Commission Regulation (EU) No 709/2010 of 22 July 2010 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, hereinafter 'the Convention'. At the 15th session of the Conference of the Parties to the Convention, held in Doha, Qatar, in March 2010, certain amendments were made to the Appendices to the Convention.

(2) The species *Anas oustaleti* has been deleted from Appendix I.

(3) The species *Euphorbia misera, Orothamnus zeyheri* and *Protea odorata* have been deleted from Appendix II.

(4) The Egyptian population of *Crocodylus niloticus* has been transferred from Appendix I to Appendix II with a zero quota for wild specimens.

(5) The Mexican and Belize populations of *Crocodylus moreletii* have been transferred from Appendix I to Appendix II with a zero quota for wild specimens.

(6) *Neurergus kaiseri* has been included in Appendix I.

(7) The species *Ctenosaura bakeri*, *C. oedirhina*, *C. melanosterna*, *C. palearis*, *Agalychnis* spp., *Dynastes satanas*, *Operculicarya hyphaenoides*, *O. pachypus*, *Zygosicyos pubescens*, *Z. tripartitus*, *Aniba rosaeodora* (with annotation), *Adenia olaboensis*, *Cyphostemma elephantopus*, *C. montagnacii* and *Bulnesia sarmientoi* (with annotation) have been included in Appendix II.

(8) The Appendix II listing of *Beccariophoenix madagascariensis* and *Neodypsis decaryi* was extended to include seeds from Madagascar.

(9) The following species have been deleted from Appendix III to the Convention at the request of Malaysia: *Arborophila campbelli, Arborophila charltonii, Caloperdix*

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 709/2010. (See end of Document for details)*

oculeus, Lophura erythrophthalma, Lophura ignita, Melanoperdix niger, Polyplectron inopinatum, Rhizothera dulitensis, Rhizothera longirostris and *Rollulus rouloul*, and the species *Haliotis midae* has been deleted from Appendix III to the Convention at the request of South Africa.

(10) The annotations for the listings in Appendices I and II to the Convention of the species *Canis lupus* have been amended.

(11) The annotations for the listings in Appendix I to the Convention of the species Orchidaceae spp. have been amended.

(12) The annotations for the listings in Appendix II to the Convention of the species Cactaceae spp. and all plant taxa with annotation #1 have been amended.

(13) None of the Member States has entered a reservation in respect of any of those amendments.

(14) The amendments made to Appendices I, II and III to the Convention therefore necessitate amendments to Annexes A, B and C of the Annex to Regulation (EC) No 338/97.

(15) The species *Physignathus cocincinus, Abronia graminea* and *Ctenosaura quinquecarinata* — which are currently not listed in the Annex to Regulation (EC) No 338/97 — are being imported into the Union in such numbers as to warrant monitoring. Those species should therefore be included in Annex D of the Annex to Regulation (EC) No 338/97.

(16) At the 15th Conference of the Parties to the Convention new nomenclatural references for animals were adopted.

(17) 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.

(18) 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 in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third day following 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, 22 July 2010.

For the Commission

The President

José Manuel BARROSO

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 (Birds Directive) or Council Directive 92/43/EEC (Habitats Directive).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 of 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.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.11.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 naturalised or artificially propagated plants of the genus Vanilla (Orchidaceae) and of the family Cactaceae;stems, flowers, and parts and derivatives thereof of naturalised 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 and 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.12.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.13.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.14.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.15.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 bear a label including the logotype and the designation “VICUÑA-PERU-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.All species are listed in Appendix II except Balaena mysticetus, Eubalaena spp., Balaenoptera acutorostrata (except population of West Greenland), Balaenoptera bonaerensis, Balaenoptera borealis, Balaenoptera edeni, Balaenoptera musculus, Balaenoptera omurai, Balaenoptera physalus, Megaptera novaeangliae, Orcaella brevirostris,