



Council of the
European Union

197308/EU XXVII. GP
Eingelangt am 24/09/24

Brussels, 24 September 2024
(OR. en)

13730/24

ENV 934
WTO 117

COVER NOTE

From:	European Commission
date of receipt:	20 September 2024
To:	General Secretariat of the Council
No. Cion doc.:	D099286/02
Subject:	COMMISSION REGULATION (EU) .../... of XXX amending Regulation (EC) No 865/2006 as regards developments in the framework of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the possibility to issue retrospective permits

Delegations will find attached document D099286/02.

Encl.: D099286/02



EUROPEAN
COMMISSION

Brussels, XXX
D099286/02
[...] (2024) XXX draft

COMMISSION REGULATION (EU) .../...

of XXX

amending Regulation (EC) No 865/2006 as regards developments in the framework of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the possibility to issue retrospective permits

COMMISSION REGULATION (EU) .../...

of **XXX**

amending Regulation (EC) No 865/2006 as regards developments in the framework of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the possibility to issue retrospective permits

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 therein¹, and in particular Article 19(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 865/2006² lays down provisions implementing Regulation (EC) No 338/97 and ensuring full compliance with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (the Convention).
- (2) Certain resolutions were adopted at the 19th meeting of the Conference of the Parties to the Convention (CoP19) in Panama City in the Republic of Panama from 14 to 25 November 2022, and decisions were taken and recommendations made at the 75th and 77th meetings of the CITES Standing Committee.
- (3) In particular, at CoP19, certain changes to Resolution Conf. 10.16 (Rev. CoP19), amending the definition of breeding stock, were agreed on. Those amendments need to be incorporated into Union law.
- (4) The list of standard references for nomenclature annexed to Resolution Conf. 12.11 (Rev. CoP19), to be used to indicate the scientific names of species in permits and certificates, was also updated. Those changes should be reflected in Annex VIII to Regulation (EC) No 865/2006.
- (5) The CoP19 decision on a change in nomenclature should also be reflected in Annex X to Regulation (EC) No 865/2006.
- (6) CoP19 amended Resolution Conf. 12.3 with regard to different purposes of transaction and the codes to be used for designating those purposes. Those amendments should be reflected in Article 5c of Regulation (EC) No 865/2006 and in Annex IX to that Regulation. In particular, Resolution Conf. 12.3 was amended by inserting definitions for purpose-of-transaction codes Z, M, E, N and L. Those definitions should be included in Annex IX to Regulation (EC) No 865/2006.

-

¹ OJ L 61, 3.3.1997, p. 1, ELI: <http://data.europa.eu/eli/reg/1997/338/2023-05-20>.

² 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 (OJ L 166, 19.6.2006, p. 1, ELI: <http://data.europa.eu/eli/reg/2006/865/oj>).

- (7) At the 75th and 77th meetings of the CITES Standing Committee, the guidelines on submitting annual reports were also revised. They consist of revised codes that are to be included in the description of specimens and units of measure to be used in permits and certificates. The revised codes and units of measure need to be reflected in Annex VII to Regulation (EC) No 865/2006.
- (8) Resolution Conf. 11.17 (Rev. CoP19) set the deadline for submitting implementation reports as 31 October of the year before each Conference of the Parties to the Convention. Article 69 of Regulation (EC) No 865/2006 should be amended so that all intra-EU deadlines for Member State report submissions are 15 June, so that the Commission can fulfil its duty to report to the Secretariat of the Convention by 31 October of the year in question. The new amendment on submitting implementation reports clarifies the reference to Article 15(4), point (c), of Regulation (EC) No 338/97.
- (9) To implement Resolution Conf. 12.10 (Rev. CoP15) and the recommendations the CITES Standing Committee adopted at its 77th meeting, certain provisions and annexes should be amended, and further provisions, as well as new Annex XIV, should be added to Regulation (EC) No 865/2006.
- (10) Resolution Conf. 12.10 (Rev. CoP15) states that the exemption set out in Article VII, paragraph 4, of the Convention should be implemented through the registration by the Secretariat of the Convention of operations that breed specimens of animal species listed in Appendix I to the Convention in captivity for commercial purposes.
- (11) At the 77th meeting of the CITES Standing Committee, it was determined that Article III and Article VII, paragraph 4, of the Convention were not being effectively implemented by the Union with regard to the registration of operations that breed specimens of Appendix I animal species in captivity for commercial purposes.
- (12) The CITES Standing Committee urged CITES Management Authorities of the Union to ensure that facilities breeding specimens of animal species listed in Appendix I to the Convention in captivity for commercial purposes are registered with the Secretariat of the Convention in accordance with the procedures established in Resolution Conf. 12.10 (Rev. CoP15).
- (13) The CITES Standing Committee also invited the Parties to the Convention to restrict imports for primarily commercial purposes of captive-bred specimens of animal species listed in Appendix I to the Convention to specimens produced by operations registered with the Secretariat of the Convention, and to reject any permit or certificate granted under Article VII, paragraph 4, if the specimens concerned did not originate from a registered facility.
- (14) Given the potentially significant number of applications for the registration of operations with the Secretariat of the Convention and the time national authorities and the Secretariat of the Convention need to process applications, the application of the provisions on issuing permits and certificates for the import, export and re-export for commercial purposes of specimens of animal species listed in Appendix I to the Convention that are born and bred in captivity should be deferred.
- (15) Finally, in exceptional cases, for legally exported dead specimens listed in Annex B to Regulation (EC) No 338/97, the competent authorities should, for reasons of proportionality, be allowed to issue a retrospective import permit where there is evidence of a genuine error and where the transaction otherwise complies with

Regulation (EC) No 338/97, the Convention and the country of export's relevant legislation.

- (16) Regulation (EC) No 865/2006 should therefore be amended accordingly.
- (17) The measures set out 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 Article 1, point (3) is replaced with the following:

‘(3) ‘breeding stock’ means all the animals in a breeding operation that were or are used for reproduction;’;
- (2) in Article 5c, paragraph 1 is replaced as follows:

‘1.

The purpose of a transaction shall be indicated using one of the codes in point 1 of Annex IX to this Regulation. Where non-commercial aspects are not clearly predominant, the purpose-of-transaction code T shall be used, except where there is an alternative code that more precisely reflects the nature of the transaction between the (re-)exporter and importer or the intended use by the importer, in which case that other code shall be used.

Where non-commercial aspects of the transaction are clearly predominant, the code that best describes the nature of the transaction or the intended use shall be used.’ ;
- (3) in Article 15(2), the second subparagraph is replaced with the following:

‘As regards specimens imported or (re-)exported as personal and household effects, to which the provisions of Chapter XIV apply, as regards personally owned live animals, which are legally acquired and held for personal non-commercial purposes, and, in exceptional cases, as regards imported dead specimens listed in Annex B to Regulation (EC) No 338/97 which are legally exported, the derogation provided for in paragraph 1 shall also apply where the competent management authority of the Member State, in consultation with the relevant enforcement authority, is satisfied that there is evidence that a genuine error has been made and that there was no attempt to deceive and the import or (re-)export of the specimens concerned otherwise complies with Regulation (EC) No 338/97, the Convention and the country of export's relevant legislation. This derogation shall not apply if the importer or (re-)exporter has made a similar error before.’;
- (4) in Article 20, the following paragraph 5 is added:

‘5. As regards applications for permits for import for commercial purposes of specimens of animal species listed in Appendix I to the Convention that are born and bred in captivity submitted after 31 December 2026, the applicant shall satisfy the management authority that the specimen originates from an operation that is registered by the Secretariat of the Convention for that species as an operation that breeds specimens of animal species listed in Appendix I to the Convention in captivity for commercial purposes.’;
- (5) in Article 26, the following paragraph 4a is inserted:

‘4a. As regards applications for permits and certificates for export and re-export for commercial purposes of specimens of animal species listed in Appendix I to the Convention that are born and bred in captivity submitted after 31 December 2026, the applicant shall satisfy the management authority that the specimen originates from an operation that is registered by the Secretariat of the Convention for that species as an operation that breeds specimens of animal species listed in Appendix I to the Convention in captivity for commercial purposes.’;

- (6) the heading of Chapter XIII is replaced with the following:

‘SPECIMENS BORN AND BRED IN CAPTIVITY, ARTIFICIALLY PROPAGATED SPECIMENS AND THE REGISTRATION OF OPERATIONS THAT BREED SPECIMENS OF ANIMAL SPECIES LISTED IN APPENDIX I TO THE CONVENTION IN CAPTIVITY FOR COMMERCIAL PURPOSES’;

- (7) the following Article 54a is inserted:

‘Article 54a

Registration of operations that breed specimens of animal species listed in Appendix I to the Convention in captivity for commercial purposes

- (1) To register an operation with the Secretariat of the Convention as an operation that breeds specimens of animal species listed in Appendix I to the Convention in captivity for commercial purposes, the natural or legal person in charge of the operation (the operator) shall submit an application for registration to the management authority of the Member State in which the operation is located. The application shall include the information set out in Annex XIV and demonstrate that the operation meets all of the following requirements:
- (a) the breeding stock is established in accordance with the provisions of the Convention and of the relevant legislation of the Member State where the operation is located, in a manner not detrimental to the survival of the species in the wild;
 - (b) the specimens produced by the operation qualify as ‘born and bred in captivity’ under this chapter;
 - (c) the operator ensures that an appropriate and secure marking system is used to clearly identify all breeding stock and specimens in trade in accordance with Article 66;
 - (d) the operation makes a continuing meaningful contribution based on the conservation needs of the species concerned.
- (2) The management authority may submit to the Secretariat of the Convention the application for registration, when, in consultation with the scientific authority, it is satisfied that all the information set out in Annex XIV has been provided and that the requirements for registration set out in paragraph 1 are fulfilled, and that there are no other factors relating to the conservation of the species that militate against registration.

The registration shall take effect when the operation is included in the register of operations that breed specimens of animal species listed in Appendix I to the Convention in captivity for commercial purposes, maintained by the Secretariat of the Convention (the Register).

- (3) If the nature of the operation or the types of products being produced for export change, the operator shall notify the management authority to allow for the update of the information in the Register.
- (4) The management authority, in consultation with the scientific authority, may ask the Secretariat of the Convention to remove an operation in its jurisdiction from the Register upon request by the operator or if it becomes aware that one or more requirements for the registration referred to in paragraph 1 are no longer fulfilled. From the date of the request of the management authority, no export permits or re-export certificates for the specimens of the animal species listed in Appendix I to the Convention shall be granted for that operation.

The registration shall cease to be valid when the operation is removed from the Register by the Secretariat of the Convention.’;

- (8) in Article 65, paragraph 4 is replaced with the following:

‘4. Export permits shall be issued with regard to live vertebrates of species listed in Annex A to Regulation (EC) No 338/97 only if the applicant has satisfied the competent management authority that the relevant requirements laid down in Article 66 of this Regulation have been met. This does not apply to specimens of species listed in Annex X to this Regulation, unless:

- a) an annotation in Annex X prescribes marking;
- b) the specimens were bred at a breeding operation included in the Register.’;

- (9) in Article 66, paragraph 1 is replaced with the following:

‘1. For the purposes of Article 33(1), Article 40(1), Article 54a, Article 59(5) and Article 65(4), paragraphs 2 and 3 of this Article shall apply.’;

- (10) Article 69 is replaced with the following:

‘Article 69

Reports on imports, exports and re-exports and on implementation

1. Member States shall collect data on imports into and exports and re-exports from the Union that have taken place on the basis of permits and certificates issued by their management authorities, irrespective of the actual place of introduction or (re-) export.

Member States shall, in accordance with Article 15(4), point (a), of Regulation (EC) No 338/97, report that information to the Commission, for a calendar year, in accordance with the time schedule set out in paragraph 6 of this Article, for species listed in Annexes A, B and C to Regulation (EC) No 338/97, in computerised form and in accordance with the Guidelines for the preparation and submission of CITES annual reports issued by the Secretariat of the Convention.

2. The information referred to in paragraph 1 shall be presented in two separate parts, as follows:

- (a) one part on imports, exports and re-exports of specimens of species listed in the Appendices to the Convention;
- (b) one part on imports, exports and re-exports of specimens of other species listed in Annexes A, B and C to Regulation (EC) No 338/97 and on the introduction into the Union of specimens of species listed in Annex D to that Regulation.

3. With regard to imports of shipments containing live animals, Member States shall, where possible, maintain records of the percentage of specimens of species listed in Annexes A and B to Regulation (EC) No 338/97 that were dead at the time of introduction into the Union.

4. The information referred to in Article 15(4), point (c), of Regulation (EC) No 338/97 shall include details on the legislative, regulatory and administrative measures taken to implement and enforce the provisions of Regulation (EC) No 338/97 and this Regulation.

Member States shall also report on the following:

- (a) persons and bodies registered in accordance with Articles 18 and 19 of this Regulation;
- (b) scientific institutions registered in accordance with Article 60 of this Regulation;
- (c) breeders approved in accordance with Article 63 of this Regulation;
- (d) caviar (re-)packaging plants licensed in accordance with Article 66(7) of this Regulation;
- (e) their use of phytosanitary certificates in accordance with Article 17 of this Regulation;
- (f) cases where export permits and re-export certificates were issued retrospectively in accordance with Article 15 of this Regulation.

5. The information referred to in paragraph 4, first sentence, shall be submitted in computerised form and in accordance with the 'Implementation Report Format' issued by the Secretariat of the Convention and amended by the Commission, and shall correspond to the three-year period ending on 31 December of the previous year.

The information referred to in paragraph 4, second subparagraph, if not included in the communication pursuant to Article 15(4), point (a) of Regulation (EC) No 338/97 or in the notification pursuant to Article 66(7) of this Regulation, shall be submitted in computerised form together with the communication pursuant to Article 15(4), point (c) of Regulation (EC) No 338/97.

6. The information referred to in paragraphs 1, 2 and 3 shall be communicated to the Commission for each calendar year before 15 June of the following year on a species-by-species basis and per country of (re-)export.

The information referred to in paragraph 4, first sentence, shall be communicated to the Commission by 15 June of the year before the year of each meeting of the Conference of the Parties to the Convention.';

- (11) Annexes VII, VIII and IX are replaced by the text in Annex 1 to this Regulation;
- (12) in Annex X, the entry *Psephotus dissimilis* is replaced with the entry *Psephotellus dissimilis*.
- (13) Annex XIV, as set out in Annex 2 to this Regulation, is added.

Article 2

This Regulation shall enter into force on the twentieth 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,

For the Commission
The President
[...]