Information document in view of a revision of the EU Wildlife Trade Regulations in relation to cross-border movements of musical instruments

The European Union (EU) is considering a revision of its legal provisions governing cross-border movements of musical instruments. This revision is based on the recent adoption of CITES Resolution Conf. 16.8 on frequent cross-border non-commercial movements of musical instruments at the 16th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species (CITES) in March 2013. This Resolution encourages CITES Parties to create, under certain conditions, “musical instrument certificates” to facilitate the frequent non-commercial cross-border movement of musical instruments for purposes including personal use, performance, display or competition. The holder of such certificate would not need to apply for CITES permits when crossing borders with a musical instrument manufactured from CITES-listed species.

This Resolution was adopted on the basis that musical instruments are frequently moved for a variety of legitimate non-commercial purposes and that CITES documents requirements may result in administrative burden for individuals who frequently move musical instruments across international borders. The aim of Resolution Conf. 16.8 is therefore to facilitate the cross-border movement of musical instruments for non-commercial purposes. CITES Parties noted however that such movements of musical instruments need to be monitored closely to prevent illegal activities, and that any exemption to the CITES Convention should not be used to avoid the necessary measures for the control of international trade in specimens crafted from species listed under the Convention.

1. Current legal framework


Text of the Resolution available under this link: http://www.cites.org/eng/res/16/16-08.php

Further details on EU Wildlife Trade Regulations are available under this link: http://ec.europa.eu/environment/cites/pdf/2007_referenceguide2_en.pdf

In the current situation, musical instruments manufactured from species listed in the Appendices to the CITES Convention and in the Annexes to Council Regulation (EC) No 338/97 are subject to strict rules and shall be accompanied by CITES documents when being moved across international borders.

2. Considerations of possible amendments to the current regime

The EU is considering which changes need to be introduced to Commission Regulation (EC) No 865/2006 and Commission Implementing Regulation (EU) No 792/2012 to implement the provisions of CITES Resolution Conf. 16.8. The provisions in EU law should be based on CITES Resolution Conf. 16.8 and would define the conditions under which such a “musical instrument certificate” would be delivered by the EU Member States.

In that context, the EU authorities in the Member States and the European Commission need to clarify a few points and would be grateful to hear view of the stakeholders on the following issues:

2.1. Authority responsible for issuing the musical instrument certificate:

- one option is that the certificate is issued by the CITES Management Authority of the country where the instrument is located, in which case it may be challenging to determine the country where the “instrument is located” if a musical instrument is frequently moved across international borders;

- another option is that this is done by the CITES Management Authority of the country of residence of the applicant, which may present practical difficulties if the instrument is located in another country.

2.2. To whom should the musical instrument certificate be issued?

- one option is that only the legal owner of the musical instrument is entitled to apply for a certificate;

- given that musicians are not always the legal owners of their instrument, some flexibility might be required. Another option would therefore be that the user of the instrument is the one applying for the certificate, if he is not the legal owner of the instrument;

- a third option could be that the certificate be issued to the user of the instrument, and that, if the instrument is legally owned by another person, the identity of this person is clearly indicated in the certificate as well.

2.3. What activities should be authorised through the musical instrument certificate?

In line with CITES Resolution Conf. 16.8, the aim of the certificate is “to facilitate the frequent non-commercial cross-border movement of musical instruments for purposes
including, but not limited to, personal use, performance, display or competition”. The main reason for using the certificate would be for musicians to move across borders with their “CITES-listed” instruments, whilst on tour, without having to apply for multiple certificates. However, Resolution Conf. 16.8 alludes to non-commercial cross-border movement for certain purposes without defining the term “non-commercial”. It is therefore needed to define what activities should be authorised through the musical instrument certificate:

- one option is that use of the certificate is only authorized for strictly non-commercial activities;
- a second option is that use of the certificate is authorised for paid performances too, considering that the commercial dimension of such an activity relates to the performing musician rather than to the instrument itself.

It is clear however that the certificate should not be used for the sale of the instrument or for the commercial display with the intent to sell the instrument. The views of stakeholders would be welcome on what activities they think the certificate could usefully cover and what are the reasons for extending use of the certificate to such activities.

2.4. Identification of musical instruments subject to the musical instrument certificate

It is key that the certificate is only used for the instrument that it covers. The instrument therefore needs to be clearly identifiable. The views of the stakeholders would be useful as to the best means to ensure such identification: the marking of the instrument or the reference to a serial number would certainly represent the best identification tools, but those techniques might not be suitable for all instruments. Another option would be for the musical instrument certificate to include a description of the instrument, including its size, weight and possibly a picture of the instrument.

2.5. Extending the scope of the CITES travelling exhibition certificate to orchestras and museum exhibitions

Commission Regulation (EC) No 865/2006 provides for specific rules applying to travelling exhibitions for specimens that are frequently transported across borders in order to be displayed to the public in travelling exhibitions such as sample collections, travelling circuses, menageries or plant exhibitions that are used for commercial display to the public. The delivery of the travelling exhibition certificate is possible in a limited number of cases, such as for products acquired before the inclusion of the species concerned in the CITES Convention (“pre-Convention specimens”).

Just as the musical instrument certificate, a travelling exhibition certificate precludes the need for application for CITES permits each time an international border is crossed; the important difference is that it can also cover more than one specimen. Under EU law, the travelling exhibition certificate can currently not be used by orchestras.

However Resolution Conf. 12.3 was amended following the 16th meeting of the Conference of the Parties to CITES where a wider definition of the term “travelling exhibition” was adopted and where it was recommended that “the term ‘travelling exhibition’ include, but not be limited to (…) orchestras, (…) and other such
exhibitions”. The EU would therefore be interested to hear the views of stakeholders whether the current EU rules applying to travelling exhibitions should change and if there would be an added-value in extending the scope of the travelling exhibition certificate (or create a similar mechanism) to orchestras. It would also be interesting to hear views on whether any change of those rules should apply to orchestras only, or whether there are other exhibition types to which those new rules should apply.

The EU would be interested to hear any views and suggestions regarding those various questions, especially on the practical implications of the various options which are currently under discussion, by 15 November 2013.