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COMMISSION REGULATION (EU) .../...

of 16.12.2021

**amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna
and flora by regulating trade therein**

and

**Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the
implementation of Council Regulation (EC) No 338/97**

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and

Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein¹, and in particular Article 19(3), (4) and (5) thereof,

Whereas:

- (1) Regulation (EC) No 338/97 regulates trade in animal and plant species listed in the Annex to that Regulation. The species listed in that Annex include the species listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ('the Convention') as well as other species whose conservation status requires that trade from, into and within the Union be regulated or monitored.
- (2) Levels of trade in certain species require monitoring in order to collect data and consider whether stricter protection might be necessary in the future. To this end, the Scientific Review Group, established pursuant to Article 17 of Regulation (EC) No 338/97, has during its regular meetings in 2019 and 2020 reviewed different species and concluded that the following taxa should be included in Annex D to that Regulation: *Otocryptis wiegmanni*, *Platysaurus imperator*, *Tracheloptychus petersi*, *Zonosaurus maximus*, *Pseudocerastes* spp. (except for the species listed in Annex B), and *Atelopus* spp. (except for the species listed in Annex A). The Scientific Review Group also concluded that the following species should be included in Annex D, with an annotation delimiting which types of specimens are covered by the listing: *Handroanthus* spp., *Tabebuia* spp., *Roseodendron* spp., *Aucoumea klaineana*, *Rhodiola* spp., *Boswellia* spp., *Millettia stuhlmannii*, *Pterocarpus macrocarpus*, *Entandrophragma cylindricum*, *Khaya* spp., *Okoubaka aubrevillei* and *Baillonella toxisperma*.
- (3) New annotations should be inserted in the *Notes on interpretation of Annexes A, B, C and D*. It is necessary to insert one annotation in paragraph 12 in relation to a new listing in Annex C, to reflect the listing in Appendix III by the range state. It is also necessary to insert two annotations in paragraph 17 in relation to tree species to be included in Annex D, in order to ensure that the specimens which occur in international trade are covered by the listing.

¹ OJ L 61, 3.3.1997, p. 1.

- (4) In view of recent taxonomic changes agreed by the eighteenth meeting of the Conference of the Parties to the Convention, held in Geneva, Switzerland, from 17 to 28 August 2019 (CoP 18), it is appropriate to replace the current listing of *Homalopsis bucata* in Annex D by the listing of the entire genus *Homalopsis* spp. It is necessary to change *Prionailurus iriomotensis* in Annex A to *Prionailurus bengalensis euptilurus*, and the listing of *Agalychnis* spp. in Annex B into a listing of *Agalychnis annae*, *A. callidryas*, *A. moreletii*, *A. saltator* and *A. spurrelli*. It is also necessary to change the listing of the family Pristidae so that it falls under the order Rhinopristiformes. The spelling of *Pelophylax shqipericus* in Annex D needs to be corrected and *Lophura hatinhensis* needs to be deleted from Annex B as it is treated as *L. edwardsi*.
- (5) The footnote in the Annex to the Regulation related to *Ovis collium*, *O. darwini*, *O. jubata*, *O. karelini*, *O. polii*, and *O. severtzovi* which states “This taxon is referred to as *Ovis ammon* in Annex XIII to Commission Regulation (EC) No 865/2006” should be removed, to bring it in line with Annex XIII to Commission Regulation (EC) No 865/2006², as amended by Article 2(14) of the present Regulation. These amendments are a consequence of changes in the taxonomy of this group of species.
- (6) The text of certain annotations in the Annex to Regulation (EC) No 338/97 should be amended to improve clarity (*Canis lupus*, *Caracara lutosa*, *Ceratophora aspera*, *C. stoddartii*, *Lyriocephalus scutatus*, *Crotalus durissus*, and *Rheobatrachus* spp.).
- (7) *Goniurosaurus* spp. should be moved from the family Eublepharidae to the family Gekkonidae in order to bring the listing in line with the current standard nomenclature.
- (8) The following species have been included in Appendix III to the Convention since 14 February 2021: *Goniurosaurus kuroiwae*, *Goniurosaurus orientalis*, *Goniurosaurus sengokui*, *Goniurosaurus splendens*, *Goniurosaurus toyamai*, *Goniurosaurus yamashinae* and *Echinotriton andersoni* (all with annotation) at the request of Japan, and *Calotes ceylonensis*, *Calotes desilvai*, *Calotes liocephalus*, *Calotes liolepis*, *Calotes manamendrai*, *Calotes nigrilabris*, *Calotes pethiyagodai* at the request of Sri Lanka. The following species have been included in Appendix III to the Convention since 22 June 2021: *Lodoicea maldivica* (with annotation) at the request of the Seychelles, and *Alauda arvensis*, *Galerida cristata*, *Lullula arborea*, *Melanocorypha calandra*, *Emberiza citronella*, *Emberiza hortulana*, *Carduelis cannabina*, *Carduelis carduelis*, *Carduelis flammea*, *Carduelis hornemanni*, *Carduelis spinus*, *Carpodacus erythrinus*, *Loxia curvirostra*, *Pyrhula pyrrhula*, *Serinus serinus*, *Erithacus rubecula*, *Ficedula parva*, *Hippolais icterina*, *Luscinia svecica*, *Luscinia luscinia*, *Luscinia megarhynchos*, *Monticola saxatilis*, *Sylvia atricapilla*, *Sylvia borin*, *Sylvia curruca*, *Sylvia nisoria*, *Turdus merula*, *Turdus philomelos*, *Oriolus oriolus*, *Parus ater*, *Troglodytes troglodytes* and *Emys orbicularis* (only applicable to the population of Ukraine) at the request of Ukraine. These amendments to Appendix III should be reflected in Annex C to Regulation (EC) No 338/97.
- (9) The Scientific Review Group has concluded at its regular meetings in 2020, and through several consultations in writing, that listing of the following species in Annex D to Regulation (EC) No 338/97 is no longer necessary, and these species

² Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 166, 19.6.2006, p. 1).

should be deleted from that Annex: *Dendrolagus dorianus*, *Dendrolagus goodfellowi*, *Dendrolagus matschiei*, *Dendrolagus pulcherrimus*, *Dendrolagus stellarum*, *Columba oenops*, *Didunculus strigirostris*, *Ducula pickeringii*, *Gallucolumba crinigera*, *Ptilinopus marchei*, *Turacoena modesta*, *Crax alector*, *Pauxi unicornis*, *Penelope pileata*, *Eulipoa wallacei*, *Arborophila gingica*, *Lophura bulweri*, *Lophura diardi*, *Lophura inornata*, *Bombycilla japonica*, *Cyanocorax caeruleus*, *Cyanocorax dickeyi*, *Procnias nudicollis*, *Dacnis nigripes*, *Sporophila falcirostris*, *Sporophila frontalis*, *Sporophila hypochroma*, *Sporophila palustris*, *Amandava amandava*, *Cryptospiza reichenovii*, *Erythrura coloria*, *Erythrura viridifacies*, *Estrilda quartinia* (frequently traded as *Estrilda melanotis*), *Hypargos niveoguttatus*, *Lonchura griseicapilla*, *Lonchura punctulata*, *Lonchura stygia*, *Carduelis ambigua*, *Carduelis atrata*, *Kozłowia roborowskii*, *Pyrrhula erythaca*, *Serinus canicollis*, *Serinus citrinelloides hypostictus* (frequently traded as *Serinus citrinelloides*), *Sturnella militaris*, *Cochoa azurea*, *Cochoa purpurea*, *Garrulax formosus*, *Garrulax galbanus*, *Garrulax milnei*, *Niltava davidi*, *Stachyris whiteheadi*, *Swynnertonia swynnertoni* (also referenced as *Pogonicichla swynnertoni*), *Turdus dissimilis*, *Pitta nipalensis*, *Pitta steerii*, *Sitta magna*, *Sitta yunnanensis*, *Lamprotornis regius*, *Mino dumontii*, *Sturnus erythropygius*, *Teratoscincus microlepis*, *Rhabdophis subminiatus*, *Calloselasma rhodostoma*, *Baronia brevicornis*, *Papilio grosesmithi*, *Papilio maraho*, *Calibanus hookeri*, *Biarum davisii* ssp. *marmorisense*, *Biarum ditschianum*, *Othonna cacalioides*, *Othonna hallii*, *Othonna lepidocaulis*, *Ceraria carrissoana*, and *Ceraria fruticulosa*.

- (10) On the basis of review by the Scientific Review Group, three subspecies should be added to the listing in Annex D to Regulation (EC) No 338/97 of *Teratoscincus scincus*.
- (11) It is necessary to correct certain formatting errors in the Annex to Regulation (EC) No 338/97.
- (12) In view of the extent of the amendments it is appropriate, for clarity purposes, to replace the Annex to Regulation (EC) No 338/97 in its entirety.
- (13) Regulation (EC) No 338/97 should therefore be amended accordingly.
- (14) The purpose of Regulation (EC) No 865/2006 is to implement Regulation (EC) No 338/97 and to ensure full compliance with the provisions of the Convention.
- (15) CoP 18 adopted or amended Resolutions concerning, inter alia, the criteria to determine the purpose of a transaction, the list of standard references used for determining the names of species listed in the Appendices to the Convention, as well as introducing a new code to be used in permits and certificates. Therefore, in order to incorporate those CoP 18 agreements into Union law, it is necessary to amend certain provisions and to add further provisions to Commission Regulation (EC) No 865/2006.
- (16) CoP 18 amended Resolution Conf. 12.3, on *Permits and certificates*, with regard to different purposes of transaction and the codes to be used in Convention documents for designating those purposes. Those amendments should be made in Regulation (EC) No 865/2006.
- (17) CoP 18 further amended Resolution Conf. 12.3 by inserting a new code to be used to indicate the source of certain plant specimens which do not conform to any of the previously existing codes. That new source code should be included in Annex IX to Regulation (EC) No 865/2006.

- (18) Resolution Conf. 12.3 was furthermore amended with regard to the validity of Convention documents for specimens of species that have been transferred to Appendix I of the Convention. That amendment should be reflected in Regulation (EC) No 865/2006.
- (19) Annex IV to Resolution Conf. 12.3, on *Types of biological samples and their use*, was also amended, and those amendments should be reflected in Annex XI to Regulation (EC) No 865/2006.
- (20) CoP 18 also amended Resolution Conf. 11.3, on *Compliance and enforcement*, inter alia with regard to the conditions under which export permits and re-export certificates issued by third countries are to be accepted. Those amendments should be reflected in Regulation (EC) No 865/2006.
- (21) CoP 18 amended Resolution Conf. 12.11, on *Standard nomenclature*, and the new standard references for nomenclature should be reflected in Annex VIII to Regulation (EC) No 865/2006.
- (22) Already at its seventeenth meeting held in Johannesburg, South Africa, from 24 September to 4 October 2016 (CoP 17), the Conference of the Parties to the Convention amended Resolution Conf. 11.17, on *National reports*, by replacing the previous biennial reports with implementation reports to be submitted every three years. This change should be reflected in Regulation (EC) No 865/2006.
- (23) CoP 17 also amended Resolution Conf. 10.10, on *Trade in elephant specimens*, recommending that “all Parties [...] in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency”.
- (24) The information available at present shows that important quantities of old ivory items are present in the Union, mostly imported into EU Member States before elephant species were included in Appendix I to the Convention.
- (25) To strengthen the fight against illegal ivory trade, and taking into account the principle of proportionality, the rules and enforcement efforts need to be reinforced proportionally to the risks identified with respect to the poaching of elephants and illegal trade in ivory.
- (26) The general exemption granted in accordance with Article 8, paragraph 4, of Regulation (EC) No 338/97, which allows worked ivory specimens that were acquired more than 50 years previously as defined in Article 2(w) of Regulation (EC) No 338/97 to be traded without a certificate issued in accordance with Article 8, paragraph 3 of the same Regulation, should be removed for worked specimens containing elephant ivory. As a consequence, it will no longer be possible to market worked ivory without a certificate issued in accordance with Article 8, paragraph 3 of the same Regulation.
- (27) In parallel, account should be taken of the fact that certificates referred to in Article 8, paragraph 3 of Regulation (EC) No 338/97 which concern elephant ivory specimens have been issued for almost 40 years (since entry into force of Regulation (EEC) No 3626/82) and that Union law does not require competent authorities to periodically renew them. As a consequence, it is not possible to have a complete overview of the certificates issued and, in some cases, due to administrative practice evolving over time, doubts may arise as to whether the certified material corresponds to the certificate issued. In order to better contribute to the continuous fight against

illegal trade and to allow competent authorities of the Member States to strengthen the control of the trade in elephant ivory within the Union, it appears therefore necessary to set an expiry date to all these certificates. Taking into account the need for operators and authorities to adapt to these changes, the expiry date should be set after a transition period of 12 months after the entry into force of this Regulation.

- (28) For a certain time after the removal of these exemptions becomes effective, the amendments are expected to lead to an increase in the number of applications for certificates which are newly required for commercial activities in elephant ivory specimens. The time period within which applications for such certificates are to be processed by Member States' management authorities should therefore be extended during the first year after the entry into force of this Regulation.
- (29) Regulation (EC) No 865/2006 should therefore be amended accordingly.
- (30) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Trade in Wild Fauna and Flora,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EC) No 338/97

The Annex to Regulation (EC) No 338/97 is replaced by the text in Annex 1 to this Regulation.

Article 2

Amendments to Regulation (EC) No 865/2006

Regulation (EC) No 865/2006 is amended as follows:

- (1) In the first paragraph of Article 5, point (5) is replaced by the following:
'(5) where required, the purpose of a transaction must be determined applying the criteria set out in Article 5c and indicated on the relevant permit or certificate, using one of the codes contained in point 1 of Annex IX to this Regulation;'
- (2) The following Article 5c is inserted:

Article 5c

Purpose of transaction

1. The purpose of transaction shall be indicated using one of the codes contained in point 1 of Annex IX to this Regulation.
2. For an export permit, the nature of the transaction between the exporter and importer shall determine the purpose-of-transaction code. For a re-export certificate, the nature of the transaction between the re-exporter and importer shall determine the purpose-of-transaction code.

The code shall indicate the reason why there is an exchange or movement of the specimen(s) from the exporter to the importer or from the re-exporter to the importer.

3. For an import permit or introduction-from-the-sea certificate, the intended use of the specimens by the importer shall determine the purpose-of-transaction code. The code shall indicate the reason why the importer has requested or is receiving the specimen.
4. When an export permit and an import permit or a re-export certificate and an import permit are issued, the purpose-of-transaction code used on the import permit may differ from that on the export permit or re-export certificate, respectively.’
- (3) In Article 7, the following paragraph 7 is added:

’7. Export permits and re-export certificates issued by third countries shall only be accepted if issued by the Management Authority officially designated as competent by the exporting or re-exporting Party.’
- (4) In Article 10, the following paragraph 2b is inserted:

’2b. When a species has been transferred to Appendix I to the Convention at a meeting of the Conference of the Parties, and the Union has not made a reservation on this transfer, the validity of any import or export permit or re-export certificate for specimens of that species shall not extend beyond the date of entry into force of the transfer to Appendix I.’
- (5) In Article 11, the following paragraph 4a is inserted:

’4a. Certificates as referred to in Article 48 which concern elephant ivory specimens and which were issued before [dd/mm/yy – *date of entry into force of the amending regulation*] shall cease to be valid on [dd/mm/yy – *12 months after the entry into force of the amending regulation*].’ [to be filled in by OP, please]
- (6) In Article 48(1), the following point (e) is added:

’(e) they are worked specimens containing elephant ivory that were acquired more than 50 years previously as defined in Article 2(w) of Regulation (EC) No 338/97.’
- (7) In Article 52, paragraph 1 is replaced by the following:

’1. The labels referred to in Article 2(6) of Implementing Regulation (EU) No 792/2012 shall be used only for the movement between duly registered scientists and scientific institutions of non-commercial loans, donations and exchanges of herbarium, diagnostic and forensic research specimens (as described in Annex XI to this Regulation), preserved, dried or embedded museum specimens and live plant material for scientific study.’
- (8) In Article 62, point (3) is replaced by the following:

’(3) worked specimens that were acquired more than 50 years previously, as defined in Article 2(w) of Regulation (EC) No 338/97, except specimens containing elephant ivory.’
- (9) Article 69 is amended as follows:
 - (a) the title is replaced by the following:

’Reports on imports, exports and re-exports and on implementation.’
 - (b) in paragraph 1, the last sentence is deleted;
 - (c) paragraph 6 is replaced by the following:

’6. The information referred to in the first sentence of paragraph 5 shall be submitted in a computerised form and in accordance with the ‘Implementation

Report Format' issued by the Secretariat of the Convention and amended by the Commission, one year before each meeting of the Conference of the Parties to the Convention, and shall correspond to the three-year period ending on 31 December of the previous year.

The information referred to in the second subparagraph of paragraph 5, where it is not included in the communication pursuant to Article 15(4)(a) of Regulation (EC) No 338/97 or in the notification pursuant to Article 66(7), shall be submitted in a computerised form together with the communication pursuant to Article 15(4)(c).'

(10) Annex VII is amended as follows:

(a) in the row for "Cosmetics", the text in the column "explanation" is replaced by the following:

'Any product or mixture of products which is applied to an external part of the body only (e.g. skin, hair, nails, genitals, lips or teeth or the mucous membranes of the oral cavity) with the intent to clean, odourise, change the appearance or protect. Cosmetics may include the following: make-up, perfume, skin cream, nail polish, hair colorants, soap, shampoo, shaving cream, deodorant, sunscreens, toothpaste. The quantity should reflect the amount of CITES-listed species present.'

(b) in the row for "Fingerlings", the text in the column "explanation" is replaced by the following:

"Live juvenile fish for the aquarium trade, aquaculture, hatcheries, consumption or for release, including live European eels (*Anguilla anguilla*) up to 12 cm in length".

(11) Annex VIII is replaced by the text in Annex 2 to this Regulation.

(12) In Annex IX, the following point Y is added:

"Y Plant specimens obtained from assisted production, which are considered not to be 'artificially propagated' as set out in Article 56, and also not considered to be taken from the wild because they are propagated or planted in an environment with some level of human intervention for the purpose of plant production."

(13) Annex XI is replaced by the text in Annex 3 to this Regulation.

(14) In Annex XIII, the following species are inserted after *Ovis ammon*: *O. collium*, *O. darwini*, *O. jubata*, *O. karelini*, *O. polii*, *O. severtzovi*.

Article 3

Transitional provision concerning the time limit for issuance of certain certificates under Regulation (EC) No 338/97

By way of derogation from Article 8(3) of Regulation (EC) No 865/2006, the time limit for deciding on the issuance of certificates shall be three months as regards applications under Article 8(3) of Regulation (EC) No 338/97 concerning elephant ivory specimens which are submitted between [the date of entry into force of this Regulation] and [date of one year after the entry into force of this Regulation].[to be filled in by OP, please]

Article 4

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16.12.2021

For the Commission
The President
Ursula VON DER LEYEN