Commission Regulation (EU) No 1158/2012 of 27 November 2012 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein

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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 lists animal and plant species in respect of which trade is restricted or controlled. Those lists incorporate the lists set out in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), hereinafter 'the Convention'.

(2) The following species have been included recently in Appendix III to the Convention: *Diospyros aculeata*, *Diospyros analamerensis*, *Diospyros anosivolensis*, *Diospyros baroniana*, *Diospyros bemarivensis*, *Diospyros bernieri*, *Diospyros bernieriana*, *Diospyros bezofensis*, *Diospyros boinensis*, *Diospyros boivini*, *Diospyros calophylla*, *Diospyros caucheana*, *Diospyros cinnamomoides*, *Diospyros clusiifolia*, *Diospyros conifera*, *Diospyros coursiana*, *Diospyros cupulifera*, *Diospyros danguyana*, *Diospyros decaryana*, *Diospyros dycorypheoides*, *Diospyros ebenifera*, *Diospyros enervis*, *Diospyros erinacea*, *Diospyros erythrosperma*, *Diospyros filipes*, *Diospyros fuscovelutina*, *Diospyros geayana*, *Diospyros gneissicola*, *Diospyros gracilipes*, *Diospyros greveana*, *Diospyros haplostylis*, *Diospyros hazomainty*, *Diospyros hemiteles*, *Diospyros heterosepala*, *Diospyros humbertiana*, *Diospyros humbertii*, *Diospyros implexicalyx*, *Diospyros ketsensis*, *Diospyros laevis*, *Diospyros lamiana*, *Diospyros lanceolata*, *Diospyros latispathulata*, *Diospyros lenticellata*, *Diospyros leucomelas*, *Diospyros leucocalyx*, *Diospyros lokohensis*, *Diospyros louveli*, *Diospyros madagascariensis*, *Diospyros madecassa*, *Diospyros magnifolia*, *Diospyros manampetsae*, *Diospyros mangabensis*, *Diospyros mangorensis*, *Diospyros mapingo*, *Diospyros masoalensis*, *Diospyros mcphersonii*, *Diospyros meeusiana*, *Diospyros microrhombus*, *Diospyros montigena*, *Diospyros myriophylla*, *Diospyros myrtifolia*, *Diospyros myrtilloides*, *Diospyros natalensis*, *Diospyros neraudii*, *Diospyros nigricans*, *Diospyros nodosa*, *Diospyros obducta*, *Diospyros occlusa*, *Diospyros olacinoides*, *Diospyros onivensis*, *Diospyros parifolia*, *Diospyros parvifolia*, *Diospyros perreticulata*, *Diospyros perrieri*, *Diospyros pervillei*, *Diospyros platycalyx*, *Diospyros*

pruinosa, *Diospyros quartzitarium*, *Diospyros quercina*, *Diospyros revaughanii*, *Diospyros rubrolanata*, *Diospyros sakalavarum*, *Diospyros sclerophylla*, *Diospyros seychellarum*, *Diospyros sphaerosepala*, *Diospyros stenocarpa*, *Diospyros striicalyx*, *Diospyros subacuta*, *Diospyros subenervis*, *Diospyros subfalciformis*, *Diospyros subsessilifolia*, *Diospyros subtrinervis*, *Diospyros tampinensis*, *Diospyros tetraceros*, *Diospyros tetrapoda*, *Diospyros torquata*, *Diospyros toxicaria*, *Diospyros tropophylla*, *Diospyros urschii*, *Diospyros velutipes*, *Diospyros vera*, *Diospyros vescoi*, *Diospyros viguieriana*, *Dalbergia louvelii*, *Dalbergia monticola*, *Dalbergia normandii*, *Dalbergia purpurascens*, *Dalbergia xerophila* (all with annotation) at the request of Madagascar; *Dalbergia darienensis*, *Dalbergia retusa* (both with annotation) at the request of Panama; *Cryptobranchus alleganiensis* at the request of the United States; *Sphyrna lewini* at the request of Costa Rica.

(3) The amendments made to Appendix III to the Convention therefore necessitate amendments to Annex C to Regulation (EC) No 338/97.

(4) A footnote should be added to the generic listing of *Agalychnis* spp. in Annex B to Regulation (EC) No 338/97 to indicate the names of the five species covered by this listing.

(5) A footnote should be added to the listing of *Scleropages formosus* in Annex A to Regulation (EC) No 338/97 to indicate that this listing includes the newly described taxon *Scleropages inscriptus*.

(6) The name of the order ‘RAJIFORMES’ should be replaced by the order ‘PRISTIFORMES’ to correctly reflect the taxonomy reference accepted by CITES.

(7) The annotations for the listing of *Cedrela fissilis*, *Cedrela lilloi* and *Cedrela odorata* in Annex C to Regulation (EC) No 338/97 should be amended and the listing of these species in Annex D to that Regulation should subsequently be deleted to correct an inconsistency between the CITES Appendices and the Annexes to Regulation (EC) No 338/97.

(8) Regulation (EC) No 338/97 should therefore be amended accordingly. In view of the extent of the amendments it is appropriate, for clarity purposes, to replace the Annex to that Regulation in its entirety.

(9) 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

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*.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EU) No 1158/2012. (See end of Document for details)*

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

Done at Brussels, 27 November 2012.

For the Commission

The President

José Manuel BARROSO

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 1158/2012. (See end of Document for details)*

ANNEX

ANNEX Notes on interpretation of Annexes A, B, C and D1.Species included in these Annexes A, B, C and D are referred to:

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 Council Directive 2009/147/EC[(2)] or Council Directive 92/43/EEC[(3)].

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

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 to 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 Annex A or B shall be subject to the provisions of 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 parts and derivatives are included. In accordance with Article 2(t) of this Regulation, 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 the Regulation as follows:

13.

As none of the species or higher taxa of FLORA included in Annex A is annotated to the effect that its hybrids shall be treated in accordance with the provisions of Article 4(1) of the Regulation, this means that artificially propagated hybrids produced from one or more of these species or taxa may be traded with a certificate of artificial propagation, and that seeds and

pollen (including pollinia), cut flowers, seedling or tissue cultures obtained *in vitro*, in solid or liquid media, transported in sterile containers of these hybrids are not subject to the provisions of the Regulation.

14. Urine, faeces and ambergris which are waste products and gained without the manipulation of the animal concerned are not subject to the provisions of the Regulation.

15.In respect of fauna species listed in Annex D, the provisions shall apply only to live specimens and whole, or substantially whole, dead specimens except for taxa which are annotated as follows to show that other parts and derivatives are also covered:

16.In respect of flora species listed in Annex D, the provisions shall apply only to live specimens except for taxa which are annotated as follows to show that other parts and derivatives are also covered:

	Annex A	***Annex B***	***Annex C***	***Common name***
FAUNA				
CHORDATA (CHORDATES)				
MAMMALIA				**Mammals**
ARTIODACTYLA				
Antilocapridae				**Pronghorn**
	Antilocapra americana (I) (Only the population of Mexico; no other population is included in the Annexes to this Regulation)			Mexican pronghorn
Bovidae				**Antelopes, cattle, duikers, gazelles, goats, sheep etc.**
	Addax nasomaculatus (I)			Addax
		Ammotragus lervia (II)		Barbary sheep
			Antilope cervicapra (III Nepal)	Blackbuck
		Bison bison athabascae (II)		Wood bison
	Bos gaurus (I) (Excludes the domesticated form referenced as *Bos frontalis* which is not			Gaur