

**WILDLIFE PROTECTION IN GERMANY:
SOUND LEGISLATION AND DEFICIENT IMPLEMENTATION**

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ABSTRACT: National, European, and international legislation regulates wildlife protection in Germany. Germany has comprehensively codified into national legislation numerous international and regional treaties. Furthermore, European Union regulations are directly binding in its Member States. Yet Germany's implementation of wildlife protection laws remains wanting. The gap between the country's comprehensive legal framework and related enforcement is glaring. Germany's decentralized administrative structure embedded in its federal system is the main impediment to better implementation of wildlife protection laws. While the country's federal structure might stand in the way of more centralized enforcement, a more coordinated approach still offers a realistic remedy to narrow the gap between Germany's legislation and enforcement. This article discusses Germany's wildlife protection laws, analyzes its enforcement approach, and recommends ways to improve.

RESUM: La legislació nacional, europea i internacional regula la protecció de la vida silvestre a Alemanya. Alemanya ha codificat àmpliament en la seva legislació nacional nombrosos tractats internacionals i regionals. A més, la normativa de la Unió Europea és directament vinculant en els seus Estats Membres. No obstant això, l'aplicació de les lleis

de protecció de la vida silvestre a Alemanya continua sent deficient. La bretxa entre l'ampli marc jurídic del país i l'aplicació de les lleis corresponents és flagrant. L'estructura administrativa descentralitzada d'Alemanya, integrada en el seu sistema federal, és el principal impediment per a una millor aplicació de les lleis de protecció de la vida silvestre. Encara que l'estructura federal del país pot obstaculitzar una aplicació més centralitzada, un enfocament més coordinat continua sent un remei realista per reduir la bretxa entre la legislació alemanya i la seva aplicació. Aquest article examina les lleis alemanyes de protecció de la vida silvestre, analitza el seu enfocament d'aplicació i recomana maneres de millorar.

RESUMEN: La legislación nacional, europea e internacional regula la protección de la fauna en Alemania. Alemania ha codificado ampliamente en su legislación nacional numerosos tratados internacionales y regionales. Además, la normativa de la Unión Europea es directamente vinculante en sus Estados miembros. Sin embargo, la aplicación de las leyes de protección de la fauna silvestre en Alemania sigue siendo deficiente. El desfase entre el amplio marco jurídico del país y la aplicación de las leyes correspondientes es evidente. La estructura administrativa descentralizada de Alemania, integrada en su sistema federal, es el principal impedimento para una mejor aplicación de las leyes de protección de la vida silvestre. Aunque la estructura federal del país puede obstaculizar una aplicación más centralizada, un enfoque más coordinado sigue siendo un remedio realista para reducir la brecha entre la legislación alemana y su aplicación. Este artículo examina las leyes alemanas de protección de la fauna y la flora silvestres, analiza su enfoque de aplicación y recomienda formas de mejorar.

KEYWORDS: Germany - European Union - wildlife protection - federalism - law enforcement

PARAULES CLAU: Alemanya - Unió Europea - protecció de la vida silvestre - federalisme - aplicació de la llei

PALABRAS CLAVE: Alemania - Unión Europea - protección de la vida silvestre - federalismo - aplicación de la ley

SUMMARY: I. Introduction -- II. Germany's legal framework for wildlife protection -- III. Germany's enforcement structure -- IV. Assessing Germany's enforcement structure -- V. Enhancing enforcement capacities -- VI. Conclusion -- VII. References

I. INTRODUCTION

Although not important as a source country, Germany is one of the biggest import countries of wildlife products such as live animals for the domestic pet market and hunting trophies.¹ For instance, "Germany is by far the largest importer of live reptiles within the EU."² Germany is also host to one of the world's largest reptile trade shows which takes place in the town of Hamm, attracting traders and customers from Europe and across the world.³ German tourists are the main culprits. They often do not know that the species they are bringing back home are endangered. Yet collectors of rare species with no commercial interests are also among the top offenders. Finally, in addition to tourists and collectors, professional smugglers with pecuniary interests violate Germany's wildlife laws.⁴ They often organize within and across borders.⁵ Moreover, Germany serves a transit country for wildlife species and products.⁶

Numerous regional and international wildlife protection treaties, multilateral conventions, and European laws regulate the protection of endangered species in Germany to a significant degree. For instance, Germany has ratified the Convention on Biological Diversity, the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on the Conservation of Migratory Species of Wild Animals (CMS), and the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention). Both the Center for Governance and Sustainability at the University of Massachusetts Boston and the Yale Center for Environmental Law & Policy at Yale University rank Germany high for its efforts to

¹ ALTHEER; LAMETER, 2020.

² AULIYA et al., 2016, p. 105.

³ SOLLUND, 2013.

⁴ SOLLUND, 2020b.

⁵ KLAAS; SINA; GERSTETTER, 2016.

⁶ KLAAS; SINA; GERSTETTER, 2016.

integrate these and other environmental treaties into federal law.⁷ Furthermore, as a Member State of the European Union (EU), Germany is directly bound by EU regulations, including the EU Wildlife Trade Regulations which adopts CITES as EU law. In addition, German federal laws have incorporated EU directives such as the Habitats Directive and the Birds Directive. These two directives, jointly called the nature directives, transpose the Bern Convention into EU law. The Habitats Directive requires the signatories to designate protected areas for the conservation of flora and fauna species. The Birds Directive aims to protect Europe's wild birds, prohibiting the killing and capturing of these species as well as the destruction of their natural habitat.

As a signatory to various international treaties, the EU commonly exceeds minimum commitments in its adoption of legislation, thereby committing Germany to the same ambitious goals. Furthermore, Germany's legal framework occasionally goes even beyond EU directives and regulations and regularly beyond international norms.⁸ On the other hand, the European Commission has recently taken Germany to court over its failure to implement the Habitats Directive. For several years, Germany has failed to designate a significant number of sites as Special Areas of Conservation (SAC) which are needed to protect and restore biodiversity on German territory.⁹ Nevertheless, with potential prison sentences of up to 5 years and administrative fines of up to €50,000, Germany's laws for the protection of wildlife are considered comprehensive and sufficient both in terms of what is prohibited and the penalties incurred by violations.¹⁰

Despite Germany's comprehensive legal framework, enforcement of existing wildlife conservation laws has remained insufficient. The gap between the country's laws and enforcement is glaring and unfortunate. Prosecution is wanting, and court sentences for convicted offenders are usually lenient. The maximum penalty has never been imposed. And even in one of the most reported cases, a seizure of more than a ton of ivory, the perpetrators received only a suspended jail sentence.¹¹ Germany's federal system is the

⁷ CENTER FOR GOVERNANCE AND SUSTAINABILITY, University of Massachusetts Boston; YALE CENTER FOR ENVIRONMENTAL POLICY & LAW, Yale University.

⁸ KLAAS; SINA; GERSTETTER, 2016, pp. 16f.

⁹ DEUTSCHE WELLE, 2021.

¹⁰ SINA et al., 2016, pp. 73-84.

¹¹ SÜDDEUTSCHE ZEITUNG, 2020.

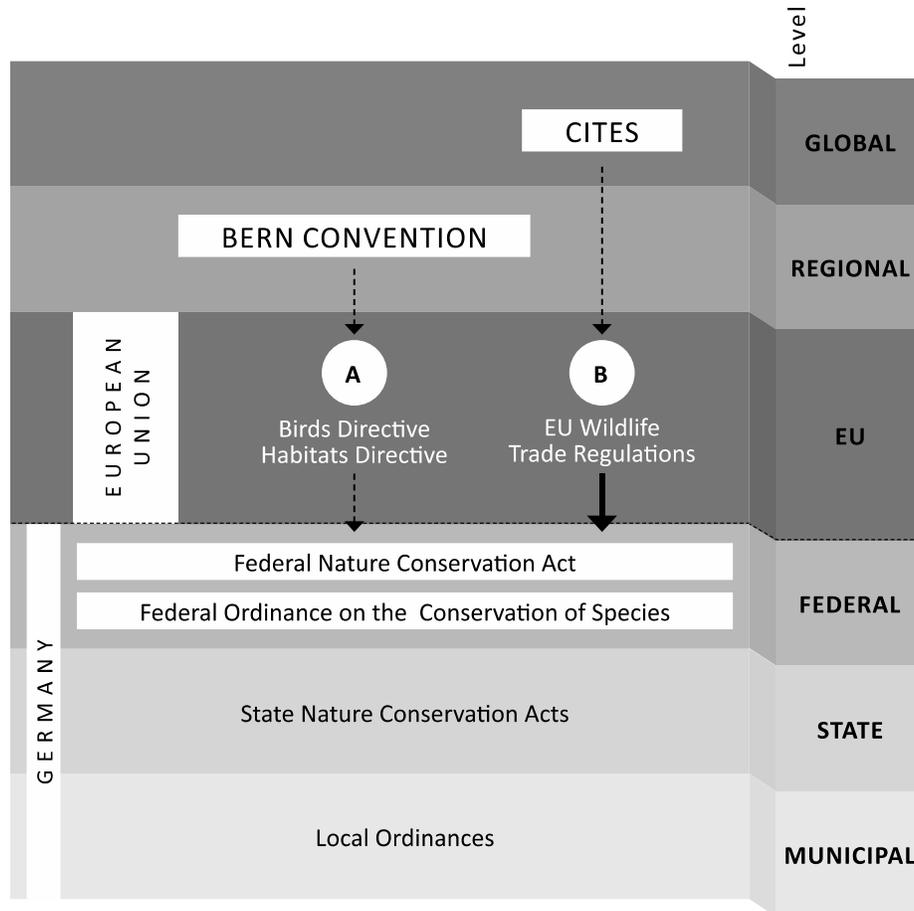
main culprit for this gap. While Germany's customs agency and the Federal Agency for Nature Conservation are the two central enforcement agencies at the federal level, the enforcement structure below the federal level is fractured, differing from state to state and even from municipality to municipality. As will be argued below, this level of decentralization prevents a coordinated attempt to detect and penalize criminal offenses and administrative violations that are laid out in Germany's legal framework. I hypothesize further that the devolution of authority to the state and municipal level undermines the ability of enforcement agents to develop sufficient expertise and motivation to prosecute wildlife crime. It sometimes even undermines the impartiality of enforcement agents, making them susceptible to business and political interests.

This article analyzes the origins of Germany's deficient law enforcement and outlines ways to overcome it. It starts with describing Germany's legal framework (Part II) and enforcement structure (Part III). In Part IV, I discuss key reasons for Germany's inability to enforce its wildlife protection laws. Thereafter, I propose measures to improve Germany's law enforcement (Part V). The article concludes with a summary of the findings and an urgent appeal to address the disconnect between the country's ambitious legal framework and its enforcement of wildlife-protection laws (Part VI).

I rely on secondary sources and about a dozen qualitative and semi-structured interviews that I conducted with various individuals who were involved in various capacities with the protection of wildlife in Germany. The list includes officials at the local, state, and federal level, including police officers and bureaucrats, as well as expert witnesses, activists, and politicians. The interviews lasted anywhere between one and two hours. All interviewees agreed that the interviews would be recorded and that they would be cited in later publications with their full names and official positions.

II. PROTECTING WILDLIFE IN GERMANY - THE LEGAL FRAMEWORK

For all EU Member States, wildlife protection comprises governance at multiple stages, from the international to the local level. Using the examples of CITES and the Bern Convention, this section outlines how international and regional conventions filter through EU legislation into German laws. The following graph summarizes the discussion.



CITES. The Convention on International Trade in Endangered Species of Wild Fauna and Flora entered into force in 1975. Germany was one of the initial parties of *CITES*, and the Convention was ratified in Germany a year later. The European Union officially became a full party to *CITES* only thirty years later, in 2005. Yet the EU's engagement with *CITES* began well before its official accession. Starting in 1984, the EU has passed several regulations that applied *CITES* directly to all its Member States, whether they were already signatories to *CITES* at the time or not. With the successive completion of the European Single Market, national border controls vanished, and a common external border was erected. It therefore became inevitable that international trade treaties would be commonly enforced throughout the EU Member States.¹²

¹² FAJARDO DEL CASTILLO, 2012.

CITES aims at controlling the international trade of wildlife. The parties of to the Convention recognize that this trade is a key factor “for the persistent decline in species and populations of animal and plants worldwide.”¹³ CITES classifies species into three groups, depending on the level of endangerment. The first group, listed in *Appendix I* of the Convention, comprises species who are threatened with extinction. Rarely are trade exceptions permitted for species in these groups (e.g., rare exceptions are granted to travelling circuses and for animals that were bred in captivity). Import and (re-)export licenses that document these circumstances are required. In *Appendix II* are species that are not necessarily threatened with extinction, “but in which trade must be controlled in order to avoid utilization incompatible with their survival.”¹⁴ (Re-)export licenses are required, though not necessarily import licenses. In *Appendix III* are species “that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade.”¹⁵ The countries in which these species are protected require licenses to control the export of these species from their territories. Close to 40,000 species are listed in CITES (about 6,000 species of animals and 33,000 species of plants), representing roughly 2% of currently known species in the world, and the Appendices are updated every three years.

The EU’s Wildlife Trade Regulations have adopted the three CITES appendices. Appendices I-III are largely congruent with Annex A-C in Council Regulation (EC) No. 338/97.

- *Annex A* includes all species listed in CITES Appendix I species, as well as some indigenous species from CITES Appendix II and III for which the EU has adopted stricter domestic measures, implementing the Habitats Directive and the Birds Directive (see subsection on the Bern Convention).
- *Annex B* comprises most CITES Appendix II species, as well as some Appendix III species and some non-CITES species. It is important to note that both export and import licenses are required for species listed in Annex B (CITES demands only export licenses).

¹³ FEDERAL AGENCY FOR NATURE CONSERVATION, 2021a.

¹⁴ CITES, 2021.

¹⁵ CITES, 2021.

- *Annex C* includes most CITES Appendix III species.
- Finally, *Annex D* has no equivalent in CITES, though it includes some CITES Appendix III species. It is often referred to as the monitoring list. Species in Annex D are closely monitored for statistical purposes, allowing for a scientific assessment whether a higher level of protection should eventually be recommended to CITES.¹⁶

As the EU's Wildlife Trade Regulations are directly applicable, Germany has adopted these regulations mainly into its Federal Nature Conservation Act (BNatSchG) and the Federal Ordinance on the Conservation of Species (BArtSchV). The Nature Conservation Act discriminates distinguishes between two groups of protected species: strictly protected (highest protection level) and specially protected (high protection level). All strictly protected species are also specially protected. No specially protected species may be killed. Moreover, these species and their derived products (e.g., eggs, horns, skins) are not allowed to be captured, traded, or commercially exhibited. All strictly protected species must not even be disturbed in their natural habitats. Import and export licenses are required for all specially protected species.¹⁷

All species listed in Annex A of the EU's Wildlife Trade Regulations are considered strictly protected under German law, and violations are subject to criminal prosecution, the punishment for which; the sanctions include fines (up to €50,000) and prison sentences (up to 5 years). German law considers all species listed in Annex B as specially protected. Harm done to these species does not fall under criminal law. Instead, these harmful acts are considered administrative violations, potentially leading to significant administrative fines, especially if sizeable economic gains are made in the course of a violation.¹⁸

Germany's Federal Nature Conservation Act further provides for the administrative implementation of the EU's Wildlife Trade Regulations in its territory. Germany's constitution (*Grundgesetz*) stipulates that the execution of nature protection law falls almost entirely under the jurisdiction of Germany's 16 federal states (*Länder*). Nature conservation acts passed by the states therefore constitute an additional body of law that

¹⁶ EUROPEAN COMMISSION, 2021a.

¹⁷ FEDERAL MINISTRY FOR JUSTICE AND CONSUMER PROTECTION, 2021.

¹⁸ FEDERAL AGENCY FOR NATURE CONSERVATION, 2021b.

deserves attention, as do local and regional administrative regulations in those states where the implementation of nature protection laws is further delegated to local administrations. It should be noted that state legislation cannot undercut the Federal Nature Conservation Act and the Federal Ordinance on the Conservation of Species. They can, however, go beyond them (rarely) or further refine them (more commonly), for instance, in terms of how inspections are conducted and how inter-agency cooperation is facilitated.¹⁹

Bern Convention. The Convention on the Conservation of European Wildlife and Natural Habitats came into force in 1982. In the following years, all Member States of the Council of Europe, including Germany, as well as four African riparian states, Belarus, and the EU signed the Bern Convention. The goal of the Convention, according to Article 1, is:

to conserve wild flora and fauna and their natural habitats, especially those species and habitats whose conservation requires the co-operation of several States, and to promote such co-operation. Particular emphasis is given to endangered and vulnerable species, including endangered and vulnerable migratory species.²⁰

The Bern Convention resembles CITES insofar as it organizes species according to their degree of endangerment. Appendix I includes around 700 strictly protected flora species such as certain forms of algae and Bryophyta. These species must not be extracted, destroyed, or negatively impacted in any significant way. Appendix II lists strictly protected fauna species such as some rodents and Carnivora. These 710 species must not be captured, killed, harmed, or traded. Appendix III includes protected fauna species (e.g., all amphibians and reptiles that are not included in Appendix II, plus some bird and fish species) that can be extracted, killed, or traded under strict guidelines. Finally, Appendix IV lists prohibited means and methods of killing, capture, and other exploitation.

The EU implemented the Bern Convention primarily through two directives: The Birds Directive and the Habitats Directive. As directives, and unlike EU regulations, they are not directly applicable in EU Member States. Yet Member States are required to pass national legislation that achieves the goals outlined in the directives. Furthermore, EU

¹⁹ FEDERAL AGENCY FOR NATURE CONSERVATION, 2021b.

²⁰ COUNCIL OF EUROPE, 2021.

Member States are required to designate certain areas on their territories, both on land and at sea, to form “a network of core breeding and resting sites for rare and threatened species, and some rare natural habitat types which are protected in their own right” (Natura 2000).²¹ Species protected under the EU Birds and Habitats Directives are also grouped into Annexes depending on their endangerment. These Annexes largely overlap with the Annexes of the Bern Convention.

Germany designates all species listed in Annex IV of the Habitats Directive and some birds listed in the Birds Directive as strictly protected. They must not be killed or harmed in any way, even, for example, by altering their natural habitat. All other European birds and the remaining species of the Habitats Directive are designated as specially protected. The killing and capturing of these species are largely banned. Exceptions are granted in various other German laws that, for instance, regulate hunting and fishing. In addition to Annex IV, another key measure to protect the species listed in the two directives is the designation of nature reserves. Due to conflicts related to competence between federal and state governments, Germany has been slow to designate these reserves. Therefore, in February 2021, the European Commission referred Germany to the European Court of Justice over the country’s failure to properly implement the Habitats Directive.²² In general, Germany has lacked an ambitious timetable to codify these two EU directives into national law.²³

It should be noted that the Federal Ordinance on the Conservation of Species assigns protection status to additional species that are not listed in CITES and the Bern Convention as well as in the Birds and Habitats Directives. Germany thereby goes beyond international conventions and EU legislation. On the other hand, forestry, hunting, and fishery laws trumps wildlife legislation. Certain provisions in these laws can limit the protection status of certain species insofar as the prohibition to kill certain species (e.g., wolves) might be revoked.

Furthermore, with prison sentences of up to five years and considerable administrative fines, German law sets tougher penalties than most of the EU Member States. Only Dutch

²¹ EUROPEAN COMMISSION, 2021b.

²² EUROPEAN COMMISSION, 2021c.

²³ BORASS; SOTIROV; WINKEL, 2015.

law knows stricter penalties (up to six years in prison and substantial penalties, including shutdowns, for companies).²⁴ As we will see below, Germany's problem is not inadequate wildlife protection legislation, but the lack of a robust enforcement structure.

III. ENFORCING WILDLIFE PROTECTION IN GERMANY

At Germany's borders, that is, the country's major air- and seaports, two federal agencies are primarily responsible to monitor international wildlife trade: German Customs and the Agency for Nature Conservation (BfN). Both agencies are supported by Germany's Federal Crime Agency (BKA) which investigates in cases of organized crime.

Although the Federal Ministry for Environment, Nature Conservation, Building and Nuclear Safety (BMU) is the official Management Authority of CITES in Germany, the Federal Agency for Nature Conservation (BfN) serves as the lead agency for CITES enforcement. The BfN is an agency under the authority of the BMU. It is responsible for issuing all CITES-related import and export certificates. It provides scientific and technical expertise, publishes newsletters with

new developments, special cases, seizures, court decisions, and provides an internet platform to better coordinate the various agencies at the federal and lower levels in the enforcement of wildlife legislation. However, the BfN has no authority over any other federal, state, and local agency. Furthermore, if Customs detects a violation of wildlife law that relates to specially, but not strictly, protected species (an administrative violations), the BfN initiates proceedings to impose administrative fines. It can also request Customs to initiate criminal proceedings when it suspects criminal behavior.²⁵

Customs, occasionally in cooperation with the BKA, prosecutes all cases related to strictly protected species. To detect contraband trade in cigarettes, illegal employment, and human trafficking, Customs often uses dragnet controls on the German side of the border. In the case of wildlife crime, it primarily focuses on Germany's major airports for

²⁴ SINA et al., 2016, pp. 74-84

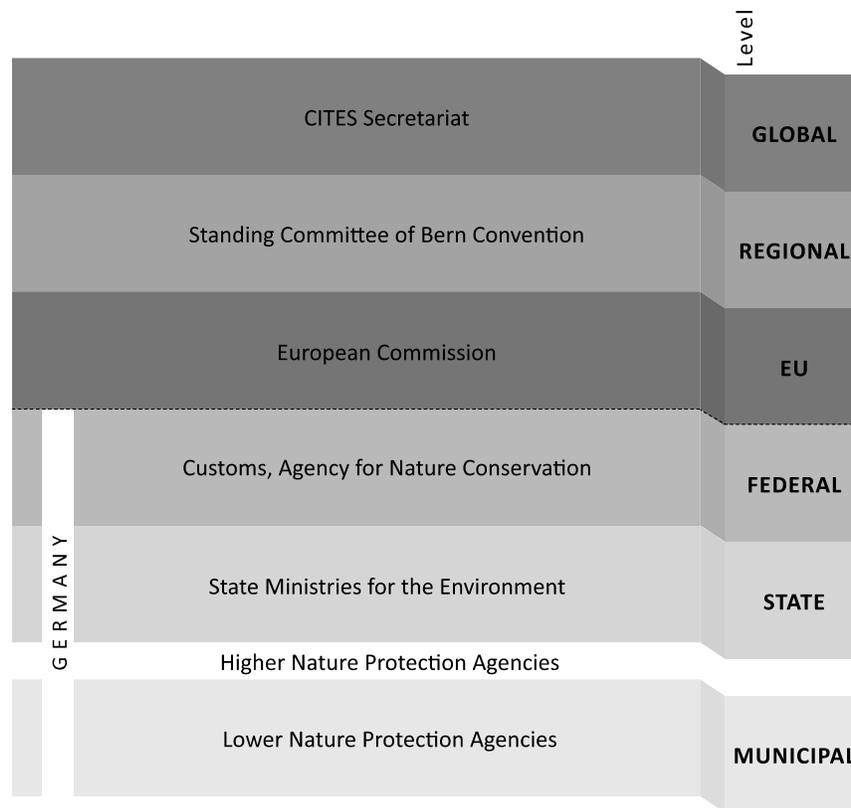
²⁵ BALZER; BÖHMER, Interview with author.

passengers and airfreight, such as Frankfurt and Leipzig, as well as the major seaports like Hamburg.

Inside Germany, the states are almost exclusively responsible for enforcing wildlife laws. While some states like Lower Saxony keep the authority over wildlife protection at the state level, other states have further delegated authority to the regional, and sometimes further down to the local level, such as Hesse and Bavaria, respectively. At the regional level, the Higher Nature Protection Agencies are responsible for administering wildlife law. At the local level, the Lower Nature Protection Agencies are in charge. For CITES, these agencies are then the responsible authorities in Germany, which explains why the country has an unusually high number of local CITES management authorities (over 230, of which close to half are located in Bavaria and North Rhine-Westphalia alone). It is the responsibility of these agencies to issue or deny commercial licenses to market species and to monitor owners, breeders, and traders of wildlife. In the case of violations, they can impose administrative fines and refer suspected criminal activities to the police.

In Germany's federal system, the police force falls under the authority of the states, and severe crimes such as organized and political crimes are prosecuted by the State Crime Agencies (LKAs). The justice system is hierarchically organized from the local to the federal level. The vast majority of proceedings involving wildlife crime are resolved at the lowest level. Rarely do wildlife crime cases go beyond the first instance courts. In one egregious case, in 2012, the state court of Münster sentenced two Germans to two years in prison, suspended on probation, on counts of violation against Federal Nature Protection Law. The convicted had traveled for years all over Europe to remove eggs from rare and strictly protected birds, which they later sold to collectors for significant profits.²⁶ Considering the duration, extent, and organization of this scheme, the sentence was rather lenient, making it a typical case of wildlife crime proceedings.

²⁶ GÄRTNER, 2012.



In short, as Graph 2 summarizes, Germany's wildlife law is enforced through a bewildering number of different agencies at the local, state, and federal level, and enforcement is further divided between those agencies that have the authority to initiate criminal proceedings and other agencies that sanction administrative violations through fines. The picture is further complicated by the fact that different states have different structures as far as the delegation of authority is concerned.

IV. Assessing Deficiencies in Enforcement

The exact number of illegally traded species in Germany is hard to gauge. The number of undetected cases is likely many times higher than the number of documented cases. With an average of around 7,000 seizures per year, the number is likely close to 100,000.²⁷ Given this volume of species that end up in Germany or are transited through

²⁷ KLAAS; SINA; GERSTETTER, 2016, p. 11.

the country, rigorous enforcement of its wildlife laws would arguably curtail the illegal wildlife trade to a measurable extent. To some degree, this rigorous enforcement is taking place at Germany's ports. For example, between 2007 and 2014, German customs authorities initiated roughly 1,100 procedures per year.²⁸ The vast majority ended in the issuance of administrative fines. Criminal proceedings were not initiated. Furthermore, in 2014, seizures of illegally traded species at Germany's borders accounted for more than one-third of all seizures made in the 22 EU Member States that reported their seizures to the EU-TWIX database in that year.²⁹

Considering the high volume of illegal trade that crosses Germany's borders, Germany's large number of seizures is probably not exceptional or disproportionate. Yet statistics is only part of the story. German Customs officials are well trained. They "attend basic, legal and detection seminars on a regular basis several times a year (7-9 basic and 5-6 detection seminars per year)."³⁰ And even though Germany's government has redirected Customs' resources away from the enforcement of wildlife legislation (with the exception of fighting ivory trade and poaching) and towards the prosecution of illegal employment, Germany Customs has remained a resourceful agency in combatting wildlife crime and contraband trade.³¹ Much the same can be said about the BfN. Although it has at times lacked a determinate leadership, it is unrivaled as far as expertise and coordinating activities go.³²

Yet prosecution only acts as a deterrent if the likelihood of being caught is relatively high and if perpetrators can expect stiff court sentences when caught. Across the globe, perpetrators of illegal wildlife trade are unlikely to be caught, and they are unlikely to be severely punished.³³ The risks are equally small in Germany. As already mentioned, the likelihood of being caught is not very high in Germany. Furthermore, sentences are usually lenient. For instance, of the roughly 1,100 procedures per year that German Customs has initiated, only about 10-15% have led to administrative fines and only just

²⁸ KLAAS; SINA; GERSTETTER, 2016, p. 13.

²⁹ KLAAS; SINA; GERSTETTER, 2016, p. 1

³⁰ SINA et al., 2016, pp. 52f.

³¹ MARX, 2020, Interview with author.

³² BALZER; BÖHMER, Interview with author.

³³ SOLLUND; MAHER, 2015.

1% have resulted in criminal convictions.³⁴ Almost all of these criminal convictions resulted in acquittals and suspended sentences, which is a rather typical outcome for wildlife offenses not just in Germany, but in other countries around the world as well.³⁵ Even the administrative fines that the BfN imposes are relatively modest. Annual revenues from BfN fines hover around 50,000 to 100,000 Euro, which comes down to an average fine of roughly 500 to 1,000 Euro per case.³⁶ Below the federal level, enforcement of wildlife crime is even more spotty.³⁷

There are a few key reasons for lenient prosecution and court rulings and insufficient enforcement within Germany's states. First, concerning leniency towards wildlife crime in the executive and judiciary branches, one of the primary causes is that most police officers, judges, and prosecutors have received little training in wildlife laws. For instance, "Wildlife crime is one of many crimes the police deals with, and police officers have a basic seminar in environmental crime which covers the whole range of environmental crimes in two weeks, of which wildlife crime is only a small segment."³⁸ Furthermore, judges and prosecutors are also unlikely to develop expertise on the job, as wildlife cases are randomly distributed among local judges and prosecutors. With only a few thousand cases reported and prosecuted per year, a judge or prosecutor will encounter wildlife crime rarely more than once a year. With little training and experience, wildlife cases which already require specialized expertise become even more challenging. It is noteworthy that judges and prosecutors around Germany's main airports belong to a small group of experienced officials simply because most cases of wildlife crime fall under their jurisdiction. Finally, adjudicating wildlife crime is not a career-builder, considering that public interest in wildlife crime is usually low, unless it relates to elephant poaching and the illegal ivory trade (and even then, sentences are not harsh).³⁹

The sanctioning of violations that fall outside criminal law is even more problematic. The delegation of authority to the local and regional level means that outside the main cities,

³⁴ SINA et al., 2016, p. 13

³⁵ SOLLUND, 2020b.

³⁶ SINA et al., 2016.

³⁷ HINTZMANN, 2021, Interview with author.

³⁸ SINA et al., 2016.

³⁹ SÜDDEUTSCHE ZEITUNG, 2020.

rarely more than one civil servant is appointed to oversee the administration of wildlife legislation. This employee usually lacks any specialized training, and she is unable to develop expertise because of the low number of cases, other administrative duties, and frequent rotation. Furthermore, working on wildlife cases is not particularly popular among local government officials, which often leaves the task to newly hired employees. In larger cities, the situation is somewhat better. Yet even here, the staffing level is insufficient.⁴⁰ Finally, local officials are more likely to be exposed to personal networks and political pressure which discourage officials from undertaking close investigations and imposing stiff fines.

In sum, these reasons account for the imposition of administrative fines that routinely fail to act as a deterrent against wildlife violations. Moreover, officials in the Lower and Higher Nature Protection Agencies rarely refer cases to the police, even if they would warrant criminal proceedings. For one, citizens in rural areas rather tend to handle issues among themselves. They usually know each other well, are often related or befriended, and are therefore hesitant to get outsiders involved in handling conflicts - with each other or the law.⁴¹ Moreover, "in contrast to a fine issued under criminal law, money received as an administrative fine goes to the local authority dealing with the case."⁴²

Finally, cooperation and exchange of information between these various units do not take place on a regular basis. For instance, if breeders and traders of wildlife move from one town to another, a related paper trail or electronic file does not automatically follow them. As an example, breeders are required to document that offspring stems from legally imported species. If they fail to provide these documents, they can escape prosecution by moving to another jurisdiction. Therefore, repeated violators of wildlife laws might start with a clean slate by just moving to another jurisdiction that could be less than a few miles away.⁴³

It is also not easy for officials to request information and to get training. They often feel isolated and unsupported, which is a further drain on their motivation to protect wildlife in

⁴⁰ HINTZMANN, 2021; KRICKE, 2021. Interviews with author.

⁴¹ HINTZMANN, 2021, Interview with author.

⁴² KLAAS; SINA; GERSTETTER, 2016, p. 21.

⁴³ KRICKE, 2021, Interview with author.

their line of work.⁴⁴ It is true, however, that CITES subcommittees have been created to bring together representatives from state and federal governments. Moreover, BKA and LKAs work closely together. Yet these formal and informal structures of cooperation rarely include officials and police officers at the local and regional level. Hence, when the BKA states that “a very good working cooperation between all agencies and institutions working on wildlife crime” exists, a few eyebrows must be raised.⁴⁵ At the very least, it is questionable whether these agencies and institutions include the Lower and Higher Nature Protection Agencies, which are in close proximity to where wildlife crimes are committed.

V. Strengthening Enforcement

Analyzing Germany’s situation, the WWF recommends numerous steps that the country should undertake to improve enforcement of wildlife legislation, such as more capacity building for customs officials, prosecutors, and other officials; increased use of criminal proceedings; and more surveillance of internet trade.⁴⁶ These are all laudable goals. However, they take aim in the wrong direction and are not very efficient, given that they do not address the aforementioned deficiencies produced by Germany’s federal structure. To clarify, German Customs is not the weakest enforcement link. It could surely benefit from more personnel, training, and technical resources such as wildlife scanners. Yet more resources could benefit every agency involved in combatting wildlife crime. The issue is the most effective use of scarce resources. To train thousands of officials in Germany’s lower courts, public prosecutors offices and the Lower Nature Protection Agencies would certainly increase enforcement capacities. Yet would it make sense to train a judge who has to adjudicate a wildlife crime only every other year? It would be more efficient if only a few judges, prosecutors, police officials, etc. were to be designated for wildlife crime, bundling resources and allowing these officials to gain experience on

⁴⁴ HINTZMANN, 2021, Interview with author.

⁴⁵ KLAAS; SINA; GERSTETTER, 2016, p. 19.

⁴⁶ KLAAS; SINA; GERSTETTER, 2016, p. 20.

the job. This would address the lack of specialists in wildlife crime in the criminal justice system.

Germany delegates authority over the protection of wildlife to the lowest possible level. To some degree, this decision makes sense. The closer government services are to its citizens, the more they can adjust to specific circumstances, and the more they can be democratically controlled. Yet the drawback is that resources are spread thin -- in the case of Germany, undoubtedly too thin -- and that the energy expended to coordinate a myriad of agencies can be put to better use. The federalism reform of 2006 has given the federal government a stronger role in regulating nature protection laws and standardizing related state laws. Yet this has not led to a reform of the administrative structure that implements these laws. It also unlikely that Germany's constitution would allow the federal government to do so. Reforms therefore have to take place at the state level.

Germany's states should be encouraged to concentrate enforcement resources and authority related to wildlife protection. Bavaria could thereby follow the example of Hesse, which delegates authority to a handful of Higher Nature Protection Agencies at the regional level, or even Lower Saxony where authority largely remains in the hands of the state government. At the very least, it should be ensured that wildlife crime cases are not randomly distributed among officials and agencies so that resources can be more efficiently allocated and specialized knowledge can be accumulated. Spain provides a suitable blueprint, in which "a specific police force (SEPRONA) and a public prosecutor (in each provincial headquarters) [are] dedicated to the [criminal] prosecution of ecological crimes."⁴⁷

North Rhine-Westphalia took a different approach when it created a special unit for environmental crime (*Stabsstelle Umweltkriminalität*) under the leadership of an experienced former prosecutor within the state's Ministry for Environment. The unit's main tasks were the provision of resources for local and regional agencies involved in combatting environmental crime, including wildlife crime. It organized seminars for officials; provided them with technical expertise; and it filed legal suits on their behalf, which gave these suits more weight. The unit also strengthened informal networks to

⁴⁷ FAJARDO DEL CASTILLO; et al. 2015, p. 8

enhance mutual learning and the exchange of information. Given North Rhine-Westphalia's overly decentralized enforcement structure, the *Stabsstelle Umweltkriminalität* fulfilled an important function to strengthen the enforcement of wildlife legislation in that state and beyond (for instance, workshops were also open to officials from other states).⁴⁸ It was unfortunately shut down after a new center-right coalition had been elected to power under dubious circumstances that are currently investigated by a parliamentary investigation committee.⁴⁹

In short, numerous formal and informal means are accessible at relatively low cost to strengthen enforcement in wildlife protection in Germany. The bundling of resources through the recentralization of authority, or at least through more top-down coordination and support, would increase efficiency and thereby capacity. In turn, more wildlife crime would be detected and would likely lead to more criminal proceedings and more deterring penalties. It would not hurt if more resources were allocated towards the fight against wildlife crime. Yet the low-hanging fruit is a reform of the enforcement structures. Germany's ambitious stance in international and European wildlife negotiations would suggest that political ambition was not lacking. Alas, it has barely materialized in concrete actions at home.

VI. Conclusion

Within the EU and beyond, Germany has been a strong proponent of wildlife protection. It has signed all relevant international conventions, it has played an active role within the EU to advance wildlife conservation, and its wildlife legislation generally reflects the country's commitment to preserve endangered flora and fauna. With a strong environmental movement and a Green Party that has been in power in several states and at the federal level, it is not surprising that Germany has often assumed a leading role in advancing climate and environmental issues in international and EU negotiations.

Yet praising Germany for its legislation and international advocacy is misleading. Germany suffers from a serious implementation gap. For instance, Germany has long

⁴⁸ HINTZMANN, 2021, Interview with author.

⁴⁹ WESTFÄLISCHE NACHRICHTEN, 2020

been a strong advocate for climate change mitigation. At the same time, it regularly fails to meet its carbon emission targets.⁵⁰ In the case of wildlife preservation, the implementation gap is equally glaring. The delegation of authority sometimes down to the lowest level of Germany's administrative apparatus has caused a wasteful decentralization of authority over the enforcement of wildlife legislation. Resources are spread thin. Officials at lower administrative levels, including judges and prosecutors, are unable to accumulate sufficient expertise, and they lack sufficient training. Finally, local political and economic pressures erode officials' independence in enforcing wildlife legislation.

Just blaming Germany's federal structure misses the point. The delegation of authority over nature protection to the German states is not the main culprit. On the other hand, delegating authority further downwards is a key driver of wasteful decentralization. Yet not all states do so. Some states such as Lower Saxony keep authority at the state level. Anecdotal evidence suggests that wildlife crime is indeed more efficiently combatted in these states.⁵¹ Furthermore, as the example of North Rhine-Westphalia shows, decentralization does not inevitably lead to wanting enforcement. A strong coordinating and supporting body at the top such as the *Stabsstelle Umweltkriminalität* can support agencies at the lower levels to bolster capacity. In the end, it takes political will to overcome wasteful decentralization in the enforcement of wildlife legislation. Germany would be well advised to strengthen its enforcement structure to match its wildlife legislation and advocacy. Otherwise, it might look hypocritical when meeting its counterparts in EU and international forums. More importantly, it will fail to fulfill the purpose of protecting important wildlife for which the country has put an expansive body of law into place.

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⁵⁰ SCHLANDT, 2019.

⁵¹ LIEFERINK, 2021; CASSELMANN, 2021. Interviews with the author.

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