Commission Regulation (EU) 2017/128 of 20 January 2017 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein

COMMISSION REGULATION (EU) 2017/128

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

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 therein[(1)], and in particular Article 19(5) thereof,

Whereas:

(1) Regulation (EC) No 338/97 regulates trade in animal and plant species listed in the Annex to the Regulation. The species listed in the Annex include the species set out in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the Convention) as well as species whose conservation status requires that trade from, into and within the Union be regulated or monitored.

(2) At the 17th meeting of the Conference of the Parties to the Convention, held in Johannesburg, South Africa, from 24 September to 4 October 2016 (CoP 17), certain amendments were made to the Appendices to the Convention. These amendments should be reflected in the Annexes to Regulation (EC) No 338/97.

(3) The following genera or species were included in Appendix I to the Convention and should be included in Annex A to Regulation (EC) No 338/97: *Abronia anzuetoi*, *Abronia campbelli*, *Abronia fimbriata*, *Abronia frosti*, *Abronia meledona*, *Cnemaspis psychedelica*, *Lygodactylus williamsi*, *Telmatobius culeus*, *Polymita* spp.

(4) The following species were transferred from Appendix II to Appendix I to the Convention and should be removed from Annex B and included in Annex A to Regulation (EC) No 338/97: *Manis crassicaudata*, *Manis culionensis*, *Manis gigantea*, *Manis javanica*, *Manis pentadactyla*, *Manis temminckii*, *Manis tetradactyla*, *Manis tricuspis*, *Macaca sylvanus*, *Psittacus erithacus*, *Shinisaurus crocodilurus*, *Sclerocactus blainei*, *Sclerocactus cloverae*, *Sclerocactus sileri*.

(5) The following taxa were transferred from Appendix I to Appendix II to the Convention and should be removed from Annex A and included in Annex B to Regulation (EC) No 338/97: *Puma concolor coryi*, *Puma concolor cougar*, *Equus zebra zebra*, *Lichenostomus melanops cassidix*, *Ninox novaeseelandiae undulata*, *Crocodylus acutus* (population of the Bay of Cispata in Colombia, with annotation), *Crocodylus porosus* (populations of Malaysia, with annotation), *Dyscophus antongilii*.

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(6) The following family, genera or species were included in Appendix II to the Convention and should be included in Annex B to Regulation (EC) No 338/97: *Capra caucasica*, *Abronia* spp. (with an annotation for *Abronia aurita*,*Abronia gaiophantasma*, *Abronia montecristoi*, *Abronia salvadorensis* and *Abronia vasconcelosii*, and except the species listed in Appendix I), *Rhampholeon* spp., *Rieppeleon* spp., *Paroedura masobe*, *Atheris desaixi*, *Bitis worthingtoni*, *Lanthanotidae* spp. (with annotation), *Cyclanorbis elegans*, *Cyclanorbis senegalensis*, *Cycloderma aubryi*, *Cycloderma frenatum*, *Rafetus euphraticus*, *Trionyx triunguis*, *Dyscophus guineti*, *Dyscophus insularis*, *Scaphiophryne boribory*, *Scaphiophryne marmorata*, *Scaphiophryne spinosa*, *Paramesotriton hongkongensis*, *Carcharhinus falciformis* (with annotation), *Alopias* spp. (with annotation), *Mobula* spp. (with annotation), *Holacanthus clarionensis*, Nautilidae spp., *Beaucarnea* spp., *Dalbergia* spp. (with annotation), *Guibourtia demeusei* (with annotation), *Guibourtia pellegriniana* (with annotation), *Guibourtia tessmannii* (with annotation), *Pterocarpus erinaceus*, *Adansonia grandidieri* (with annotation), *Siphonochilus aethiopicus* (with annotation).

(7) The following species were deleted from Appendix II to the Convention and should be removed from Annex B to Regulation (EC) No 338/97: *Bison bison athabascae*, *Tillandsia mauryana*.

(8) Species which were so far listed in Appendix III have been removed from that Appendix following their inclusion in Appendix II and should be removed from Annex C to Regulation (EC) No 338/97.

(9) *Abronia graminea* and *Salamandra algira* which were so far listed in Annex D to Regulation (EC) No 338/97, should be removed from that Annex following their inclusion in Appendix II and Appendix III respectively to the Convention at CoP 17.

(10) A number of annotations relating to species or genus included in the Appendices of the Convention were adopted or amended at CoP 17 and also need to be reflected in the Annexes to Regulation (EC) No 338/97 (annotations for the species *Vicugna vicugna, Panthera leo, Crocodylus moreletti*, *Bulnesia sarmientoi*, the genera *Aquilaria* spp. and *Gyrinops* spp., the genus *Dalbergia* spp., the species *Guibourtia demeusei*, *Guibourtia pellegriniana* and *Guibourtia tessmannii* and the species *Adansonia grandidieri*).

(11) The Union has not entered a reservation in respect of any of those amendments.

(12) At CoP 17, new nomenclatural references for animals and plants were adopted.

(13) The following species were recently included in Appendix III to the Convention: *Salamandra algira* at the request of Algeria; *Chelydra serpentina*, *Apalone ferox*, *Apalone mutica* and *Apalone spinifera* at the request of the United States; *Potamotrygon* spp. (with annotation) and *Hypancistrus zebra* at the request of Brazil; *Potamotrygon constellata*, *Potamotrygon magdalenae*, *Potamotrygon motoro*, *Potamotrygon orbignyi*, *Potamotrygon schroederi*, *Potamotrygon scobina*, *Potamotrygon yepezi* and *Paratrygon aiereba* at the request of Colombia. These species should therefore be included in Annex C to Regulation (EC) No 338/97.

(14) In view of the extent of the amendments it is appropriate, for reasons of clarity, to replace the Annex to Regulation (EC) No 338/97 in its entirety.

(15) Regulation (EC) No 338/97 should therefore be amended accordingly.

(16) Article XV.1(c) of the Convention states that 'amendments adopted at a meeting [of the Conference of the Parties] shall enter into force 90 days after that meeting for all Parties (…)'. In order to meet that deadline and ensure the timely entry into force of the changes to the Annex to this Regulation, the entry into force of this Regulation should be on the third day following that of its publication.

(17) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Trade in Wild Fauna and Flora established pursuant to Article 18(1) of Regulation (EC) No 338/97,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on the third 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, 20 January 2017.

For the Commission

The President

Jean-Claude JUNCKER

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) 2017/128. (See end of Document for details)*

ANNEX

Notes on interpretation of Annexes A, B, C and D

1. Species included in Annexes A, B, C and D are referred to:

(a) by the name of the species; or

(b) as being all of the species included in a higher taxon or designated part thereof.

2. The abbreviation 'spp.' is used to denote all species of a higher taxon.

3. Other references to taxa higher than species are for the purposes of information or classification only.

4. Species printed in bold in Annex A are listed there in consistency with their protection as provided for by Directive 2009/147/EC of the European Parliament and of the Council[(2)] or Council Directive 92/43/EEC[(3)].

5. The following abbreviations are used for plant taxa below the level of species:

(a) 'ssp.' is used to denote subspecies;

(b) 'var(s).' is used to denote variety (varieties); and

(c) 'fa.' is used to denote forma.

6. The symbols '(I)', '(II)' and '(III)' placed against the name of a species or higher taxon refer to the Appendices to the Convention in which the species concerned are listed as indicated in notes 7, 8 and 9. Where none of these annotations appears, the species concerned are not listed in the Appendices to the Convention.

7. (I) against the name of a species or higher taxon indicates that the species or higher taxon concerned is included in Appendix I to the Convention.

8. (II) against the name of a species or higher taxon indicates that the species or higher taxon concerned is included in Appendix II to the Convention.

9. (III) against the name of a species or higher taxon indicates that it is included in Appendix III to the Convention. In this case the country with respect to which the species or higher taxon is included in Appendix III is also indicated.

10. 'Cultivar' means, following the definition of the 8th edition of the *International Code of Nomenclature for Cultivated Plants*, an assemblage of plants that (a) has been selected for a particular character or combination of characters, (b) is distinct, uniform, and stable in these characters, and (c) when propagated by appropriate means, retains those characters. No new taxon of a cultivar can be regarded as such until its category name and circumscription has been formally published in the latest edition of the International Code of Nomenclature for Cultivated Plants.

11. Hybrids may be specifically included in the Appendices but only if they form distinct and stable populations in the wild. Hybrid animals that have in their previous four generations of the lineage one or more specimens of species included in Annexes A or B shall be subject to this Regulation just as if they were full species, even if the hybrid concerned is not specifically included in the Annexes.

12. When a species is included in Annex A, B or C, all parts and derivatives of the species are also included in the same Annex unless the species is annotated to indicate that only specific

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parts and derivatives are included. In accordance with Article 2(t), the symbol '#' followed by a number placed against the name of a species or higher taxon included in Annex B or C designates parts or derivatives which are specified in relation thereto for the purposes of this Regulation as follows:

#1 Designates all parts and derivatives, except:

(a) seeds, spores and pollen (including pollinia);

(b) seedling or tissue cultures obtained *in vitro*, in solid or liquid media, transported in sterile containers;

(c) cut flowers of artificially propagated plants; and

(d) fruits and parts and derivatives thereof of artificially propagated plants of the genus *Vanilla*.

#2 Designates all parts and derivatives, except:

(a) seeds and pollen; and

(b) finished products packaged and ready for retail trade.

#3 Designates whole and sliced roots and parts of roots, excluding manufactured parts or derivatives, such as powders, pills, extracts, tonics, teas and confectionery.

#4 Designates all parts and derivatives, except:

(a) seeds (including seedpods of Orchidaceae), spores and pollen (including pollinia). The exemption does not apply to seeds from Cactaceae spp. exported from Mexico, and to seeds from *Beccariophoenix madagascariensis* and *Dypsis decaryi* exported from Madagascar;

(b) seedling or tissue cultures obtained *in vitro*, in solid or liquid media, transported in sterile containers;

(c) cut flowers of artificially propagated plants;

(d) fruits and parts and derivatives thereof of naturalized or artificially propagated plants of the genus *Vanilla* (Orchidaceae) and of the family Cactaceae;

(e) stems, flowers, and parts and derivatives thereof of naturalized or artificially propagated plants of the genera *Opuntia* subgenus *Opuntia* and *Selenicereus* (Cactaceae); and

(f) finished products of *Euphorbia antisyphilitica* packaged and ready for retail trade.

#5 Designates logs, sawn wood and veneer sheets.

#6 Designates logs, sawn wood, veneer sheets and plywood.

#7 Designates logs, wood-chips, powder and extracts.

#8 Designates underground parts (i.e. roots, rhizomes): whole, parts and powdered.

#9 Designates all parts and derivatives, except those bearing a label 'Produced from *Hoodia* spp. material obtained through controlled harvesting and production under the terms of an agreement with the relevant *CITES Management Authority of [Botswana*