Regulation (EC) No 398/2009 of the European Parliament and of the Council of 23 April 2009 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, as regards the implementing powers conferred on the Commission

REGULATION (EC) No 398/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, as regards the implementing powers conferred on the Commission

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) Regulation (EC) No 338/97[(3)] provides that certain measures are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(4)].

(2) Decision 1999/468/EC has been amended by Decision 2006/512/EC[(5)], which introduced the regulatory procedure with scrutiny for the adoption of measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure laid down in Article 251 of the Treaty, inter alia by deleting some of those elements or by supplementing the instrument with new non-essential elements.

(3) In accordance with the statement by the European Parliament, the Council and the Commission[(6)] concerning Decision 2006/512/EC, for the regulatory procedure with scrutiny to be applicable to instruments adopted in accordance with the procedure laid down in Article 251 of the Treaty which are already in force, those instruments must be adjusted in accordance with the applicable procedures.

(4) In particular, the Commission should be empowered to adopt certain measures regulating trade in species of wild fauna and flora, to adopt certain amendments to the Annexes to Regulation (EC) No 338/97 and to adopt additional measures to implement resolutions of the Conference of the Parties to the Convention on international trade in endangered species of wild fauna and flora (CITES) (hereinafter referred to as

'the Convention'), decisions or recommendations of the Standing Committee of the Convention and recommendations of the Convention Secretariat. Since those measures are of general scope and are designed to amend non-essential elements of Regulation (EC) No 338/97, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(5) On grounds of efficiency, the normal time-limits for the regulatory procedure with scrutiny should be curtailed for the adoption of measures amending the Annexes to Regulation (EC) No 338/97, in order to comply with the deadline for entry into force of amendments to the Appendices to the Convention.

(6) Regulation (EC) No 338/97 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments

Regulation (EC) No 338/97 is hereby amended as follows:

1. Article 4 shall be amended as follows:

   (a) in paragraph 6, the introductory sentence shall be replaced by the following:

   6. In consultation with the countries of origin concerned, in accordance with the regulatory procedure referred to in Article 18(2) and taking account of any opinion from the Scientific Review Group, the Commission may establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into the Community:;

   (b) paragraph 7 shall be replaced by the following:

   7. Where special cases of transhipment, air transfer or rail transport occur following introduction into the Community, derogations from completion of the checks and presentations of import documents at the border customs office at the point of introduction which are referred to in paragraphs 1 to 4 shall be granted by the Commission in order to permit such checks and presentations to be made at another customs office designated in accordance with Article 12(1).

   Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).;

2. Article 5 shall be amended as follows:

   (a) paragraph 5 shall be replaced by the following:

   5. Where an application for a re-export certificate concerns specimens introduced into the Community under an import permit issued by another Member State, the management authority must first consult the management authority which issued the permit. The consultation procedures and the cases in which consultation is necessary shall be established by the

Commission. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).;

(b) in paragraph 7, point (b) shall be replaced by the following:

(b) Whenever a management authority is advised of the measures referred to in (a), it shall inform and send comments to the Commission which shall, if appropriate, recommend restrictions on exports of the species concerned in accordance with the regulatory procedure referred to in Article 18(2).;

3. Article 7 shall be amended as follows:

(a) in paragraph 1, point (c) shall be replaced by the following:

(c) The criteria for determining whether a specimen has been born and bred in captivity or artificially propagated and whether for commercial purposes, as well as the special conditions referred to in (b), shall be specified by the Commission. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).;

(b) in paragraph 2, point (c) shall be replaced by the following:

(c) If the document referred to in (b) has not been issued before export or re-export, the specimen must be seized and may, where applicable, be confiscated unless the document is submitted retrospectively in compliance with the conditions specified by the Commission. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).;

(c) paragraphs 3 and 4 shall be replaced by the following:

3. *Personal and household effects*

By way of derogation from Articles 4 and 5, the provisions therein shall not apply to dead specimens, parts and derivatives of species listed in Annexes A to D which are personal or household effects being introduced into the Community, or exported or re-exported therefrom, in compliance with provisions that shall be specified by the Commission. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).

4 *Scientific institutions*

The documents referred to in Articles 4, 5, 8 and 9 shall not be required in the case of non-commercial loans, donations and exchanges between scientists and scientific institutions, registered by the management authorities of the States in which they are located, of herbarium specimens and other preserved, dried or embedded museum specimens, and of live plant material, bearing a label, the model for which has been determined in accordance with

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EC) No 398/2009 of the European Parliament and of the Council. (See end of Document for details)*

the regulatory procedure referred to in Article 18(2) or a similar label issued or approved by a management authority of a third country.;

4. in Article 8, paragraph 4 shall be replaced by the following:

4. General derogations from the prohibitions referred to in paragraph 1 based on the conditions referred to in paragraph 3, as well as general derogations with regard to species listed in Annex A in accordance with point (ii) of Article 3(1)(b) may be defined by the Commission. Any such derogations must be in accordance with the requirements of other Community legislation on the conservation of wild fauna and flora. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).;

5. in Article 9, paragraph 6 shall be replaced by the following:

6. The Commission may establish restrictions on the holding or movement of live specimens of such species in relation to which restrictions on introduction into the Community have been established in accordance with Article 4(6). Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).;

6. in Article 11, paragraph 5 shall be replaced by the following:

5. The Commission shall establish time limits for the issuance of permits and certificates. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).;

7. in Article 12, paragraph 4 shall be replaced by the following:

4. In exceptional cases and in accordance with the criteria defined by the Commission, a management authority may authorise the introduction into the Community or the export or re-export therefrom at a customs office other than one designated in accordance with paragraph 1. Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3).;

8. Article 15 shall be amended as follows:

(a) paragraph 4 shall be amended as follows:

(i) in point (a), the last sentence shall be replaced by the following:

The information to be communicated and the format for its presentation shall be specified by the Commission in accordance with the regulatory procedure referred to in Article 18(2).;

(ii) in point (c), the last sentence shall be replaced by the following:

The information to be communicated and the format for its presentation shall be specified by the Commission in accordance with the regulatory procedure referred to in Article 18(2).;

(b) paragraph 5 shall be replaced by the following: