Commission Regulation (EU) No 791/2012 of 23 August 2012 amending, as regards certain provisions relating to the trade in species of wild fauna and flora, Regulation (EC) No 865/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 338/97

COMMISSION REGULATION (EU) No 791/2012

of 23 August 2012

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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(2), (3) and (4) thereof,

Whereas:

(1) In order to implement certain Resolutions adopted at the 15th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), hereinafter 'the Convention', certain provisions should be amended and further provisions should be added to 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[(2)].

(2) Experience gained in the implementation of Regulation (EC) No 865/2006 has shown that some provisions therein should be amended in order to ensure that that Regulation is implemented in a harmonised and efficient manner within the Union.

(3) Therefore, provisions relating to the conditions applying to the identification and marking of specimens, the retrospective issue of certain documents, the conditions under which personal ownership certificates can be issued, the regime applying to personal and household effects within the Union as well to their re-export, the conditions under which 'Annex A' specimens can be subject to commercial activities within the Union, and the conditions applying to pre-issued certificates, should be changed.

(4) Articles 2 and 3 as well as Annexes I to VI to Regulation (EC) No 865/2006 should be deleted from that Regulation as they will become an integral part of a new Commission Implementing Regulation (EU) No 792/2012[(3)], adopted under Article 19(1) of Regulation (EC) No 338/97 further to the entry into force of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[(4)].

(5) At the 15th meeting of the Conference of the Parties to the Convention, the standard references for nomenclature, to be used to indicate scientific names of species in permits and certificates, were updated. Those changes should therefore be reflected in Annex VIII to Regulation (EC) No 865/2006.

(6) Regulation (EC) No 865/2006 should therefore be amended accordingly.

(7) 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

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

(1) in the preamble, the sentence relating to the legal basis of Regulation (EC) No 865/2006 is replaced by the following:

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[(5)], and in particular Article 19(2), (3) and (4) thereof,;

(2) in Article 1, the following points (4a) and (4b) are inserted:

(4a) "cultivated parental stock" means the ensemble of plants grown under controlled conditions that are used for reproduction, and which must have been, to the satisfaction of the competent management authority, in consultation with a competent scientific authority of the Member State concerned:

(i) established in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild; and

(ii) maintained in sufficient quantities for propagation so as to minimise or eliminate the need for augmentation from the wild, with such augmentation occurring only as an exception and limited to the amount necessary to maintain the vigour and productivity of the cultivated parental stock;

(4b) "hunting trophy" means a whole animal, or a readily recognisable part or derivative of an animal, specified on any accompanying CITES permit or certificate that fulfils the following conditions:

(i) is raw, processed or manufactured;

(ii) was legally obtained by the hunter through hunting for the hunter's personal use;

(iii) is being imported, exported or re-exported by or on behalf of the hunter, as part of the transfer from its country of origin, ultimately to the hunter's State of usual residence;;

(3) Article 4 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

1. Forms referred to in Article 2 of Commission Implementing Regulation (EU) No 792/2012[6] shall be completed in typescript.;

(b) paragraph 2 is replaced by the following:

2. Forms 1 to 4 of Annex I provided for in Implementing Regulation (EU) No 792/2012, forms 1 and 2 of Annex II provided for in Implementing Regulation (EU) No 792/2012, forms 1 and 2 of Annex III provided for in Implementing Regulation (EU) No 792/2012, forms 1 and 2 of Annex V provided for in Implementing Regulation (EU) No 792/2012, the continuation sheets referred to in Article 2(4) of Implementing Regulation (EU) No 792/2012 and the labels referred to in Article 2(6) of Implementing Regulation (EU) No 792/2012 may not contain any erasures or alterations, unless those erasures or alterations have been authenticated by the stamp and signature of the issuing management authority. In the case of the import notifications as referred to in Article 2(2) of Implementing Regulation (EU) No 792/2012 and the continuation sheets referred to in Article 2(4) of Implementing Regulation (EU) No 792/2012, erasures or alterations may also be authenticated by the stamp and signature of the customs office of introduction.;

(4) in Article 5a, the first subparagraph is replaced by the following:

In case of plant specimens that cease to qualify for an exemption from the provisions of the Convention or Regulation (EC) No 338/97 in accordance with the "Notes on the interpretation of Annexes A, B, C and D" in the Annex thereto, under which they were legally exported and imported, the country to be indicated in box 15 of the forms in Annexes I and III provided for in Implementing Regulation (EU) No 792/2012, box 4 of the forms in Annex II provided for in Implementing Regulation (EU) No 792/2012 and box 10 of the forms in Annex V provided for in Implementing Regulation (EU) No 792/2012 may be the country in which the specimens ceased to qualify for the exemption.;

(5) Article 6 is replaced by the following:

Article 6

Annexes to forms

1 If an annex attached to any of the forms referred to in Article 2 of Implementing Regulation (EU) No 792/2012 is an integral part of that form, that fact and the number of pages shall be clearly indicated on the permit or certificate concerned and each page of the annex shall include the following:

a the number of the permit or certificate and its date of issue;

b the signature and the stamp or seal of the management authority which issued the permit or certificate.

2 Where the forms referred to in Article 2(1) of Implementing Regulation (EU) No 792/2012 are used for more than one species in a shipment, an annex shall be attached which, in addition to the information required under paragraph 1 of this Article, shall, for each species in the shipment, reproduce boxes 8 to 22 of the form concerned as well as the spaces contained in box 27 thereof for "quantity/net mass

actually imported or (re-)exported" and, where appropriate, "number of animals dead on arrival".

3 Where the forms referred to in Article 2(3) of Implementing Regulation (EU) No 792/2012 are used for more than one species, an annex shall be attached which, in addition to the information required under paragraph 1 of this Article, shall, for each species, reproduce boxes 8 to 18 of the form concerned.

4 Where the forms referred to in Article 2(5) of Implementing Regulation (EU) No 792/2012 are used for more than one species, an annex shall be attached which, in addition to the information required under paragraph 1 of this Article, shall, for each species, reproduce boxes 4 to 18 of the form concerned.;

(6) in Article 7, the following paragraph 5 is added:

5. Export permits and re-export certificates shall be endorsed, with quantity, signature and stamp, by an official from the export or re-export country, in the export endorsement block of the document. If the export document has not been endorsed at the time of export, the management authority of the importing country should liaise with the exporting country's management authority, considering any extenuating circumstances or documents, to determine the acceptability of the document.;

(7) in Article 8(1), the first subparagraph is replaced by the following:

1. Documents shall be issued and used in accordance with the provisions and under the conditions laid down in this Regulation and in Regulation (EC) No 338/97, and in particular in Article 11(1) to (4) of the latter Regulation. Permits and certificates may be issued in paper format or in electronic format.;

(8) in Article 11(3), the first subparagraph is replaced by the following:

3. Certificates issued in accordance with Articles 48 and 63 shall be transaction-specific unless the specimens covered by such certificates are uniquely and permanently marked or, in the case of dead specimens which can not be marked, identified by other means.;

(9) in Article 15, paragraph 3a is replaced by the following:

3a. For personally owned live animals, which are legally acquired and held for personal non-commercial purposes, for which an import permit is issued pursuant to the second subparagraph of paragraph 2, commercial activities, as laid down in Article 8(1) of Regulation (EC) No 338/97, shall be prohibited for two years from the date of issuance of the permit and no exemptions for specimens of Annex A species, as provided for in Article 8(3) of that Regulation, shall be granted during that period.

In the case of import permits issued pursuant to the second subparagraph of paragraph 2 for those personally owned live animals and for specimens of species listed in Annex A to Regulation (EC) No 338/97 and referred to in Article 4(5)(b) thereof, the stipulation "by way of derogation to Article 8(3) or (5) of Regulation (EC) No 338/97, commercial activities, as laid down in Article 8(1) of that Regulation, shall be prohibited for at least two years from the date of issuance of this permit" shall be included in box 23.;

(10) in Article 30, paragraph 4 is replaced by the following:

4. In the case of specimens other than live animals, the management authority shall attach to the travelling exhibition certificate an inventory sheet displaying,

in respect of each specimen, all the information required by boxes 8 to 18 of the model form set out in Annex III provided for in Implementing Regulation (EU) No 792/2012.;

(11) in Article 37, paragraph 1 is replaced by the following:

1. Member States may issue personal ownership certificates to the legal owner of legally acquired live animals, held for personal non-commercial purposes.;

(12) in Article 45(1), the second subparagraph is replaced by the following:

Management authorities receiving such documents shall without delay forward those issued by other Member States to the relevant management authorities, together with any supporting documents issued in accordance with the Convention. For reporting purposes, original import notifications shall also be forwarded to the management authorities of the country of import, when it is different from the country where the specimen was introduced into the Union.;

(13) 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 specimens, preserved, dried or embedded museum specimens and live plant material for scientific study.;

(14) Article 56 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

(b) the cultivated parental stock is established and maintained in accordance with the definition set out in Article 1(4a);;

(b) point (c) is deleted;

(c) point (d) is replaced by the following:

(d) in the case of grafted plants, both the root stock and the graft have been artificially propagated in accordance with points (a) and (b).;

(d) paragraph 2 is replaced by the following:

2. Timber and other parts or derivatives of trees taken from trees grown in monospecific plantations shall be considered to be artificially propagated in accordance with paragraph 1.;

(15) in Article 58, a new paragraph 3a is inserted:

3a. The re-export, by a person which is not normally residing in the Union, of personal or household effects acquired outside his/her State of usual residence, including personal hunting trophies, that are specimens of species listed in Annex A to Regulation (EC) No 338/97, shall require the presentation to customs of a re-export certificate.;

(16) the following Article 58a is inserted: