Commission Regulation (EU) No 101/2012 of 6 February 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: *Calyptocephalella gayi* at the request of Chile; *Agrias amydon boliviensis, Morpho godartii lachaumei*, and *Prepona praeneste buckleyana* at the request of Bolivia; *Cedrela fissilis* and *Cedrela lilloi* (both with annotation) at the request of Bolivia; *Cedrela odorata* (with annotation) at the request of Bolivia and Brazil; *Lodoicea maldivica* at the request of the Seychelles; *Pinus koraiensis* at the request of Russia.

(3) *Lamna nasus* is subject to conservation and management measures within the Union, in particular to those provided for in Council Regulation (EU) No 57/2011 of 18 January 2011 fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters[(2)]. With a view to fostering international cooperation for the control of trade in specimens of the *Lamna nasus* species, the Commission intends to propose that the Member States include the species in Appendix III to the Convention; *Lamna nasus* should therefore be included in Annex C of the Annex to Regulation (EC) No 338/97 and that inclusion applies as soon as the inclusion in Appendix III to the Convention takes effect.

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

(5) It has been established that the introduction of live specimens belonging to three squirrel species (*Callosciurus erythraeus*, *Sciurus carolinensis* and *Sciurus niger*) into the natural habitat of the Union would constitute an ecological threat to endangered wild species of fauna indigenous to the Union. Threats, and/or potential threats, to the

Eurasian red squirrel (*Sciurus vulgaris*), as well as to plant communities and habitats have been demonstrated or anticipated by several ad hoc studies and surveys. Threats for the Eurasian red squirrel are a combination of competitive exclusion (over food resources or habitat) and resistance to disease. Threats on ecosytems include predation on birds' eggs and chicks and competition with woodland birds for nest sites and food, and damage to woodland and timber plantations through bark-stripping. Specimens of those three invasive species are currently traded into the Union and the species should therefore be included in Annex B of the Annex to Regulation (EC) No 338/97 in accordance with Article 3(2)(d) thereof.

(6) Trade in specimens from the species *Haliotis midae* needs to be monitored. This species should therefore be included in Annex D of the Annex to Regulation (EC) No 338/97.

(7) A definition of the term 'cultivar' should be inserted in the Annex to Regulation (EC) No 338/97 in order to implement CITES Resolution Conf. 11.11 (Rev. CoP 15) on Regulation of Trade in Plants.

(8) In order to distinguish between wild and artificially propagated specimens of *Tillandsia xerographica*, this species already included in Annex B needs to be accompanied by an annotation which specifies that trade of artificially propagated specimens is allowed only for those specimens which possess certain recognizable morphological characteristics (cataphylls).

(9) An inconsistency in the nomenclatural references in Annex D of the Annex to Regulation (EC) No 338/97 as regards the family Gerrhosauridae should be corrected.

(10) 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.

(11) 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 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, 6 February 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 101/2012. (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:by the name of the species; oras 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 Council Directive 2009/147/EC or Council Directive 92/43/EEC.5.The following abbreviations are used for plant taxa below the level of species:"ssp." is used to denote subspecies;"var(s)." is used to denote variety (varieties); and"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 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 Annexes 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:#1Designates all parts and derivatives, except:seeds, spores and pollen (including pollinia);seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers;cut flowers of artificially propagated plants; andfruits and parts and derivatives thereof of artificially propagated plants of the genus Vanilla.#2Designates all parts and derivatives, except:seeds and pollen; andfinished products packaged and ready for retail trade.#3Designates whole and sliced roots and parts of roots.#4Designates all parts and derivatives, except: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 Neodypsis decaryi exported from Madagascar;seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers;cut flowers of artificially propagated plants;fruits and parts and derivatives thereof of naturalized or artificially propagated plants of the genus Vanilla (Orchidaceae) and of the family Cactaceae;stems, flowers, and parts and derivatives thereof of naturalized or artificially propagated plants of the genera Opuntia subgenus Opuntia and Selenicereus (Cactaceae); andfinished products of Euphorbia antisyphilitica packaged and ready for retail trade.#5Designates logs, sawn wood and veneer sheets.#6Designates logs, sawn wood, veneer sheets and plywood.#7Designates logs, wood-chips, powder and extracts.#8Designates underground parts (i.e. roots, rhizomes): whole, parts and powdered.#9Designates all parts and

derivatives, except those bearing a label “Produced from Hoodia spp. material obtained through controlled harvesting and production in collaboration with the CITES Management Authorities of Botswana/Namibia/South Africa under agreement no. BW/NA/ZA xxxxxx”.#10Designates logs, sawn wood, veneer sheets, including unfinished wood articles used for the fabrication of bows for stringed musical instruments.#11Designates logs, sawn wood, veneer sheets, plywood, powder and extracts.#12Designates logs, sawn wood, veneer sheets, plywood and essential oil, excluding finished products packaged and ready for retail trade.#13Designates the kernel (also known as “endosperm”, “pulp” or “copra”) and any derivative thereof.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:§ 1Any whole, or substantially whole, skins, raw or tanned.§ 2Any feathers or any skin or other part with feathers on it.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:§ 3Dried and fresh plants, including, where appropriate; leaves, roots/rootstock, stems, seeds/spores, bark and fruits.§ 4Logs, sawn wood and veneer sheets.Population of Argentina (listed in Annex B):For the exclusive purpose of allowing international trade in wool sheared from live vicuñas of the populations included in Annex B, in cloth and in derived manufactured products and other handicraft artefacts. The reverse side of the cloth must bear the logotype adopted by the range States of the species, which are signatories to the Convenio para la Conservación y Manejo de la Vicuña, and the selvages the words “VICUÑA-ARGENTINA”. Other products must bear a label including the logotype and the designation “VICUÑA-ARGENTINA-ARTESANÍA”. All other specimens shall be deemed to be specimens of species included in Annex A and the trade in them shall be regulated accordingly.Population of Bolivia (listed in Annex B):For the exclusive purpose of allowing international trade in wool sheared from live vicuñas and in cloth and items made thereof, including luxury handicrafts and knitted articles. The reverse side of the cloth must bear the logotype adopted by the range States of the species, which are signatories to the Convenio para la Conservación y Manejo de la Vicuña, and the selvages the words “VICUÑA-BOLIVIA”. Other products must bear a label including the logotype and the designation “VICUÑA-BOLIVIA-ARTESANÍA”. All other specimens shall be deemed to be specimens of species included in Annex A and the trade in them shall be regulated accordingly.Population of Chile (listed in Annex B):For the exclusive purpose of allowing international trade in wool sheared from live vicuñas of the populations included in Annex B, and in cloth and items made thereof, including luxury handicrafts and knitted articles. The reverse side of the cloth must bear the logotype adopted by the range States of the species, which are signatories to the Convenio para la Conservación y Manejo de la Vicuña, and the selvages the words “VICUÑA-CHILE”. Other products must bear a label including the logotype and the designation “VICUÑA-CHILE-ARTESANÍA”. All other specimens shall be deemed to be specimens of species included in Annex A and the trade in them shall be regulated accordingly.Population of Peru (listed in Annex B):For the exclusive purpose of allowing international trade in wool sheared from live vicuñas and in the stock extant at the time of the ninth meeting of the Conference of the Parties (November 1994) of 3 249 kg of wool, and in cloth and items made thereof, including luxury handicrafts and knitted articles. The reverse side of the cloth must bear the logotype adopted by the range States of the species, which are signatories to the Convenio para la Conservación y Manejo de la Vicuña, and the selvages the words “VICUÑA-PERU”. Other products must