



Position Paper on the future EU Action Plan Against Wildlife Trafficking

March 2020

Presented in 2016 by the European Commission, and endorsed by the Council and the Parliament, the EU Action Plan against Wildlife Trafficking (hereafter 'Action Plan') attempts to present a comprehensive blueprint on how to fight wildlife crime inside the EU and to strengthen the EU's role in this global fight. Running until 2020, it details 32 lines of actions for prevention, enforcement, and global partnerships. In October 2018, the Commission released a mid-term report that makes the case that good progress has been made but that the EU and its Member States should further intensify their efforts to reach the objectives of the Action Plan by 2020.

Intention

This position paper looks at the current Action Plan through the prism of IFAW's experiences and concerns, as well as those of a range of experts and stakeholders we interviewed across the EU institutions, civil society, and Member States. We paid particular attention to parts of the Action Plan that align with our core operations and to countries where we directly operate: the Netherlands, Belgium, Germany, France and the United Kingdom (as it has been part of the EU until October 2020). Yet, we believe the points made here have significance for the entire Action Plan.

Through this contribution, IFAW intends to help frame the discussions on the next version of the Action Plan, pointing out key issues and proposing possible ways forward. This paper has been prepared by Dr. Olivier Charnoz (CEO, ImpactDev) on behalf of IFAW, under the active supervision of Eleonora Panella from IFAW's Brussels office and with the support of IFAW staff in other offices. IFAW would like to thank all the stakeholders that were interviewed during its preparation, whose anonymity we have guaranteed. It also thanks Marisa Chicarelli for high-quality editing and valuable comments.

Statement of position

There is no doubt that the Action Plan has proved a valuable tool, supporting many positive developments across Europe and beyond. Achievements should not be underestimated, such as stronger political momentum, increased cooperation among enforcers, and the greater EU role and profile in international CITES negotiations. However, the Action Plan has not delivered enough in some critical areas of expectations. We also observe that efforts to involve the private sector and civil society across Europe has led to overall weak or unclear results, despite some valuable developments.

Lastly, though very important to IFAW, caring for seized or confiscated animals that were illegally traded is rather unorganized across the EU. The issue remains an important challenge for EU Member States with different – and sometimes inadequate – levels of resources and expertise. Animal welfare and wildlife conservation imperatives associated with seizures and confiscations usually suffer from being low-ranking priorities in law enforcement efforts.

The Action Plan suffers from structural flaws; for instance, it is impossible to properly measure progress as there are no set indicators or baselines, Member States, have, for the most part, not produced publicly announced plans or allocated sufficient resources to address wildlife trafficking. Finally, the Action Plan itself suffers from a lack of proper and innovative involvement from both the private sector and civil society.

Key issues

IFAW suggests that a new design should be discussed and envisioned before the next version of the Action Plan is drafted and should at least consider the following concerns:

1. In 2016, EU funded research indicated insufficient and uneven levels of enforcement of the existing legislation across the EU were a major concern. Issues included the varying and often low levels of sanctions in Member States, a lack of resources, technical skills, awareness and capacity among law enforcers, prosecutors and judicial authorities, the low priority given to wildlife crime by enforcement institutions and a lack of cooperation between agencies¹. It is impossible to establish whether improvements have been realized since 2016 as **the Action Plan lacks the baselines and indicators required to measure progress**. The reports produced by Member States in 2018 provided examples of achievements but lacked analysis of impact accomplished by the work.
2. **The absence of funds to support implementation of the Action Plan, including through the establishment of national plans.** At the EU level, one has to acknowledge that EU financial mechanisms are increasingly mobilised across DG ENV, DEVCO, and even HOME, to help tackle wildlife crime – also in third countries. However, just as on national levels, we do not see a proper dedicated budget or planned estimate of financial and human resources needed to deliver on the Action Plan.
3. The role of the **committees working on the implementation of CITES Regulation** (Comitology, see below) and also tasked of the implementation of the Action Plan, may be revisited.
4. **The Action Plan suffers from a lack of involvement of the private sector and civil society. There is no mechanism for contributing** in any formal and pro-active way after the consultation phase, despite the European Parliament and the Council having pointed out the important role they both play.

Discussion

On point 1, the current framework used by the Commission and the Member States does not **track the allocation of means and capacity** (staff, resources, etc.) to help deliver on the Action Plan. It also lacks a theory of change or logical framework that would help point out the challenges to be tackled for real progress to take place. Many actions are reported in generic terms (e.g. workshops have been held, stakeholders have been mobilised). In the progress reports, there is a lack of data and quantitative analysis about the potential outcomes or impacts of such actions. It is thus difficult to assess their value. At the time of the initial consultation (in 2014), many NGOs called for a detailed Monitoring & Evaluation plan with indicators to measure progress. And indeed, the Action Plan was supposed to come with a “scoreboard”² that would help relevant parties systematically review how Member States are implementing EU legislation. This mechanism, however, never materialised. Data about monitoring of illegal wildlife trade and seizures within the EU are not available on open sources such as the internet. The most complete seizure data is registered by EU-TWIX (European Union Trade in Wildlife Information eXchange) in their seizure database. Information on seizures made by EU MS are the clearest sign that trafficking of wildlife (protected by CITES and EU) is taking place. It is also the best instrument to identify trends, to identify smuggle routes and, to compile better risk analysis and risk profiles. These data only available for enforcement purposes by enforcement officers, and summaries of the most outstanding information are made available to the public every year.

All of this indicates that there is currently no objective way to measure the implementation of the Action Plan. Current reporting formats provide a general sense of progress, yet fail to demonstrate it.

¹ 2016 EFFACE study on wildlife crime in the EU

² Mentioned in Priority 3: the Commission services and the EEAS will establish a scoreboard to monitor implementation of the EU legislation.

On point 2, and the need for national plans, we believe that a lot could be accomplished even with limited budgets, and not only through better coordination and training of national authorities, but by engaging the civil society and the private sector to join discussions and planning. Also, most Member States did not set up strong strategies to implement the Action Plan and improve compliance with EU wildlife legislation.

On point 3, the comitology³ leading this Policy area has limitations weighing on its effectiveness and, they do not currently offer, on the whole, a strong steering mechanism for the Action Plan itself. They were not created for the Action Plan, and they already have many duties and responsibilities. The current situation is that, for example, the Expert Group is tasked with discussing the Action Plan implementation but the minutes from those meetings show little or no discussion and progress of the Action Plan itself.

Finally, on point 4, the Action Plan does not provide the private sector and civil society with a well-delineated way for joining in any formal and active way after the consultation phase, despite the European Parliament and the Council pointing out the important role civil society plays. This limits the potential of what the Action Plan could achieve if all the relevant stakeholders were involved. This stands true at the EU level, where the private sector (e.g. banks, transport companies, courier companies, etc.) and NGOs could be invited in for closer association and, potentially, collaboration. It also stands true at national levels, where relevant local companies and civil society organisations could be more involved through national planning processes, as discussed above.

Aligning EU policies

Opportunities to strengthen its connections with other EU policies, planning processes, and international commitments should be pursued. The Action Plan already mentions the review of Directive 2008/99/EC of the environment through criminal law (the 'Environmental Crime Directive'). In October 2019, the European Commission launched a consultation to evaluate the Environmental Crime Directive, which aims at assessing its effectiveness in the context of wildlife crime with a clear link to the Action Plan, as currently the Directive is an insufficient instrument for combating the scale of environmental crime, including wildlife crime.

The EU Green Deal represents a first good step towards the direction the Union should take in the next ten years in order to fight climate change and biodiversity loss; to fully integrate the Action Plan in the 2030 Biodiversity strategy and to allocate adequate funding. Within the framework of the EU Green Deal and the next 2030 Biodiversity strategy, which will be presented at the end of March 2020, the EU's commitments to tackle wildlife trafficking reflected in the 2016 Action Plan should be continued.

Further to this, wildlife trafficking also needs to be more strongly positioned as an overall security and home-affair issue. In a positive move, the Council of Justice and Home Affairs of May 2017 (18/05/2017) decided that environmental crime would become, for the first time, a priority in its fight against organised crime, singling out wildlife and waste trafficking. The Commission is currently preparing a Multi-Annual Strategic Plan on Environmental Crime for the next four years, with the intention to enhance the involvement of all enforcement agencies in fighting environmental crime. The new Action Plan should be closely aligned with this strategic plan. Another policy priority of the Commission includes a Europe fit for the Digital Age and will include the development of the Digital Services Act to upgrade liability, and safety rules for digital platforms, services and products. This is an opportune moment to address wildlife cybercrime occurring on platforms. Last, but not least, by mid-2020, the Commission will present a proposal for the 8th Environment Action Programme (EAP), for the period 2021 – 2030 which should clearly articulate how the Biodiversity Strategy and the Green Deal is implemented, monitored and evaluated.

Finally, wildlife trafficking has to be far better addressed in the public health and food safety policies of the EU. The COVID-19 pandemic, which started in China is a direct consequence of uncontrolled and unchecked wildlife trade, has devastating consequences in all layers of our global community. Zoonotic pathogens are not a Chinese problem though. The very same species that are sold and butchered in the market in Wuhan, where the COVID-19 pandemic started, are traded and trafficked into Europe. Legal and illegal live wild animal specimens for the pet markets and illegal fresh bush meat enter the EU on a massive scale. Traders and traffickers are also using European ports and airports as transit hubs to get wild animal specimens to final destination markets in Asia. What happened in Wuhan can also happen here.

The importance of collaborative benchmarking

³ The day-to-day governance and management of any piece of EU legislation is led by committees that represent Member States. This organisation is known as the "comitology, for CITES issues there are four active committees, Management Committee, Scientific Review Group, Group of Experts (it is responsible to monitor the progress of the Plan as well) and the Enforcement Group.

If the new Action Plan is to deliver progress, it must have a baseline, indicators, and consistent and comparable reporting across Member States. It is crucial to solve this problem in an innovative way that is acceptable to and endorsed by all parties. **IFAW calls upon everyone to join in a collaborative and positive spirit to fully and successfully address this challenge.**

Although imposing indicators is unlikely to work, everyone agrees that a qualitative narrative that states “things are going in the right direction” is not enough. A collective plan cannot be implemented by a diverse range of very autonomous actors, such as the Member States, without an effective incentive structure that guides and motivates stakeholders to deliver.

The question we need to address here is: *What mechanisms and incentives are or should be in place for this Action Plan to actually be implemented?*

It would be easy to recommend that the next Action Plan be more rigid with a monitoring and evaluation (M&E) framework that involves targets and data monitoring. However, it would be politically and administratively difficult for the Commission to impose an M&E framework along with the new Action Plan, not to mention the potential stress on the very limited staff the Commission has to carry out this work. Member States tend not to respond well to that sort of M&E practice, partly not necessarily, because they do not wish to be *accountable* to non-binding plans, but also because they already have a lot of reporting to do under legislative provisions. The Action Plan needs to gather momentum around good-will and not be perceived as “punitive M&E”.

In fact, an M&E approach was initially envisioned by the Commission as part of the Action Plan (Action 9). A “scoreboard” was to be put into place to systematically review the quality of the implementation of the EU legislation in each Member State, so as to identify gaps and suggest corrective actions with adequate timelines. That seemed at first sight pretty sensible and reasonable. Yet, the scoreboard system and reviews did not take place.

In fact, setting targets and then applying M&E techniques (as in a typical project / programme implementation with a log frame) is not the only way one can stimulate and measure the performance of a coalition of actors.

Various approaches have their own strengths and weaknesses. The right approach for each context depends on the nature of the actors involved, their power dynamics, what they are trying to do, and the level of decision making that is to be shaped and influenced by the data.

IFAW recommends an alternative approach that one could call a “collaborative benchmarking” system - a process that leverages stakeholder participation, motivation, and influence over force and control.

Such a system consists of a **limited number of indicators that are mutually agreed during a significant stakeholders discussion**. It needs to be developed by the Member States themselves, under the general oversight and with the support of the European Commission that may provide some initial proposals and facilitated by an M&E professional.

Some Member States may complain that they do not have the capacities for proper monitoring, but at least they could monitor the resources they are able to commit themselves - and that, in itself, will make the case for stronger EU solidarity.

Such discussion is likely to result in a more limited set of mutually agreed indicators. Some very basic indicators might cover how many staff with the right expertise are permanently funded to deal with the issues at national and EU levels, what budget is made available to do certain types of actions, etc. These indicators do not come with set targets or objectives. They are just a way for the Member States to be aware of the situation across every level involved. Other indicators, including proxy indicators, might focus on outcomes and impact. What is very important is that this mechanism does not kick in only once every two years, as is currently the case with the self-reporting exercise, but that it be updated on a more **continuous basis**. As the system strengthens over time, partners might progressively agree to set some common targets, see the following box for an example.

At the beginning of the new 5 year Action Plan, the MSs come together to develop and agree upon indicators to measure, but there are no targets or objectives as the MSs would just be getting used to monitoring and reporting in general.

Mid-way through the new Action Plan (year 2-3), they would have data to work with, a better understanding of the challenges and successes they have witnessed. Then, they could come together again to develop a theory of change (ToC) with outcomes and targets for their indicators (or develop others) as they would be more comfortable with what they could achieve or what is actually needed to drive change at that time.

At that point, their monitoring would continue, and they would complete another evaluation at the end of the 5-year period against their ToC. This would allow each MS and the EC to do assessments and some data collection first that inform strategies, then develop the ToC and then monitor and evaluate it.

If such a benchmarking system is implemented by Member States, they will find motivation to deliver and hold each other to account quite naturally. With such data, relevant EU groups and committees would really start being productive through open discussions on collective, as well as national, implementation challenges.

Within such a **target-free and ranking-free benchmarking system**, parties can assign a special role to a sponsor (or fondateur), such as the European Commission, whose role is simply to regularly gather the periodic reports, process them, and distribute the results back to the participants. This role is sometimes called “the central signaling function”, and it helps to ensure the hygiene and the reliability of the whole performance management system.

Mutual accountability is a key element at the heart of this mechanism, along with the fact that the people being measured have themselves agreed on the measures to be applied, so they cannot subsequently disown them. There is also a role for M&E and for various targets within such a system, but that function is for the individual Member States to apply to themselves (and for themselves) within the agreed benchmarking arrangements.

We suggest that, on the basis of this upcoming independent evaluation, and in the vision of drafting a continuation of the Action Plan, the Commission proposes to the Member States such a benchmarking system and allows at least three months for States to react and amend the proposal. What is crucial here is handing the Member States a final level of ownership regarding these indicators. This allows for an effective process without threatening hard targets.

Opportunities for improvements

The next version of the Action Plan should include outstanding as well as new measures that build on the existing Action Plan and clear linkages and connection should be made with the post-2020 biodiversity strategy. In particular, we recommend the next Action Plan takes on board the following points:

1. The upcoming external evaluation of the Action Plan, likely to be required by the EU, should provide a benchmarking proposal to be presented by the Commission and discussed, revised and adopted by the Member States. We recommend the introduction of a “progressive and comparative benchmarking” framework, rather than a “monitoring and evaluation plan based on targets”.
2. Comitology meetings should have specific discussions on the Action Plan, with clear monitoring of progress reported by Member States and stakeholders invited to provide inputs and main findings.
3. Inviting and supporting each Member State to set up national plans for implementation and to involve the local private sector and civil society. Even if budgets are limited, much can be achieved by States setting the right mindset, encouraging a clear public discourse, and aligning all national stakeholders with common objectives.

4. At the EU level, too, involving the private sector and civil society in the next version of the Action Plan. For example, creating a civil dialogue group for wildlife trafficking⁴, including private sector, civil society and relevant stakeholders like in the model that was put into place by DG AGRI. Such a dialogue group could enhance participation and provide a mechanism for civil society to report, inform, and share intelligence.

Conclusions

Illegal wildlife trade is estimated to be worth up to USD \$23 billion a year and considered the biggest direct threat to the survival of numerous animal species. A large part of illegal wildlife trade involves live animals, either for the pet industry or food markets around the world.

Despite some real successes in the four years that have passed, there is little in terms of progress that is actually measurable. Revamping the Action Plan in a way that it can actually deliver measurable progress is the only acceptable alternative to stronger legislation. The next iteration of the Action Plan must be in a form that measures real change to ensure the benefits for wildlife intended in the Action Plan are actually being realized.

The current pandemic caused by COVID-19 affecting the entire globe is a zoonotic disease like SARS in 2003, which means that the virus was transmitted from animals to people. Those epidemics both originated from live animal markets where wildlife were sold. The risks of zoonotic pathogen transmissions does not only exist in China, there are also many wet markets in South-East Asia, Africa and Latin America. The risks in all these markets are the same. Moreover, fresh bush meat is also illegally imported into Europe.

Strong policies, combined with vigorous enforcement and meaningful penalties stigmatize wildlife consumption, and thus support demand reduction efforts as well.

Therefore, now more than ever, we call upon all stakeholders to help make the next version of the Action Plan an innovative and cutting-edge policy experiment: a more inclusive, effective, and accountable plan that delivers more results on both national and international stages.

IFAW has high hopes that the next version of the Action Plan can be dramatically improved. To that aim, IFAW also calls upon civil society to be, without further delay, a responsible, proactive and positive partner working in mutually beneficial harmony with the European Commission and the Member States.

⁴ https://ec.europa.eu/agriculture/civil-dialogue-groups_en.