





COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.2.2008  
COM(2008) 104 final

2008/0042 (COD)

Adaptation to the regulatory procedure with scrutiny

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of**

**amending 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**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1 Reform of the committee procedures

Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>1</sup> was amended by Council Decision 2006/512/EC of 17 July 2006<sup>2</sup>.

Article 5a of the amended Decision 1999/468/EC introduced a new regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, including by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.

#### 1.2. Priority alignment and general alignment

In a joint statement<sup>3</sup>, Parliament, the Council and the Commission listed a number of basic instruments that should be adapted to the amended Decision as a matter of urgency in order to incorporate the new regulatory procedure with scrutiny (priority alignment). For the regulatory procedure with scrutiny to be applicable to the other instruments adopted under the codecision procedure and already in force at the time when Decision 2006/512/EC took effect, the joint statement also calls for the adaptation of these instruments, in accordance with the applicable procedures (general alignment).

The Commission has undertaken to examine all these instruments, with a view to submitting, by the end of 2007, legislative proposals to adapt them, if necessary, to the new regulatory procedure with scrutiny<sup>4</sup>.

#### 1.3. Method used

As mentioned in the Commission's Communication to the European Parliament and the Council of 23 November 2007<sup>5</sup>, the Commission has carefully examined all the instruments adopted by codecision in order to identify those which permit the Commission to adopt measures of general scope designed to amend non-essential elements of the basic instrument in question. The Commission has identified more than 200 instruments that require adaptation.

Some of these instruments come under the Commission's codification programme: for example, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein. Adaptation to the new procedure should take place, depending on how far the codification process has progressed, either by recasting the codified proposal or, as in the present case, by legislative amendment.

---

<sup>1</sup> OJ L 184, 17.7.1999, p. 23.

<sup>2</sup> OJ L 200, 22.7.2006, p. 11.

<sup>3</sup> OJ C 255, 21.10.2006, p. 1.

<sup>4</sup> PE 376.314v01-00 – A6-0236/2006 (Commission declaration annexed to Parliament's report)

<sup>5</sup> COM(2007) 740 final

## **2. LEGAL ELEMENTS OF THE PROPOSAL**

The purpose of adaptation is to incorporate the regulatory procedure with scrutiny, as provided for in Article 5a of amended Decision 1999/468/EC.

In particular, the following articles, foreseeing adoption of measures that are of general scope and are designed to amend non-essential elements of Regulation (EC) No 338/97, inter alia by supplementing it, shall be adjusted to the regulatory procedure with scrutiny: Article 4(7), Article 5(5), Article 7(1)(c), Article 7(2)(c), Article 7(3), Article 8(4), Article 9(6), Article 11(5), Article 12(4), Article 19(2), Article 19(3), Article 19(4) and Article 19(5).

Where it appears justified particularly in the light of the nature of the measures envisaged, the adaptation shall also contain provisions relating to the curtailment of the time limits normally applicable in the context of the regulatory procedure with scrutiny, in accordance with paragraph 5 of the aforesaid Article 5a.

In particular, on grounds of efficiency, the normal time-limits for the regulatory procedure with scrutiny should be curtailed for the adoption of measures, referred to in Article 19(3), that amend Annexes A to D.

It is also necessary to specify a reference to the regulatory procedure referred to in Article 18(2) in the comitology provisions that are not to be aligned to the regulatory procedure with scrutiny. This concerns Articles 4(6), 5(7)(b), 7(4), 15(4)(a), 15(4)(c), 15(5), 19(1) and 21(3).

Article 18 should be amended to introduce a reference to Article 5a of Decision 1999/468/EC.

Since the basic instrument is a Regulation, it must be adapted by means of an equivalent instrument.

**Adaptation to the regulatory procedure with scrutiny**

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending 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<sup>6</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>7</sup>,

Having regard to the opinion of the Committee of the Regions<sup>8</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>9</sup>,

Whereas:

- (1) Regulation (EC) No 338/97<sup>10</sup> 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<sup>11</sup>.
- (2) Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced a regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, including by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.
- (3) In accordance with the joint statement of the European Parliament, the Council and the Commission<sup>12</sup> on Decision 2006/512/EC, for this new procedure to be applicable to

---

6 OJ C [...], [...], p. [...].

7 OJ C [...], [...], p. [...].

8 OJ C [...], [...], p. [...].

9 OJ C [...], [...], p. [...].

10 OJ L 61, 3.3.1997, p. 1. Regulation as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1)

11 OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

12 OJ C 255, 21.10.2006, p. 1.

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) As regards Regulation (EC) No 338/97, power should be conferred on the Commission in particular to grant derogations from completion of the checks and presentations of import documents at the border customs office at the point of introduction for special cases of transshipment, air transfer or rail transport; to establish procedures for consultation between management authorities prior to the issuance of re-export certificates and the cases in which consultation is necessary; to specify criteria for determining whether a specimen has been born and bred in captivity, artificially propagated and whether for commercial purposes and special conditions for waving provisions of Articles 4 and 5 in the case of artificially propagated plants; to establish conditions for retrospective submission of documents referred to in Article 7(2)(b); to specify provisions whereby the provisions of Article 4 and 5 shall not apply to personal and household effects being introduced into the Community or exported or re-exported therefrom; to define derogations referred to in Article 8(4); to establish restrictions on the holding or movement of live specimens or species subject to restrictions in accordance with Article 4(6); to establish time-limits for the issuance of permits and certificates; to establish criteria for a management authority to authorize the introduction into the Community or the export or re-export of specimens at a customs office other than one designated in accordance with Article 12(1); to establish uniform conditions and criteria as referred to in Article 19(1); to amend Annexes A to D; to adopt additional measures to implement resolutions of the Conference of the Parties to 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 and to supplement it by the addition of new non-essential elements, they should 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 Annexes A to D in accordance with Article 19(3), in order to comply with the deadline for entry into force of amendments to the Appendices to the Convention adopted at meetings of Conferences to the Parties to the Convention and to ensure that the provisions of Article 3 are complied with.
- (6) Regulation (EC) No 338/97 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION

#### *Article 1*

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

- (1) Article 4 is amended as follows:
  - (a) in paragraph 6, the introductory sentence is replaced by the following:

"6. In consultation with the countries of origin concerned, in accordance with the 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 is replaced by the following:

"7. Where special cases of transshipment, 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 is amended as follows:

(a) paragraph 5 is 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) is 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 procedure referred to in Article 18(2)."

(3) Article 7 is amended as follows:

(a) in paragraph 1, point (c) is 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) is 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) paragraph 3 is 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)."

(d) paragraph 4 is replaced by the following:

*"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 the 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 is 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. 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). Any such derogations must be in accordance with the requirements of other Community legislation on the conservation of wild fauna and flora."

(5) In Article 9, paragraph 6 is 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 is 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 is 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, relating to the definition of criteria for such authorisations, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(3)."

(8) Article 15 is amended as follows:

(a) paragraph 4 is amended as follows:

(i) in point (a), the last sentence is 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 procedure referred to in Article 18(2)."

(ii) in point (c), the last sentence is 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 procedure referred to in Article 18(2)."

(b) paragraph 5 is replaced by the following:

"5. With a view to the preparation of amendments to the Annexes, the competent authorities of the Member States shall forward all relevant information to the Commission. The Commission shall specify the information required, in accordance with the procedure referred to in Article 18(2)."

(9) Article 18 is amended as follows:

(a) Paragraph 3 is replaced by the following:

"3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof."

(b) Paragraph 4 is inserted:

"4. Where reference is made to this paragraph, Article 5a(1) to (4) and (5)(b), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof."

The time limits laid down in Article 5a(3)(c), (4)(b), and 4(e) of Decision 1999/468/EC shall be set at one month, one month and two months respectively."

- (10) Article 19 is replaced by the following:

*"Article 19*

1. In accordance with the procedure referred to in Article 18(2), the Commission shall adopt the measures referred to in Article 4(6), Article 5(7) (b), Article 7(4), Article 15(4) (a) and (c), Article 15(5) and Article 21(3).

The Commission shall determine the design of the documents referred to in Articles 4, 5, 7 (4) and 10 in accordance with the procedure referred to in Article 18(2).

2. The Commission shall adopt the measures referred to in Article 4(7), Article 5(5), Article 7(1)(c), (2)(c) and (3), Article 8(4), Article 9(6), and Article 11(5). 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).

3. The Commission shall lay down uniform conditions and criteria for the following:

(i) the issue, validity and use of the documents referred to in Articles 4, 5, 7 (4) and 10;

(ii) the use of phytosanitary certificates referred to in Article 7(1)(b)(i);

(iii) the establishment of procedures, where necessary, for marking specimens in order to facilitate identification and ensure enforcement of the provisions;

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. The Commission shall adopt, where necessary, additional measures to implement resolutions of the Conference of the Parties to the Convention, decisions or recommendations of the Standing Committee of the Convention and recommendations of the Convention Secretariat. 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. The Commission shall amend Annexes A to D except in the case of amendments to Annex A which do not result from decisions of the Conference of the Parties to the Convention. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance regulatory procedure with scrutiny referred to in Article 18(4)."

- (11) In Article 21, paragraph 3, the introductory sentence is replaced by the following:

"3. Two months before this Regulation is implemented the Commission, in accordance with the procedure laid down in Article 18(2) and in consultation with the Scientific Review Group:"

*Article 2*

This Regulation shall enter into force on ...

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

Done at Brussels, [...]

*For the European Parliament*  
*The President*  
[...]

*For the Council*  
*The President*  
[...]