

Germany's uneven and wanting enforcement of wildlife protection treaties

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Germany is a major hub for illegally traded species and their products, such as ivory. It is also a major destination country for protected woods and endangered reptiles. The German city of Hamm hosts one of the world's largest trade shows for reptiles and amphibians, the Terraristika.

Background

Germany has also signed all major international treaties meant to protect endangered flora and fauna, including CITES and the Bern Convention. The EU has transposed most of these treaties through various regulations and directives (e.g., the EU Habitats and Birds Directives as well as the EU wildlife trade regulations).

As an EU member state, Germany has dutifully incorporated these directives and regulations into national law. International think tanks, such as the Yale Center for Environmental Law & Policy, regularly rank Germany high for its efforts to protect the environment and foster sustainability. Yet, even the best laws are only as good as their implementation.

As this policy brief shows, Germany's federal structure severely hampers a satisfying fulfilment of its obligations under CITES and the Bern Convention.

A Federal Patchwork of Enforcement

Germany's federal system comprises sixteen federal states of which Bavaria and North Rhine-Westphalia are the largest by territory and population, respectively. The implementation of Germany's comprehensive body of environmental law usually falls under the authority of these sixteen states.

State authorities can further delegate implementation to the municipal or regional authorities. The two largest states have indeed delegated the authority to investigate administrative infringements to the municipal level. This arrangement covers almost two-thirds of Germany's population.

The smaller states have kept authority at the state level, and still other states have shared authority between the state and the municipal level. In these mixed states, cooperation between these two levels is well established – in contrast to large, decentralized states such as Bavaria and NRW, which alone are host to almost 200 CITES authorities located at the municipal level. The prosecution of criminal cases almost always falls to Germany's municipal police. Only in egregious cases does the state police become involved (e.g., in cases of organized crime).

Whether a case is prosecuted as a criminal case or an administrative case depends on the protection status of the endangered species under German law (strictly or specially protected, respectively), which in turn is determined by CITES and the Bern Convention. At the federal level, Germany's Customs monitors the country's borders. The Federal Nature Protection Agency coordinates the various authorities and provides training, and prosecutes administrative infringements detected at the border.

Diluting Resources and Expertise

Decentralizing enforcement authority to the municipal level has clear advantages. State officials are close to where laws are broken. They are familiar with the environment. Yet, there are also clear disadvantages. The enforcement of wildlife law requires considerable legal and biological expertise that a single official can hardly acquire. Since these cases are rare, routine does not develop, and these officials have several other duties to fulfill. Protection of wildlife makes up no more than 10% of their work. Training is also not sufficiently provided. There are simply too many officials across the country to train. Morale is therefore low among municipal officials in decentralized states and political backlash against eager officials can be quite substantial. Officials accordingly try to move to other positions. Any kind of expertise acquired thereby gets lost. In the centralized and mixed-enforcement states, officials who usually work in teams and enjoy significant support from the state level reported higher levels of training, expertise, and morale.

Policy Recommendations

The level of decentralization in the case of wildlife protection does not correspond to the complexity of the task. There is little federal oversight.

A federal registry of all endangered species that are bred and traded within Germany does not even exist. Within the decentralized states, a potential offender only needs to move to another municipality to avoid prosecution because cooperation between municipalities is often wanting.

The creation of such a registry and a stronger coordinating role of federal and state offices should be the first steps towards a stronger enforcement regime. For instance, mobile teams of highly skilled officials could flexibly be deployed to assist in difficult cases.

Furthermore, even though it is politically unfeasible that decentralization is rolled back, auxiliary solutions are possible. For example, NRW's Ministry of Environment once hosted a department for environmental crime which was meant to assist and train municipal officials.

Finally, allowing officials to acquire expertise through training and the development of professional networks is essential to provide them with the tools and morale to fight wildlife crime.

The opinions expressed in this policy brief are the author's own and do not reflect the view of the University of Oslo, Department of Criminology and Sociology of Law.

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