

**Plant Protection:
Edelweiss:
Austria, France, Germany,
India, Slovenia, and
Switzerland**

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Plant Protection: Edelweiss

Austria, France, Germany, India, Slovenia, and Switzerland are countries in which edelweiss, the well-known and prized alpine wildflower, grows and receives protection under certain plant conservation laws. All six jurisdictions are states parties to the Convention on Biological Diversity (CBD)¹ as well as to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),² and all have ratified the Gaborone Amendment to CITES.³

In addition, the five European jurisdictions listed above are states parties to the Bern Convention of 1979, which aims to conserve wild flora and fauna and their habitats in Europe.⁴ Annex I of the Convention is on “Strictly Protected Flora Species.” Leontopodium alpinum is in the family Asteraceae of the Dicotyledones class of the Spermatophyta (Angiospermae) division of plant species. It seems, however, that the Dicotyledones are not covered under Annex I.

This report uses the example of edelweiss—which, along with a number of alpine plants, according to a recent pan-European study by experts, is in danger of becoming extinct in Europe’s mountain habitats because of climate change⁵—to illustrate how domestic conservation laws are applied in the selected jurisdictions, the interplay between protection at the national and local levels, the complexity of the governing frameworks, and the differences in the extent of protection afforded in the various jurisdictions.

¹ Convention on Biological Diversity, June 5, 1992, <http://www.cbd.int/convention/text/>. For an overview of international instruments affecting flora, see, e.g., Peter Skoberne, *Conservation Strategies for Medicinal and Aromatic Plants*,

http://www.ecpgr.cgiar.org/fileadmin/www.ecpgr.cgiar.org/NW_and_WG_UPLOADS/MAP_misc/MAP_Article_DrSkoberne.pdf (last visited Oct. 23, 2012).

² CITES, Mar. 3, 1973, amended June 22, 1979, <http://www.cites.org/>.

³ Gaborone Amendment, Apr. 30, 1983, <http://www.cites.org/eng/disc/gaborone.php>.

⁴ Bern Convention: Convention on the Conservation of European Wildlife and Natural Habitats, C.E.T.S. No. 104 (Sept. 19, 1979), <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=104&CM=8&DF=&CL=ENG>.

⁵ *Is It Too Hot for the Edelweiss? Alpine Plants Could Become Extinct as Summer Gets Warmer*, DAILY MAIL (Jan. 9, 2012), <http://www.dailymail.co.uk/sciencetech/article-2083967/Edelweiss-plants-A-risk-extinct-summers-gets-warmer.html>. The article refers to a new study, the first pan-European study of its kind, published in *Nature Climate Change*, that “suggests rising temperatures were having an even greater impact on alpine vegetation than was first thought,” based on “897 vegetation samples from 60 different summits in all European mountain systems.” *Id.* See Michael Gottfried et al., *Continent-Wide Response of Mountain Vegetation to Climate Change*, NATURE CLIMATE CHANGE (Jan. 10, 2012). The study was also apparently published in the journal *Science*. Michael Gottfried is affiliated with the Global Observation Research Initiative in Alpine Environments (GLORIA) program of the University of Vienna.

Austria

In Austria, plant protection falls within the legislative power of the states. All of the Austrian states have enacted nature conservancy laws. An example of such a law is the Nature Conservation Act of Carinthia, an Austrian state with an alpine region. Section 18 of the Carinthian Nature Conservation Act⁶ delegates the power to designate protected plants to the governor of the state. The Appendix of the Plant Protection Regulation Nature Conservation Regulation of Carinthia⁷ lists edelweiss as a protected plant.

France

Edelweiss, known as *pied-de-lion*, among other names, in France, can be found primarily in the French Alps and the Pyrenees. For a list of important sites in France for the protection of habitats of wild fauna and flora in alpine regions, one may refer to a European Commission decision of January 2011 which adopts a list of important sites for alpine regions.⁸

The major French law governing nature conservation is the Environment Code.⁹ Article L411-1, paragraph 1, prohibits the following activities, among others, “[w]hen a specific scientific interest or the necessity of conserving biological heritage justifies the conservation of non-domestic animal species or non-cultivated plant life”:

2° The destruction, cutting, mutilation, uprooting, picking or poaching of these plant species, of their flowers or any other form taken by these species during their vegetative cycle, their transport, peddling, use, offer for sale, sale or purchase, the possession of specimens taken from their natural environment,

3° The destruction, alteration or degradation of the specific environment of these animal or plant species. . .¹⁰

In addition, under article L412-1,

[t]he production, possession, transfer free of charge or for a consideration, use, transport, the introduction from all sources, the import under all customs regimes, export, or re-export of all or part of . . . non-cultivated plant species and of their seeds or parts of plants, the list of which is approved by joint decisions of the minister of the Environment and, as appropriate, of the competent ministers, if they so request, must have an authorization issued under the conditions and terms determined by a decree of the Council of State.¹¹

For the protection of wild flora in France, a key regulation is the Order (*Arrêté*) of October 13, 1989, as amended, on the list of wild plant species that can be subject to a permanent or temporary prefectural regulation. *Leontopodium alpinum* is included on the list. According to a description of the Order, the gathering of uncultivated plants and mushrooms constitutes a

⁶ Kärntner Naturschutzgesetz, 2002, Landesgesetzblatt Kärnten No. 2002/79.

⁷ Kärntner Pflanzenschutzverordnung, Jan. 30, 2007, Landesgesetzblatt Kärnten No. 2007/9.

⁸ 2011/62/EU: Commission Decision of 10 January 2011 Adopting, Pursuant to Council Directive 92/43/EEC, a Fourth Updated List of Sites of Community Importance for the Alpine Biogeographical Region (Notified Under Document C(2010) 9663), 2011 O.J. (L 033) 1–51 (Feb. 8, 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011D0062:EN:HTML> (scroll down to numbers beginning with “FR”).

⁹ Code de l’environnement (consolidated version of Oct. 1, 2012), LEGIFRANCE, http://www.legifrance.gouv.fr/affichCode.do?jsessionid=D224CC874C5068F5BEC16D5C7BD6EFF8.tpdjo03v_2?idSectionTA=LEGISCTA000022495753&cidTexte=LEGITEXT000006074220&dateTexte=20121001.

¹⁰ Environment Code, as consolidated 2010 [English translation], available at the World Intellectual Property Organization website, http://www.wipo.int/wipolex/en/text.jsp?file_id=180787.

¹¹ Code de l’environnement, *supra note 10*, <http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006159251&cidTexte=LEGITEXT000006074220&dateTexte=20121001> (translation by author).

permitted activity (*une tolérance*) and not a right, but that tolerance nonetheless is broadly applicable to open land because there are neither specific regulations nor specific signage directly or indirectly prohibiting harvesting (with the exception of natural reserves or habitats protected by ministerial order).¹²

Nevertheless, this tolerance can be controlled at the departmental level (except that this does not apply to species protected under article 411-1 of the Code of the Environment). Thus, species that can be subject to control by prefectural regulation, established by the country's ninety-six non-overseas department prefects, by means of authorization of the "collection, harvesting, and free or paid session" of uncultivated specimens in France, are listed in the ministerial order referenced above.¹³

A list of orders applicable in various regions and some departments of France is available on the country's Nature Conservation website.¹⁴ One may also search the Inventaire National du Patrimoine Naturel website. For example, entering "Leontopodium alpinum" on the search page at http://inpn.mnhn.fr/espece/cd_nom/recherche (external link) yields two results, both of which refer to "Leontopodium nivale subsp. alpinum (Cass.)." A small box on the page in red font indicates that it is a "regulated species" and clicking on the "Protection/Regulation" tab indicates under which provisions it is regulated at the national and at the prefectural level. The national level cites article 1 of the October 13, 1989, Order discussed above; the prefectural level refers to regulation in two departments, l'Isère and la Drôme. Article 2 of Arrêté No. 2010-06151 for the Protection of Wild Plant Species and Mushrooms in the Department of Isère lists "Leontopodium alpinum Cass." among the protected species, in regard to which certain activities, such as collecting, harvesting, and gathering, are prohibited.¹⁵ Arrêté No. 08-5843 of the Department of la Drôme contains a similar protection under its article 1.¹⁶

In connection with the above laws, it may be noted that France has largely incorporated into domestic law the European Union Habitats-Fauna-Flora Directive of May 21, 1992.¹⁷ The Directive extends protection, in Annex II(b), to plant species "of community interest whose conservation requires the designation of special areas of conservation," a list that includes Angiospermae. It is also included under Annex IV(b), plant species "of community interest in

¹² *La protection de la flore sauvage*, MINISTRY OF ECOLOGY, SUSTAINABLE DEVELOPMENT, AND ENERGY (Dec. 23, 2009, updated July 2, 2012), <http://www.developpement-durable.gouv.fr/La-protection-de-la-faune-sauvage.html>.

¹³ *Id.*; Arrêté du 13 octobre 1989 relatif à la liste des espèces végétales sauvages pouvant faire l'objet d'une réglementation préfectorale permanente ou temporaire, LEGIFRANCE, http://www.legifrance.gouv.fr/affichTexte.do?jsessionid=9176E6AAD6B28AC778904C0F73E7C445.tpdjo03v_2?cidTexte=LEGITEXT000006059328&dateTexte=20121003.

¹⁴ Législation relative à la protection de la flore, CONSERVATION NATURE, <http://www.conservation-nature.fr/legislation-flore.php> (last visited Oct. 3, 2012).

¹⁵ Arrêté No. 2010-06151 for the Protection of Wild Plant Species and Mushrooms in the Department of Isère (as amended on Oct. 22, 2010), http://www.isere.equipement.gouv.fr/IMG/pdf/AP_20100651_protectionspeciesprotegees_38_cle696df1.pdf.

¹⁶ Arrêté No. 08-5843 (Dec. 29, 2008), RAA [Le recueil des actes administratifs] 8-9 (Jan. 2009), http://www.drome.pref.gouv.fr/sections/publications/recueil_des_actes_administratifs/2009/raa/raa_janvier_2009/downloadFile/file/RAA_JANVIER_2009.pdf?nocache=1233675809.56.

¹⁷ Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:en:NOT>; *see also* http://europa.eu/legislation_summaries/environment/nature_and_biodiversity/128076_en.htm.

need of strict protection,” and Annex V(b), “species of community interest whose taking in the wild and exploitation may be subject to management measures.”

At the heart of both the EU “Habitats” Directive and Council Directive 79/409/EEC of 2 April 1979 on the Conservation of Wild Birds (the Birds Directive) is Natura 2000, the creation of a Europe-wide ecological network of protected sites, under which each EU Member State has designated sites for the conservation of the rare habitats and species present in their respective territory.¹⁸

There are plans to recast Council Regulation (EC) No. 338/97 of 9 December 1996 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein, by means of the Proposal for a Regulation of the European Parliament and of the Council on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein (Recast).¹⁹ However, *Leontopodium alpinum* does not appear to be on the list of protected species included in the Proposal.

Germany

Edelweiss is protected in Germany by being listed as a species under special protection in Appendix 1 (Anlage 1) of the Regulation for the Protection of Animal and Plant Species that Occur in Nature.²⁰ The plant is listed alphabetically in the Appendix in the rubric for plants, under its Latin name, *Leontopodium alpinum*. According to section 69(2), number 4, of the Federal Nature Protection Act, the removal of a specially protected plant as well as its destruction is an administrative violation and is punishable with a fine.²¹

India

India’s main legislation on the federal level protecting plants and wildlife is the Wildlife (Protection) Act, 1972,²² which establishes schedules of protected plant and animal species. Pursuant to its membership in the CBD, India passed the Biological Diversity Act, 2002.²³

Leontopodium nanum or *Leontopodium alpinum* appears to grow in the Himalayan regions of India. Therefore, provincial laws such as the Jammu & Kashmir Wildlife (Protection) Act, 1978

¹⁸ EUROPEAN COMMISSION, NATURE AND BIODIVERSITY CASES: RULING OF THE EUROPEAN COURT OF JUSTICE 4 (2006), http://ec.europa.eu/environment/nature/info/pubs/docs/others/ecj_rulings_en.pdf.

¹⁹ Proposal for a Regulation of the European Parliament and of the Council on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein (Recast), COM/2012/0403 final – 2012/0196 (COD) (Document: COM/2012/0403), IPEX, <http://www.ipex.eu/IPEXL-WEB/dossier/dossier.do?code=COD&year=2012&number=0196 &appLng=EN>.

²⁰ Regulation for the Protection of Animal and Plant Species that Occur in Nature (Bundesartenschutzverordnung, Feb. 2, 2005, Bundesgesetzblatt [BGBL.] I at 258, http://www.gesetze-im-internet.de/bundesrecht/bartschv_2005/gesamt.pdf.

²¹ Federal Nature Protection Act (Bundesnaturschutzgesetz, July 29, 2009, BGBL. I at 2542, http://www.gesetze-im-internet.de/bundesrecht/bnatschg_2009/gesamt.pdf.

²² Wildlife (Protection) Act, 1972 (No. 53 of 1972), ACTS OF PARLIAMENT (1972), http://www.karnataka-forest.gov.in/english/Acts_Rules/acts/Wildlife_Protection_Act_1972.pdf.

²³ Biological Diversity Act, 2002 (No. 18 of 2003), ACTS OF PARLIAMENT (2003), http://www.moef.nic.in/divisions/biodiv/act/bio_div_act.htm.

may also be of relevance.²⁴ However, it has not been possible to find the Plant Schedule under such laws, nor did the plant appear to be listed in the schedule of the Wildlife (Protection) Act, 1972. Edelweiss may be protected in a protected area of a national park or sanctuary.

Other laws that may be of relevance to the protection of edelweiss include the Protection of Plant Varieties and Farmers' Rights Act, 2001²⁵ and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2007.²⁶

India's import and export policies with respect to specific items are classified using the ITC-HS Codes or Indian Trade Clarification Code (ITC) system, the latter of which is based on the Harmonizing Coding System (HS). The ITC-HS Codes are further divided into two schedules: Schedule I on import policies, and Schedule II on export policies. Current restrictions on the export of plants and wildlife are also listed in this policy.²⁷

Slovenia

Edelweiss in Slovenia is known as *planika*.²⁸ At present edelweiss is classified as a potentially threatened plant and is included in the Red List of Threatened Vascular Plants in Slovenia.²⁹ Edelweiss is said to have been protected since 1896 in an area that is now Slovenian territory.³⁰

Issues relating to plant protection in Slovenia are governed by a number of legislative acts, which mostly derive from the Slovenian Nature Conservation Act.³¹ According to article 80 of the Act, the Minister of Environment and Spatial Planning must specify which plants and/or animals are endangered and have them added to the Red List by means of a regulation.³² In accordance with article 80, the Decree on Classification of Endangered Plant and Animal Species on the Red List was issued by the Minister on August 9, 2002.³³ *Leontopodium alpinum* (along with the common name *planika*) is listed in Annex 1 of this Decree.³⁴

²⁴ Jammu & Kashmir Wildlife (Protection) Act, 1978 (No. 8 of 1978),

http://www.jkforest.com/jkforest/act_pdf/J_K_Wildlife_Protection_Act.pdf.

²⁵ Protection of Plant Varieties and Farmers' Rights Act, 2001 (No. 53 of 2001), <http://agricoop.nic.in/PPV&FR%20Act,%202001.pdf>.

²⁶ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (No. 2 of 2007), Gazette of India Extraordinary (Jan. 2, 2007), <http://angul.nic.in/tribal-act.pdf>.

²⁷ ITC (HS), 2012, sched. 2 – Export Policy, DGFT, <http://164.100.9.245/exim/2000/NOT/itc%28hs%29/Eschedule2.pdf>.

²⁸ *Planika – Edelweiss – Leontopodium alpinum*, FEELSLOVENIA.NET,

http://www.feelslovenia.eu/index.php?option=com_k2&view=item&id=40:planika-edelweiss-leontopodium-alpinum&Itemid=199 (last visited Oct. 5, 2012).

²⁹ *Vegetation of Zarica Gorge*, TRBOJSKO JEZERO (Gorenjsko local government website), http://www.trbojsko-jezero.si/index.php?id=narava&lang=en&sub=_rastline (last visited Oct. 5, 2012).

³⁰ Skoberne, *supra* note 2.

³¹ Zakon o Ohranjanju Narave [Nature Conservation Act], URADNI LIST RS, No. 56 (July 13, 1999),

<http://www.uradni-list.si/1/objava.jsp?urlid=199956&stevilka=2655> (official publication), English translation available at <http://faolex.fao.org/docs/pdf/slv61725.pdf>.

³² *Id.*

³³ Decree on Classification of Endangered Plant and Animal Species on the Red List [Pravilnik o Uvrstitvi Ogroženih Rastlinskih in Zivaljskih Vrst v Rdeči Seznam] (Aug. 9, 2002), URADNI LIST RS, No. 82 (Sept. 24, 2002), <http://www.uradni-list.si/1/content?id=38615> (official publication).

³⁴ Priloga 1 [Annex 1], Ministry of Environment and Spatial Planning,

While providing protection, Slovenian legislation does not exclude the use of protected plants, including edelweiss. In order to provide effective protection while allowing some use of the plants, the Slovenian government regulates the following actions: removal of plant specimens from the wild; cultivation, introduction, reintroduction and repopulation, and trade of the plants; and research and gathering of plants in permissible quantities. It also regulates activities related to the trade, import, export, and transit of protected plants and animals.³⁵

Criminal and administrative punishments for violating the protected plant regime are prescribed by Slovenian legislation. Intentional destruction or disturbance of protected plants and their habitats, as well as illegal possession of and illegal trade in protected animals or plants, their parts, or products made thereof, are prosecutable by hefty fines and varied terms of imprisonment.³⁶

Switzerland

Edelweiss is not protected under the Swiss Federal Nature Conservation Act³⁷ and its Implementing Regulation.³⁸ According to a Swiss expert, edelweiss is not in danger of extinction in Switzerland and therefore does not need protection.³⁹

Some of the Swiss cantons, however, protect edelweiss.⁴⁰ Among them is the Canton of St. Gallen, whose Regulation on the Protection of Wild Plants⁴¹ lists edelweiss as a protected plant.

An oft-quoted protection law of 1878 of the Canton of Obwalden appears to have had commercial purposes as well as environmental ones. Allegedly, it intended to preserve the plant in its habitat in the interest of local collectors.⁴²

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³⁵ Nature Conservation Act, *supra* note 32, art. 24.

³⁶ Criminal Code of Slovenia art. 344, URADNI LIST RS, No. 55 (Apr. 6, 2008), in English translation at http://www.wipo.int/wipolex/en/text.jsp?file_id=180880.

³⁷ Bundesgesetz über den Natur- und Heimatschutz, July 1, 1966, Systematische Sammlung des Bundesrechts (SR) 451.

³⁸ Verordnung über den Natur- und Heimatschutz [Implementing Regulation of the Nature Conservation Act], Jan. 16, 1991, SR 451.1.

³⁹ TOBIAS SCHEIDEGGER, MYTHOS EDELWEISS: ZUR KULTURGESCHICHTE EINES ALPINEN SYMBOLS (2008), <http://www.ipk.uzh.ch/aboutus/people/scheidegger/MythosEdelweiss.pdf>.

⁴⁰ *Id.*

⁴¹ Naturschutzverordnung, June 17, 1975, SYSTEMATISCHE GESETZSAMMLUNG DES KANTONS ST. GALLEN 671.1, <http://www.gallex.ch/gallex/6/fs671.1.html>.

⁴² SCHEIDEGGER, *supra* note 40.