without that we would have to face fatal consequences, since the effects of the deficiencies would affect all the countries concerned. As the preservation of the ecosystem and flora and fauna is our common interest and primary obligation for ourselves and future generations, joint action is essential to that end.

Illegal wildlife trade as one of the environmental crimes is a significant threat to biodiversity therefore to all of us, its elimination is our common interest and obligation. The capacity to enforce national legislation is weak and prosecutions are rare in such cases. There are several reasons behind this phenomenon. The monitoring is insufficient, resources are limited, there is a lack of progress in applying the EU environmental standards, and the environmental legislation is often unclear. Problems with evidence and identifications often arise in criminal proceedings, moreover there are not enough specialists (working) in this field. The low awareness among law enforcement and the judiciary deepens the problem as well<sup>1</sup>, environmental crimes are not taken as seriously as they should be. This can be supported by the fact that criminologists started to study green crimes, including wildlife-related crimes only in the 1990s and 2000s.<sup>2</sup>

Realising the circumstances mentioned above, the European Union adopted the Action Plan against Wildlife Trafficking that declares the necessity of making implementation and enforcement of existing rules and the fight against organised wildlife crime more effective in which improving the rate of detection of illegal activities is highlighted.

‘The Action Plan covers the five years from 2016 to 2020.’<sup>3</sup> As half of the determined period is over, examining the results is a current issue. In this paper, we are going to introduce significant initiations, steps taken by international organisations, the EU and its Member States,

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<sup>1</sup> Schlingemann, L. (Editor in Chief); de Bortoli, I., Favilli F.; Egerer, H.; Musco, E.; Lucas T.; Lucius, I. (Eds). 2017. Combating Wildlife and Forest Crime in the Danube-Carpathian Region. A UN Environment – Eurac Research – WWF Report, p. 7-11.

<sup>2</sup> Daan van Uhm & Dina Siegel: The illegal trade in black caviar. Published online: 24 February at Springerlink.com, Trends Organ Crim (2016) 19:67-87, p. 70.

<sup>3</sup> European Commission: EU Action Plan against Wildlife Trafficking {SWD(2016) 38 final}, COM(2016) 87 final, Brussels, 26.2.2016, p. 7.

further we are going to make proposals on how enforcement powers could eliminate this crime efficiently with the help of devices that are already available and also new ones.

## II. BIODIVERSITY LOSS AND WILDLIFE TRADE

Throughout the history of the world, nature and wildlife were primarily viewed as a resource by humanity. With the rapid development of the 20<sup>th</sup> century, this began to change. The world's ecological footprint has nearly tripled since 1961<sup>4</sup>, as civilization occupies more and more space, wild fauna and flora ecosystems are pushed back. According to the International Union for Conservation of Nature's Red List of Threatened Species<sup>5</sup>, currently there are 27.159 species in the threatened category, 5914 of them being Critically Endangered<sup>6</sup>. Globally, 872 species are already declared extinct.<sup>7</sup> There are several reasons behind the recent biodiversity reduction, namely habitat destruction, overexploitation, climate change and wildlife trafficking. After nations acknowledged these, legislative steps were taken in order to solve the problems mentioned above.

The fundamental document to regulate wildlife trade on global scale is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) signed in 1973 and ratified by 183 states. In essence, CITES has set up a licensing system administered by National CITES Authorities to authorize the trade of certain species, and it is used in the export, import, and re-export of wildlife. Regarding criminal law, CITES requires parties to enforce its regulations by penalizing the trade or possession of certain species, without detailing the exact measures. The three appendices of CITES provide certain levels of protection to threatened species listed there, and they are widely used in national criminal codes to describe the species protected by the law. The trade of species included in Appendix I is banned and the species listed in Appendix II can only be traded with strict restrictions.

However, the efforts taken were not as effective as expected, the rules were not respected as the demand for wildlife trading remained and continued in illegal forms. 'Illicit wildlife trafficking (IWT) describes any environment-related crime that involves the illegal trade,

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<sup>4</sup> <http://data.footprintnetwork.org/#/countryTrends?cn=5001&type=BCtot,EFCtot> (21/3/2019)

<sup>5</sup> <https://www.iucnredlist.org/search/list> (21/3/2019)

<sup>6</sup> A Critically Endangered species is considered to be facing an extremely high risk of extinction in the wild based on the classification system criteria of the International Union for Conservation of Nature and Natural Resources (IUCN).

<sup>7</sup> <https://www.iucnredlist.org/search/list> (21/3/2019)

smuggling, poaching, capture or collection of endangered species, protected wildlife (including animals and plants that are subject to harvest quotas and regulated by permits), derivatives or products thereof.<sup>8</sup> The gravity of the issue can be illustrated by numbers: in 2016, a total of 2268 seizures were reported by 22 EU Member States<sup>9</sup>, but according to Interpol data, only 10 to 15 percent of IWT products transiting through Europe are seized<sup>10</sup>.

There are several reasons behind the demand for wildlife products. They are bought because they are considered exotic or luxurious and for their perceived medicinal value, or simply because of tradition. Due to the large demand, IWT is the fourth most lucrative illegal activity in the world, after drug trafficking, counterfeiting and human trafficking.<sup>11</sup> The supply is created by demand, and requires multiple layer organizations: poachers, couriers, national facilitators, exporters and receivers in the destination countries.<sup>12</sup> In source regions poachers are often impoverished villagers who do not have other options for income therefore contribute to trading for little money, hence the profit often represents 6 to 10 times the initial investment into criminal activities made by organized crime groups (OCG).<sup>13</sup>

Besides high profits, IWT is facilitated by detection difficulties. Poaching and other activities usually happen in isolated places without any victim or witness reporting. Uncovering wildlife crimes often require specialized knowledge from law enforcement, which they might not possess. In most countries the enforcement priority in comparison with other forms of trafficking is low,<sup>14</sup> agencies fail to understand the threat of these criminal activities, offences are sometimes not investigated completely. Even if investigations were successful, inadequate punishment does not have any deterring power over perpetrators.

The low-risk, high-reward nature of IWT attracts OCGs with extensive international connections using corruption to ensure products from exotic locations to reach consumers around the globe. ‘The structures of the groups involved are variable and groups often only become active to service a specific order rather than continuously engaging in this activity.

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<sup>8</sup> Dalberg Global Development: Fighting Illicit Wildlife Trafficking: A consultation with governments, 2012, p. 9.

<sup>9</sup> TRAFFIC: Overview of important seizures in the European Union, 2017, p. 1.

<sup>10</sup> Interpol: Global Wildlife Enforcement: Strengthening Law Enforcement Cooperation Against Wildlife Crime, 2018, p. 10.

<sup>11</sup> European Parliament Resolution of 15 January 2014 on wildlife crime (2013/2747(RSP))

<sup>12</sup> Dalberg Global Development: Fighting Illicit Wildlife Trafficking: A consultation with governments, 2012, p. 21.

<sup>13</sup> Europol: Threat Assessment 2013. Environmental Crime in the EU, 2013, p. 15.

<sup>14</sup> European Commission: EU Action Plan against Wildlife Trafficking {SWD(2016) 38 final}, COM(2016) 87 final, Brussels, 26.2.2016, p. 3.

This is possibly linked to very specific demands and the perishable or delicate nature of some of the goods traded, such as live animals or eggs.<sup>15</sup>

The lack of border inspection inside the EU makes smuggling significantly easier. Due to the international nature of the crime, cooperation between source, transit and destination countries is crucial to fight off IWT.

### **III. INTERNATIONAL FRAMEWORK**

In 2015 the United Nations recognized the importance of fighting IWT by criminal measures as the General Assembly adopted the 69/314. Resolution entitled ‘Tackling illicit trafficking in wildlife’ (A/RES/69/314). The resolution encourages member states to harmonize regulations to support evidence exchange regarding criminal prosecution, and also encouraged them to enhance international cooperation and to create national inter-agency wildlife crime task forces. One way the UN helps member states is through the United Nations Office on Drugs and Crime (UNODC), its Global Programme for Combating Wildlife and Forest Crime links existing regional efforts and provides technical assistance to combat wildlife crime.

With a special focus on migratory animals, the Convention on the Conservation of Migratory Species of Wild Animals treaty signed under the United Nations Environment Programme provided legal grounds for the creation of the Intergovernmental Task Force on Illegal Killing, Taking and Trade of Migratory Birds in the Mediterranean (MIKT), which facilitates cooperation and responds to special problems concerning the illegal trafficking of birds in the Mediterranean. The MIKT has various goals including reviewing national legislation to identify gaps and deficiencies, providing the judiciary sector with sentencing guidelines, encouraging the networking of law enforcement officials capacity building along the enforcement chain and judiciary at Mediterranean level.<sup>16</sup>

Another promising institution in the area is the International Consortium on Combating Wildlife Crime (ICCWC) formed in 2010 by five inter-governmental organisations: the CITES Secretariat, the Interpol (which has a specialized Wildlife Crime Working Group on its own), the UNODC, the World Bank, and the World Customs Organisation. ‘ICCWC’s mission is to strengthen criminal justice systems and provide coordinated support at national, regional and

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<sup>15</sup> Europol: Threat Assessment 2013. Environmental Crime in the EU, 2013, p. 15.

<sup>16</sup> UNEP: Programme of Work 2016-2020 for the Intergovernmental Task Force on Illegal Killing, Taking and Trade Of Migratory Birds In The Mediterranean, p. 4-14. In: [https://www.cms.int/sites/default/files/document/unep\\_cms\\_mikt1\\_doc-04\\_program-of-work%20FINAL\\_0.pdf](https://www.cms.int/sites/default/files/document/unep_cms_mikt1_doc-04_program-of-work%20FINAL_0.pdf) (31/3/2019)

international level to combat wildlife and forest crime to ensure perpetrators of serious wildlife and forest crime will face a formidable and coordinated response<sup>17</sup>. Its main achievement is the Wildlife and Forest Analytic Toolkit, a comprehensive analysis tool to better understand the main criminal justice system issues relating wildlife crimes. It reviews five key areas in a country: legislation, law enforcement responses, the judiciary and prosecution, drivers and prevention, data analysis. Several countries implemented recommendations based on government requested analysis provided by the Toolkit, the list<sup>18</sup> includes key actors in wildlife trafficking like Botswana, Tanzania and Vietnam. The ICCWC also coordinates and supports international operations fighting traffickers, provides specialized training for national authorities, and organizes high-profile conferences.

#### IV. EUROPEAN FRAMEWORK

Europe is in a special position because it is a source, transit and destination region for IWT. The European Union is an important market for medicinal products delivered from plants, live reptiles and reptile skin, live and dead birds, eggs, mammal bodies, parts and derivatives, corals, caviar, timber products<sup>19</sup>. Seizure records show the EU serves as a transit region for African and South American wildlife products heading to Asia. Ivory, rhino horns, dried seahorses, pangolin scales go through European infrastructure hubs with mainly China as destination<sup>20</sup>.

‘Species in Europe are also endangered and trafficked and sometimes overlooked in wildlife trafficking campaigns.’<sup>21</sup> One of the largest issues is the smuggling of the European eel, a ‘critically endangered’ species. 7 - 20 tonnes of European eel were exported illegally to East Asia each year between 2012 and 2015<sup>22</sup>, where they are sold for high prices on the black market. Another problem is illegal bird trading and hunting. While hunting is a legally practiced tradition in many countries, 25 million birds are killed illegally in the Mediterranean each year,

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<sup>17</sup> <https://cites.org/eng/prog/iccwc.php> (21/3/2019)

<sup>18</sup> Implementation of the ICCWC Wildlife and Forest Crime Analytic Toolkit - Summary of progress by CITES Secretariat and UNODC, April 2018, p. 1.

<sup>19</sup> European Commission Staff Working Document – Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking, SWD(2016) 38 final, Brussels, 26.2.2016, p. 16.

<sup>20</sup> European Commission Staff Working Document – Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking, SWD(2016) 38 final, Brussels, 26.2.2016, p. 20.

<sup>21</sup> Smith, Olivia Luci – Sina, Stephan – Pantzar, Mia: Workshop - Delivering and Enforcing the EU Action Plan against Wildlife Trafficking, European Union, 2016, p. 14.

<sup>22</sup> European Commission Staff Working Document – Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking, SWD(2016) 38 final, Brussels, 26.2.2016, p. 20.

nearly 10 million in EU member states<sup>23</sup>. Criminals transport protected animals from Southern and Eastern Europe particularly from the Carpathians to high-end restaurants in Italy or France to be served as delicacies.

Given that the threatened habitats and species form part of the Community's natural heritage and the threats to them are often of a transboundary nature, it is necessary to take measures at Community level in order to conserve them.<sup>24</sup>

#### **IV.1. European law**

Europe is in a uniquely advantageous position to fight wildlife crime compared to the rest of the world thanks to the strong international cooperation in the continent.

The first step in Europe was the Council of Europe Convention on the Protection of Environment through Criminal Law, signed on the 4th of November, 1998. The treaty is 'aimed at improving the protection of the environment at European level by using the solution of last resort - criminal law - in order to deter and prevent conduct which is most harmful to it'.<sup>25</sup> In Article 10, the convention contains specific provisions to strengthen international cooperation regarding the investigation and prosecution of environmental crimes. However, only 13 member states of the Council of Europe signed it, and only Estonia ratified the convention that illustrates the attitude of the nations to the topic quite well.

Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008<sup>26</sup> on the protection of the environment through criminal law requires member states to constitute the killing, destruction, possession, and trading of species listed in other relevant Community legislation<sup>27</sup> as criminal offences, with special attention to the liability and punishments of legal persons.

In the EU there had been substantial progress in recent years in combating ITW. In 2014 – prior to the A/RES/69/314. resolution – the European Parliament adopted the resolution of 15 January 2014 on wildlife crime (2013/2747(RSP)) in which it called for the establishment of a

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<sup>23</sup> Birdlife International: The Killing, 2015, p. 3.

<sup>24</sup> Preamble of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

<sup>25</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/172> (26/3/2019)

<sup>26</sup> Looking back, in 2003 the European Council adopted the Council Framework Decision 2003/80/JHA with stricter regulations, but the Court of Justice of the European Union eliminated the decision because of formal reasons in 2005 (C-76/03.).

<sup>27</sup> Significant directives in the area are: Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

wildlife crime action plan and several other measures such as strengthening the judiciary and prosecution regarding wildlife trafficking, harmonization of criminal offences of the area, dedicated trainings, more financial instruments and enhanced international cooperation. In 2015 the EU joined CITES as a legal entity.<sup>28</sup> The required Action Plan was adopted in 2016 by the European Commission which is a comprehensive list of efforts to fight wildlife trafficking. The plan has three priorities: 1) preventing wildlife trafficking and addressing its root causes, 2) making implementation and enforcement of existing rules and the fight against organised wildlife crime more effective, and 3) strengthening the global partnership of source, consumer and transit countries against wildlife trafficking. In the field of the second priority ambitious goals were set out regarding criminal procedure such as improving detection rate of illegal activities and cooperation on cases of cross-border IWT, improving communication and data flow amongst agencies, boosting expert capabilities, stepping up international cooperation between Member States and key non-EU countries and organizations like ICCWC and building support capacity for law enforcement.

## **IV.2. European institutions**

As the EU's law enforcement agency, Europol leads the fight against illicit wildlife trafficking in the EU. Europol supports Member States in fighting serious international crimes, including environmental crimes, and assists national enforcement authorities by collecting, analysing and spreading information. It also coordinates, organises and conducts investigations together with national enforcement authorities or within joint investigation teams involving several Member States. In 2013, Europol identified IWT as an emerging threat in its Serious and Organised Crime Threat Assessment (SOCTA). The EU Policy Cycle (EMPACT) declared environmental crimes, particularly wildlife trafficking a priority crime area for the period 2018 - 2021.<sup>29</sup> Europol has supported several high-profile operations<sup>30</sup> against wildlife crime, the most significant was the Operation COBRA III, which led to the recovery of a huge amount of wildlife products, including over 12 tonnes of elephant ivory, at least 119 rhino horns, 11.439 dead and live specimens.<sup>31</sup> The agency works closely with the EnviCrimeNet, an informal network connecting police officers and other experts.<sup>32</sup>

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<sup>28</sup> Council Decision (EU) 2015/451 of 6 March 2015 concerning the accession of the European Union to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

<sup>29</sup> EFFACE: Environmental crime and the EU, Ecologic Institute gGmbH, Berlin, 2016, p. 22.

<sup>30</sup> See: Operation LAKE, Operation Thunderstorm, Operation SUZAKU

<sup>31</sup> <https://www.europol.europa.eu/activities-services/europol-in-action/operations/operation-cobra-iii> (26/3/2019)

<sup>32</sup> <http://www.envicrimenet.eu/> (26/3/2019)

As a judicial coordination organization Eurojust has been involved in wildlife crime cases from the beginning. Between 2012 and September 2018 it provided legal assistance in 55 environmental crime cases and established 4 joint investigation teams (JIT).<sup>33</sup> In the ‘Bird-Egg case’ Eurojust assisted in setting up a JIT between Sweden and Finland and provided funding which enabled an ornithologist expert to join the investigation, and as a result a criminal network illegally trading birds was discovered.<sup>34</sup>

One of the most useful resources available for law enforcement fighting IWT is the European Union Trade in Wildlife Information eXchange (EU-TWIX). It is basically a database and a mailing list designed to facilitate information exchange and cooperation specifically in wildlife crime. The database tracks important seizures and helps in identification of species and the mailing list connects enforcement officials and key organisations like the CITES Secretariat, Eurojust, etc.<sup>35</sup>

Additionally, there are several organizations assisting various levels of fighting IWT in Europe. The European Network against Environmental Crime (ENEC) aims to improve the implementation and application of Directive 2008/99/EC. ENPE, the European Network of Prosecutors for the Environment has set up a working group exploring the major issues of interpretation, practical application, evidence gathering and quantification of damage to the environment that hinder efficient and effective prosecution and adjudication of non-compliance with EU wildlife laws.<sup>36</sup> IMPEL, the European Union Network for the Implementation and Enforcement of Environmental Law focuses on combating the illegal killing of birds by helping with the implementation of the Birds Directive and the Habitats Directive. Finally, the LIFE programme shall be mentioned which provides funding for several projects fighting wildlife crime.

Regarding differences between certain regions, local cooperation is necessary which has been manifested in the form of regional treaties<sup>37</sup> and organisations.

## V. DETECTION OF ILLICIT WILDLIFE TRAFFICKING

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<sup>33</sup> Nummela, Heidi: Eurojust and environmental crimes. Presentation at ENPE Conference, 23-24 October 2018, Heraklion, presentation, p. 18. In: <http://waldrapp.eu/science/conference-crete-2018/wp-content/uploads/2018/11/Day-2-1st-plenary-Nummela.pdf> (30/3/2019)

<sup>34</sup> Eurojust, Eurojust News Issue No. 10 (December 2013) On Environmental crime, p. 15.

<sup>35</sup> TRAFFIC: EU-TWIX – An internet tool to assist the EU in the fight against wildlife trade crime, 2019, p. 1-2. In: <https://www.traffic.org/site/assets/files/3792/eu-twix-leaflet-2019-en-web.pdf> (30/3/2019)

<sup>36</sup> <https://www.environmentalprosecutors.eu/wildlife-crime> (27/3/2019)

<sup>37</sup> eg. Framework Convention on the Protection and Sustainable Development of the Carpathians, Danube River Protection Convention

As mentioned above the commitment fighting against organised IWT already exists and the legal frames are provided at EU level. Priority 2 of the Action Plan declares the necessity of making implementation and enforcement of existing rules and the fight against organised wildlife crime more effective in which improving the rate of detection of illegal activities is highlighted.<sup>38</sup>

To carry out quantitative analyses of IWT is challenging due to its covert nature. ‘Accurately identifying trends in illegal trade (either over time or when comparing countries) is complicated in particular because we do not know what proportion of illegal transactions is seized (seizure rate) and what proportion of these is reported (reporting rate).’<sup>39</sup> Available EU seizure data (2011-2013) indicates that the latency is high. The number of indictments<sup>40</sup> in environmental crimes in Hungary also seems to confirm this presumption:

	2014	2015	2016	2017
<b>total number of registered cases of all types of crimes</b>	329.575	280.113	290.779	226.452
<b>registered cases of Damaging the Natural Environment</b>	125	91	87	81
<b>indictments thereof</b>	49	35	42	28

Based on the experience of Hungarian procedures IWT cases unfold by accident during routine roadside checks. This is confirmed by Hungarian judges ruling in such cases.

### **V.1. Caught in the act and the investigation afterwards**

The typical deficiencies of these cases can be well illustrated with the following Hungarian procedure<sup>41</sup>.

The Romanian defendant drove through Hungary from Romania to Italy with 6 Romanian passengers. During a roadside check on M3 highway police officers inspected them and their luggage where they found 10 pieces of plucked frozen quail in the driver’s cooler. The intrinsic value of the birds was altogether 500.000.-HUF (app. 1.500.-EUR).<sup>42</sup>

The defendant constantly stated he was unaware of what kind of meat was in the cooler, he only brought it because a friend asked him to deliver it to a relative in Italy and told him it was venison. He added he did not know transporting quails in Hungary requires permission, he even

<sup>38</sup> European Commission Staff Working Document – Progress report on the implementation of the EU Action Plan against Wildlife Trafficking, SWD(2018) 452 final, Brussels, 24.10.2018, Action 10

<sup>39</sup> European Commission Staff Working Document – Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking, Brussels, SWD(2016) 38 final, 26.2.2016, p. 38.

<sup>40</sup> Source: Bűnügyi Statisztikai Rendszer (Criminal Statistic System), In: <https://bsr.bm.hu/Document> (29/3/2019)

<sup>41</sup> Case 2.B.105/2011. of Municipal Court of Hajdúböszörmény

<sup>42</sup> The value of a quail is 50.000.-HUF according to the Appendix 2 of the Decree of Minister for the Environment 13/2001. (V.9.)

mentioned quails are recommended for shooting in Romania. He presented a Romanian invoice and the report of a hunting association including the shooting and the price of 3 pieces of partridge, 2 pieces of quail and 6 pieces of redwing.<sup>43</sup>

During the investigation the 6 passengers were questioned about the cooler and their connection to the defendant. According to their statements the witnesses didn't know about the quails.

Since the defendant had no appropriate legal licence for transporting the quails through the territory of the country he was convicted of committing Damaging the Natural Environment<sup>44</sup> (DNE) and he was sentenced to 6 month imprisonment suspended for 2 years.

Accusing only one person was enough for the investigation authorities in this case as well, however the circumstances of the perpetration indicated that more people were concerned in the smuggling of the protected animals. With further investigation actions the organised elements of the crime could have been detected.

First of all, the source of the endangered animals was not examined: the exact location and circumstances of poaching, the hunter's and any possible associates' identity remained unknown. The *mens rea* of the perpetrator(s) was not clarified either. Investigators did not even attempt to involve the person whom the birds were supposed to be delivered therefore they did not figure out the aim of the criminal act. Exploring the connections of the defendant who seemed a simple driver would have been indispensable in order to recognise the characteristics of organised IWT. If authorities are satisfied with closing the cases by punishing one disposable and easily replaceable offender, they have no chance to eliminate the phenomenon.

Law enforcement agencies treat these cases as isolated offences which can be illustrated by the following cases.

In October 2011 a green media website reported a case in which 779 dead Eurasian skylarks without a proper licence (caused damage: 24.574 EUR) were discovered in a car driven by an Italian hunter at the Romanian-Hungarian border crossing point.<sup>45</sup> 5 weeks later customs found 644 illegally hunted Eurasian skylarks (caused damage: 20.315 EUR) during a roadside check in a Romanian car heading to an Italian address to deliver them on a Hungarian motorway. The

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<sup>43</sup> 'Advice and guidance across the EU by the authorities who regulate the movement of species is not always consistent and can depart from EU guidance. Record keeping of advice given to individuals is not always maintained, and it can therefore become challenging to dispute an assertion by a suspect that they had been told it was acceptable to carry out a certain action by the authorities.' – See in Eurojust – Strategic Project on Environmental Crime Report, The Hague, 2014, p. 58.

<sup>44</sup> Section 281 of Act IV of 1978 on the Criminal Code

<sup>45</sup> <http://zold.info/hirek/2011/10/23/800-pacsirta-egy-terepjaroban> (26/3/2019)

Romanian driver of the car was found guilty in an expedited proceeding and sentenced to a fine of 394 EUR.<sup>46</sup>

The two competent authorities most probably did not know about each other's cases therefore did not even try to find suspicious similarities between them. More links could have been found by comparing the data gained by their phones, e-mails, messages and social media, checking their circles of acquaintances, their source, destination and route. Ways of connecting the dots are only limited by capacity, money, willingness and the amount of shared information. The need of intelligence gathered systematically in the field of environmental crime as in other crime areas was also stressed by prosecutors at the Strategic Meeting of ENPE and Eurojust.<sup>47</sup> 'Since many different agencies and or public bodies are involved in inspecting and investigating wildlife offences, this intelligence gathering should by nature be multidisciplinary. Legal channels of communication of information should also therefore exist at national level to ensure a smooth handling and sharing of intelligence. Collection of intelligence at national level would trigger a more efficient sharing and analysing of intelligence at EU level. The opening of a Focal Point at Europol on environmental crime (including wildlife crime) would clarify trends, links with other crime areas, allow for precise threat assessments and ultimately also support coordination of investigations/ prosecutions at judicial level.'<sup>48</sup> Given all the necessary information to them, the criminal data analysts of Europol could spot the link between the two defendants and put together the whole picture about wildlife trafficking organised crime groups.

## **V.2. Open source intelligence techniques**

The effective fight against organised IWT requires more effort than just investigating the cases unfold rarely by accident, therefore law enforcement authorities have to focus on detecting IWT purposely and constantly. One method to do that is using Open Source Intelligence (OSINT) techniques.

'The internet is a horizontal issue affecting most, if not all, crime areas and environmental crime is no exception.'<sup>49</sup> Criminals use internet as a tool for their crime which might make it harder to detect and prove but this tool can be turned against them variously by the investigation authority.

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<sup>46</sup> <http://greenfo.hu/hirek/2011/12/07/penzbuntetes-a-madarcsempesznek> (26/3/2019)

<sup>47</sup> Strategic Meeting towards an enhanced coordination of environmental crime prosecutions across the EU: The role of Eurojust, held in The Hague, 27-28 November 2013.

<sup>48</sup> Eurojust – Strategic Project on Environmental Crime Report, The Hague, 2014, p. 90.

<sup>49</sup> Europol: Threat Assessment 2013. Environmental Crime in the EU, 2013, p. 17.

For the beginning of detection of IWT we recommend searching on surface net that can be accessed by anyone without any special tools; OSINT is information collected from public sources such as those available on the Internet. Although there are signs of IWT on the dark web, criminals are still not afraid of getting caught enough to disappear from the surface web. People involved in illicit activities choose dark web as a platform instead of the surface web when they worry more about getting caught by law enforcement than about scams on the dark web such as stealing their digital money from deposit by the owner of crypto markets or not getting the purchased items.<sup>50</sup> Since investigation authorities do not focus on detecting IWT on the internet yet, criminals may not be too careful on this platform. Investigation authorities may get to know the market on sites and forums providing information about the collection or use of various wildlife animals. When users show interest in having them traders might contact them in private to arrange a deal.<sup>51</sup>

The origin of the animals or products made of them or even the fact if these could be purchased legally should also be examined on e-commerce sites.

Despite the fact that the Internet is used in IWT, the extent to which the Internet is an important medium cannot be conclusively determined with the existing legislation and available data. However, it is clear that specially adapted legislation and strong collaboration with customs is needed to further investigate this crime type, in order to determine the scale and nature of the illegal trade so that appropriate enforcement measures can be taken against it.<sup>52</sup> At the moment ‘there is little information available on the extent to which internet-based trade is monitored for most Member States.’<sup>53</sup>

The role of social media is not negligible either: people are not aware how much they might reveal about themselves or others and that is a real advantage for investigations. Instagram is a great example: it is well-known that a number of Italian or Maltese restaurants serve endangered birds from the Carpathians as delicacies. It is also well-known that people like sharing photos of delicacies they eat and they often tag the restaurant. By finding pictures and

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<sup>50</sup> See more about the functioning and characteristics of the surface and dark web in: dr. Pálfi, Dóra: A kiberbűnözés elleni fellépés lehetséges eszközei az online illegális piacokon – A Silk Road elleni nyomozás (Possible tools for combating cybercrime in online illegal markets – The Silk Road Investigation) thesis, Budapest, 2018.

<sup>51</sup> Thomaz, Felipe: Illicit wildlife markets and the dark web. A scenario of the changing dynamics, Global Initiative Against Transnational Organized Crime, 2018, p. 4-5.

<sup>52</sup> Interpol: Project Web – An Investigation Into the Ivory Trade Over the Internet within the European Union, Environmental Crime Programme, 2013, p. 3.

<sup>53</sup> Sina, Gerstetter, Prsch, Roberts, Smith, Klaas, Fajardo de Castillo: Wildlife crime – Study for the ENVI Committee, European Union, 2016, p. 94.

hashtags indicating the consumption of protected animals, investigators have the opportunity to check whether the restaurant had the proper permit to possess the animals and if not, how it obtained them.

These are just two examples how investigation authorities could start exploring the threads for the whole criminal organisation. OSINT techniques are also very useful in situations when the investigation already has a target person but needs to know more about his/her circles, whereabouts, interests, etc. Further methods should be discussed behind closed doors for the success of future investigations.

### **V.3. The role of administrative authorities in detection**

Similar to other forms of organised crimes, forging declarations and using false papers in order to disguise the offences committed occur in IWT cases.<sup>54</sup>

It is the responsibility and duty of the administrative authorities to monitor regularly the activity of the traders, breeders and keepers in order to prevent the breach of the international, EU and national regulation. In case of noticing suspicious growth of population the administrative authority shall report the case to the investigative authority. It is also necessary because most permit documents do not have an expiry date and without post-grant monitoring laundering of illegal specimens through the replacement of individuals born in captivity by others from the wild, or replacing dead specimens with those poached is an easy way to circumvent the rules for criminals.<sup>55</sup>

Sturgeons are on the brink of extinction due to, among other factors, habitat degradation and overexploitation, including illegal fishing.<sup>56</sup> The scarcity of ‘real’ (wild) caviar made out of them and its luxurious characteristics has offered a unique opportunity for organized crime to earn millions of euros from illegal fishing, smuggling and trafficking in various countries.<sup>57</sup>

Illegal trade is often involved with seemingly legal fishing or breeding businesses, therefore it is important to keep them under strict administrative control. ‘Enforcement authorities of consumer and transit countries/territories should pay a close attention to caviar that is claimed to be wild sourced and, as appropriate, get in contact with exporting countries to check if export

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<sup>54</sup> e. g. European Commission Staff Working Document – Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking, SWD(2016) 38 final, Brussels, 26.2.2016, p. 66

<sup>55</sup> Sina, Gerstetter, Prsch, Roberts, Smith, Klaas, Fajardo de Castillo: Wildlife crime – Study for the ENVI Committee, European Union, 2016, p. 94.

<sup>56</sup> Harris, L. and Shiraiishi. H. (2018). Understanding the global caviar market. Results of a rapid assessment of trade in sturgeon caviar. TRAFFIC and WWF joint report, p. 7.

<sup>57</sup> Daan van Uhm & Dina Siegel: The illegal trade in black caviar. Published online: 24 February at Springerlink.com, Trends Organ Crim (2016) 19:67-87, p.83.

permits are issued properly. Relevant enforcement authorities especially of the range states and countries that have been reported being on illegal trade routes should check that the species, source (e.g. wild, captive bred) and the geographic origin of the caviar match those provided on the label/packaging also using laboratory techniques to minimise the risk of fraud and illegal trade.<sup>58</sup>

Food chain safety offices could play an important role in monitoring the source of purchases of restaurants; stricter control on them might also push back supply.

National administrative authorities shall rely on the available mechanisms for full use of data sharing with each other such as EU-TWIX. United Nations Environment Programme (UNEP) states that monitoring the legal trade and curbing the illegal trade in wildlife requires good information exchange and cooperation, involving importing, exporting and transit countries. Therefore, UNEP recommends that mechanisms need to be enhanced to facilitate rapid exchanges of intelligence between enforcement agencies.<sup>59</sup>

#### **V.4. Applicability of covert data-gathering tools**

No doubt that coercive or complex investigation techniques (e. g. undercover agents, interception of communications) are one of the most powerful tools of the investigators. The conditions of using these tools are different in every national legislation which might obviously be an obstacle in international cooperation. In Hungary using covert data-gathering tools subjected to judicial or prosecutorial permit is possible in DNE cases, however in some countries the level of penalty for this offence might not be high enough to allow for these techniques.<sup>60</sup>

### **VI. FORMS OF INTERNATIONAL COOPERATION IN INVESTIGATIONS**

When the national law enforcement agencies recognise the transboundary nature of IWT they shall conduct the investigation together in order to eliminate the criminal organisation.

One of the most effective form of international cooperation is the Joint Investigation Team (JIT). A JIT is a ‘team consisting of judges, prosecutors and law enforcement authorities, established for a fixed period and a specific purpose by way of a written agreement between

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<sup>58</sup> Harris, L. and Shiraishi. H. (2018). Understanding the global caviar market. Results of a rapid assessment of trade in sturgeon caviar. TRAFFIC and WWF joint report, p. 69.

<sup>59</sup> Duffy, Rosaleen: EU trade policy and the wildlife trade, European Union, Belgium 2016, p. 31.

<sup>60</sup> Eurojust – Strategic Project on Environmental Crime Report, Appendix 3, The Hague, 2014, p. 57.

the States involved to carry out criminal investigations in one or more of the involved States. Team members carry out their duties in accordance with the national laws of the territory in which the investigation takes place. 'JITs enable the direct gathering and exchange of information and evidence without the need to use traditional channels of mutual legal assistance (MLA).'<sup>61</sup> 'JITs allow for the development of a common strategy, on-the-spot coordination and the informal exchange of specialised knowledge on serious cross-border crime cases. They also strengthen mutual trust and interaction between team members from different jurisdictions and work environments.'<sup>62</sup>

Member States who want to work together in a JIT can rely on two significant bodies. Europol can provide help for the investigations with information exchange and criminal intelligence analysis, it can serve as a support centre for law enforcement operations.<sup>63</sup> Eurojust has its tools of coordination meetings and JIT funding to offer and can provide expert advice on the conclusion of JIT agreements and related legal questions.<sup>64</sup> Eurojust accelerates the proceeding of information exchanging and helps with clarifying the respective mandates and ensures efficient coordination of the relevant entities<sup>65</sup> which is useful because finding and contacting the appropriate foreign authority can be confusing for Member States. Despite the huge amount of benefits Eurojust could provide, Member States rarely take the opportunity: the number of cases in which Member States have requested support from Europol remains low (on average less than 10 per year),<sup>66</sup> and until 2014 only five countries involved Eurojust in concrete cases of all kinds environmental crimes. In these cases Eurojust helped the countries to identify criminals, gave recommendations and enabled communication between the parties involved.<sup>67</sup>

There is cooperation not only at EU level but in certain regions as well. Such initiation is the Police Cooperation Convention for Southeast Europe<sup>68</sup> (PCC SEE) entered into force in 2007. PCC SEE allows the Contracting Parties upon request to exchange data of individuals involved

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<sup>61</sup> Crampton, Nicholas: Co-operation in enforcing Wildlife trafficking – Institutions and Instruments, ERA, 2016, p. 16.

<sup>62</sup> Eurojust, Eurojust News Issue No. 9 (June 2013) On Joint Investigation Teams, p. 2.

<sup>63</sup> <https://www.europol.europa.eu/about-europol> (26/3/2019)

<sup>64</sup> Eurojust, Eurojust News Issue No. 9 (June 2013) On Joint Investigation Teams, p. 2.

<sup>65</sup> Eurojust – Strategic Project on Environmental Crime Report, The Hague, 2014, p. 31.

<sup>66</sup> European Commission Staff Working Document – Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking, Brussels, 26.2.2016, SWD(2016) 38 final, p. 49.

<sup>67</sup> Eurojust – Strategic Project on Environmental Crime Report, The Hague, 2014, p. 71.

<sup>68</sup> The founding members were Albania, Bosnia and Herzegovina, Macedonia, Moldova, Romania, Serbia and Montenegro. Bulgaria (2008), Austria (2011), Hungary (2012), Slovenia (2012) joined the convention.

in organised crime, intelligence on links between the suspects and persons under suspicion in relation to commission of criminal offences.<sup>69</sup> To reconnoiter a major criminal organisation PCC SEE Member States are allowed to pursue investigation with a help of an ‘undercover investigator’ according to Article 16.

## VII. BEYOND CRIMINAL PROCEDURE

In order to effectively apply the proposed methods to fight against organised IWT successfully States have to strengthen the knowledge, capacity and cooperation between institutions and actors in the field.<sup>70</sup>

Enforcement officials (border police, customs officials and other relevant authorities) should be trained in the form of international or joint trainings on how they can provide the judiciary with all the necessary information for effective prosecution.<sup>71</sup> It is crucial staff at all levels to be adequately trained and skilled to meet those challenges and hazards associated with combating wildlife and forest offences.<sup>72</sup>

Some trainings on wildlife trafficking are already included in the programme of EU training institutions such as European Union Agency for Law Enforcement Training (CEPOL), the Academy of European Law (ERA) and others according to the Progress Report of the Action plan.<sup>73</sup>

States shall provide sufficient material and human resources to enhance the capacity of law enforcement authorities.

‘One way of enabling effective cross-border cooperation would be to improve the level of communication (including passing on good practices) and information exchange, particularly on administrative measures and sanctions between Member States, Europol and the Commission.’<sup>74</sup>

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<sup>69</sup> Art. 5. (1) a)

<sup>70</sup> Schlingemann, L. (Editor in Chief); de Bortoli, I., Favilli F.; Egerer, H.; Musco, E.; Lucas T.; Lucius, I. (Eds). 2017. Combating Wildlife and Forest Crime in the Danube-Carpathian Region. A UN Environment – Eurac Research – WWF Report, p. 7.

<sup>71</sup> Schlingemann, L. (Editor in Chief); de Bortoli, I., Favilli F.; Egerer, H.; Musco, E.; Lucas T.; Lucius, I. (Eds). 2017. Combating Wildlife and Forest Crime in the Danube-Carpathian Region. A UN Environment – Eurac Research – WWF Report, p. 37.

<sup>72</sup> UNODC: Wildlife and Forest Crime Analytic Toolkit Revised Edition, United Nations, New York, 2012, p. 91.

<sup>73</sup> See: [https://www.era.int/cgi-bin/cms?\\_SID=4661088b822e629a5858b4d0e54dd16d08852cd700632447682688&\\_sprache=en&\\_bereich=artikel&\\_aktion=detail&idartikel=125762](https://www.era.int/cgi-bin/cms?_SID=4661088b822e629a5858b4d0e54dd16d08852cd700632447682688&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=125762)

<sup>74</sup> European Commission Staff Working Document – Analysis and Evidence in support of the EU Action Plan against Wildlife Trafficking, Brussels, 26.2.2016, SWD(2016) 38 final, p. 50.

Communication and cooperation should also be enhanced at national level amongst cross-border bodies, law enforcement agencies and administrative authorities concerned thus they could work together as multi-agency enforcement task forces to tackle organised IWT.<sup>75</sup>

Damage caused to the environment by committing wildlife crimes cannot be restored by punishing the perpetrator therefore every effort should be made to prevent it.

Non-governmental organisations like TRAFFIC, World Wildlife Fund (WWF) and IUCN plays an important role in raising public awareness. Bottom-up communities are suitable for changing the attitude of careless individuals by educating them how to live an environmentally conscious life.

## VIII. CONCLUSION

In this paper we showed why wildlife crime is a significant problem, why it is crucial to fight against organised IWT that needs to be more effective and how we could achieve it.

Detecting IWTs must not be left to chance therefore we proposed a new approach towards these cases by introducing applicable OSINT techniques. We also emphasized that law enforcement agencies and administrative authorities have to work together at national and EU level in this matter in order to eliminate the threatening phenomenon.

Judicature would benefit substantially from clarification and harmonisation of the definition of offences regarding IWT, from the introduction of similar levels of penalty across the European Union, but ‘also from a common interpretation of the different specific texts existing under the label ‘European environmental law’. In national legislation the burden of proof in relation to specific criteria can be hard, proving the criterion ‘potential danger of the environment to a considerable degree’ is particularly challenging.<sup>76</sup> These will probably only be made feasible by a clear recognition, starting at national level, of the seriousness of those types of crime.<sup>77</sup>

Tight time limits, procedural and communicational complications usually discourage investigators from conducting IWT related criminal proceedings. Obtaining evidence from abroad takes long time, which can itself pose challenges to presenting a case within bound time

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<sup>75</sup> Interpol: Project Web – An Investigation Into the Ivory Trade Over the Internet within the European Union, Environmental Crime Programme, 2013, p. 4.

<sup>76</sup> Eurojust – Strategic Project on Environmental Crime Report, The Hague, 2014, p. 56-57.

<sup>77</sup> Eurojust – Strategic Project on Environmental Crime Report, The Hague, 2014, p. 36.

limits. ‘In requests for information from abroad, it can be challenging to convey the procedural requirements in the laws of the requesting country that any evidence produced will have to meet (these requirements may be unknown in the foreign jurisdiction). For example, copy documentary productions may require appropriate certification to explain that they are copies.’<sup>78</sup>

Nevertheless, international cooperation should be seen as an opportunity rather than an obstacle. If implemented and executed properly, law enforcement cooperation in cross-border organised wildlife trade cases contributes to the effectiveness of international judicial cooperation, enabling countries to seek legal assistance, the transfer of proceedings in criminal matters, and cooperation for the purposes of the confiscation of criminal proceeds and assets.<sup>79</sup>

The 5-year duration of the Action Plan is shortly coming to an end when its result will need to be evaluated. However, it is already foreseeable that a decision point seems to be coming soon. At this point we need to choose either investing in human and financial resources in order to preserve our nature or resigning ourselves to the ‘inevitable’. We believe the right decision is obvious. We need to increase the capacity of law enforcement otherwise the biodiversity would suffer damage that cannot be restored afterwards.

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<sup>78</sup> Eurojust – Strategic Project on Environmental Crime Report, The Hague, 2014, p. 36.

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