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*Committee on the Environment, Public Health and Food Safety*

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**2012/0196(COD)**

27.11.2013

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council  
on the protection of species of wild fauna and flora by regulating trade therein  
(recast)  
(COM(2012)0403 – C7-0197/2012 – 2012/0196(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Matthias Groote

(Recast – Rule 87 of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikethrough. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on the protection of species of wild fauna and flora by regulating trade therein (recast) (COM(2012)0403 – C7-0197/2012 – 2012/0196(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0403),
  - having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0197/2012),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 14 November 2012<sup>1</sup>,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>2</sup>,
  - having regard to the letter of 11 November 2013 from the Committee on Legal Affairs to the Committee on the Environment, Public Health and Food Safety in accordance with Rule 87(3) of its Rules of Procedure,
  - having regard to Rules 87 and 55 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A7-0000/2013),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;

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<sup>1</sup> OJ C 11, 15.01.2013, p.85.

<sup>2</sup> OJ C 77, 28.3.2002, p. 1.

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a regulation

#### Recital 20

##### *Text proposed by the Commission*

(20) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>10</sup>,

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<sup>10</sup>OJ L 55, 28.2.2011, p. 13.

##### *Amendment*

(20) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission ***in particular for the establishment of the design, the model and the format of certain documents.*** Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>10</sup>,

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<sup>10</sup>OJ L 55, 28.2.2011, p. 13.

Or. en

## Amendment 2

### Proposal for a regulation

#### Article 2 – paragraph 1 – point d

##### *Text proposed by the Commission*

(d) ‘‘import notification’ means the notification given by the importer or his agent or representative, at the time of the introduction into the Union of a specimen of a species included in Annexes C or D, on the form provided for in Article 19(2) ;

##### *Amendment*

(d) ‘‘import notification’ means the notification given by the importer or his agent or representative, at the time of the introduction into the Union of a specimen of a species included in Annexes C or D, on the form provided for in ***the third paragraph of Article 10;***

Or. en

### Amendment 3

#### Proposal for a regulation

#### Article 4 – paragraph 6 – introductory part

*Text proposed by the Commission*

6. ***In consultation with*** the countries of origin concerned and taking account of any opinion of the Scientific Review Group, ***the Commission may, by means of implementing acts, establish*** general restrictions, or restrictions relating to certain countries of origin, on the introduction into the Union:

*Amendment*

6. ***The Commission shall be empowered, after consulting*** the countries of origin concerned and taking account of any opinion of the Scientific Review Group, ***to adopt delegated acts in accordance with Article 20 establishing*** general restrictions, or restrictions relating to certain countries of origin, on the introduction into the Union:

Or. en

### Amendment 4

#### Proposal for a regulation

#### Article 4 – paragraph 6 – subparagraph 2

*Text proposed by the Commission*

***The implementing acts referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 21(2).***

*Amendment*

***deleted***

Or. en

### Amendment 5

#### Proposal for a regulation

#### Article 10 – title

*Text proposed by the Commission*

Certificates to be issued

*Amendment*

***Permits, notifications and*** certificates to

be issued

Or. en

## **Amendment 6**

### **Proposal for a regulation Article 10 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a The Commission shall, by means of implementing acts, determine the design of the certificates referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).***

Or. en

## **Amendment 7**

### **Proposal for a regulation Article 10 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. On receiving an application and the requisite supporting documents from the person concerned and provided that all the requirements for their issuance have been fulfilled, the management authority of a Member State may issue a permit for the purposes of Article 4(1) and (2).***

Or. en

## Amendment 8

### Proposal for a regulation Article 10 – paragraph 1 c (new)

*Text proposed by the Commission*

*Amendment*

***1b. The Commission shall, by means of implementing acts, determine the design of the permit referred to in paragraph 1a. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).***

Or. en

## Amendment 9

### Proposal for a regulation Article 10 – paragraph 1 d (new)

*Text proposed by the Commission*

*Amendment*

***1d. The Commission shall, by means of implementing acts, determine the design of the import notification referred to in Article 4(3) and (4). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).***

Or. en

## Amendment 10

### Proposal for a regulation Article 19

*Text proposed by the Commission*

*Amendment*

***Article 19***

***deleted***

***Further implementing powers***



***1. The Commission shall, by means of implementing acts, determine the design of the documents referred to in Article 4, Article 5, Article 7(4) and Article 10. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).***

***2. The Commission shall, by means of implementing acts, prescribe a form for the presentation of the import notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).***

Or. en

## **Amendment 11**

### **Proposal for a regulation Article 20 – paragraph 2**

#### *Text proposed by the Commission*

2. The power to adopt delegated acts referred to in Article 4(7), Article 5(5), Article 7(1), (2) and (3), Article 8(4), Article 9(6), Article 11(5), Article 12(4) and Article 18(1), (2) and (3) shall be conferred on the Commission for an indeterminate period of time from [the date of entry into force of the basic legislative act or from any other date set by the legislator].

#### *Amendment*

2. The power to adopt delegated acts referred to in Article **4(6)**, 4(7), Article 5(5), Article 7(1), (2) and (3), Article 8(4), Article 9(6), Article 11(5), Article 12(4) and Article 18(1), (2) and (3) shall be conferred on the Commission for an indeterminate period of time from [the date of entry into force of the basic legislative act or from any other date set by the legislator].

Or. en

## Amendment 12

### Proposal for a regulation Article 20 – paragraph 3

#### *Text proposed by the Commission*

3. The delegation of powers referred to in Article 4(7), Article 5(5), Article 7(1), (2) and (3), Article 8(4), Article 9(6), Article 11(5), Article 12(4) and Article 18(1), (2) and (3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

#### *Amendment*

3. The delegation of powers referred to in Article **4(6)**, 4(7), Article 5(5), Article 7(1), (2) and (3), Article 8(4), Article 9(6), Article 11(5), Article 12(4) and Article 18(1), (2) and (3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force

Or. en

## Amendment 13

### Proposal for a regulation Article 20 – paragraph 5

#### *Text proposed by the Commission*

5. A delegated act adopted pursuant to Article 4(7), Article 5(5), Article 7(1), (2) and (3), Article 8(4), Article 9(6), Article 11(5), Article 12(4) and Article 18(1), (2) and (3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament

#### *Amendment*

5. A delegated act adopted pursuant to Article **4(6)**, 4(7), Article 5(5), Article 7(1), (2) and (3), Article 8(4), Article 9(6), Article 11(5), Article 12(4) and Article 18(1), (2) and (3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the

or the Council.

European Parliament or the Council.

Or. en

## EXPLANATORY STATEMENT

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), signed in 1973, aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. The species covered by CITES are listed in three Appendices, granting varying degrees of protection to them. Council Regulation (EC) No 338/97 deals with the protection of species of wild fauna and flora by regulating trade therein. It lays down the provisions for import, export and re-export as well as internal EU trade in specimens of species listed in its four Annexes.

Whenever the list of species listed in the Annexes to Council Regulation (EC) No 338/97 changes, e.g. in order to implement listing decisions of the Conference of the Parties, this has been done through a Commission Regulation (the latest one dating from February 2012). The Commission had initiated codification of Council Regulation (EC) No 338/97. To allow for further changes regarding delegated and implementing acts (following the adoption of the Lisbon Treaty), it has been found appropriate to transform the codification of Regulation (EC) No 338/97 into a recast in order to incorporate the necessary amendments.

The changes made by the recast to the of Council Regulation (EC) No 338/97 are all motivated by the need to update the proposal under the Lisbon Treaty to replace the old obsolete provisions with new ones (including the update of the legal basis, i.e. Article 192(1) TFEU which corresponds to the old 175(1) of the EC Treaty) in particular with respect to comitology rules.

While no political choices have been exercised within the recast proposal, the substantive changes resulted from the treaty law or new EU legislation concerning the same topic matter. Due to the nature of these adaptations and modifications, the Rapporteur proposes only a few amendments to the recast proposal on Regulation (EC) No 338/97.

## ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

Ref.: D(2013)55514

Mr Matthias Groote  
Chair of the Committee on Environment, Public Health and Food Safety  
ASP 12G201  
Brussels

**Subject:        *Protection of species of wild fauna and flora by regulating trade therein  
(Recast) 2012/0196(COD) - COM(2012)0403***

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

*"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible."*

*In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.*

*However, if in accordance with point 8 of the Interinstitutional Agreement, the committee responsible intends also to submit amendments to the codified parts of the proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal."*

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

Furthermore, pursuant to Rules 86(2) and 86(3), the Committee on Legal Affairs considered that the technical adaptations suggested in the opinion of the abovementioned Working Party were necessary in order to ensure that the proposal complied with the recasting rules.

In conclusion, after discussing it at its meeting of 5 November 2013, the Committee on Legal Affairs, unanimously<sup>1</sup>, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in accordance with Rule 87.

Yours faithfully,

Klaus-Heiner LEHNE

*Encl.: Opinion of the Consultative Working Party.*

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<sup>1</sup> The following Members were present: Baldassarre (Vice-Chair), Luigi Berlinguer, Sebastian Valentin Bodu (Vice-Chair), Françoise Castex (Vice-Chair), Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne, Eva Lichtenberger, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner (Vice-Chair), József Szájer, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka.

**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels, 25 September 2013

**OPINION**

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a regulation of the European Parliament and of the Council Proposal on the protection of species of wild fauna and flora by regulating trade therein  
COM(2012)403 final of 19.7.2012 - 2012/0196 (COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 24 September and 17 October 2012 and on 17 September 2013 for the purpose of examining the aforementioned proposal submitted by the Commission.

At those meetings<sup>1</sup>, an examination of the proposal for a Regulation of the European Parliament and of the Council recasting Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) As far as the explanatory memorandum is concerned, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.

2) In Article 13(3), first subparagraph, the initial words "*Not later than 3 March 1997*" should be replaced by the words "*Not later than three months before the date of application of Regulation (EC) No 338/97*".

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<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

3) In Article 18(1)(b) of the recast proposal, the reference made to "*point (a) of the second subparagraph of Article 7(1)*" should be adapted so as to read as a reference made to "*point (b)(i) of the third subparagraph of Article 7(1)*".

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

However, as far as Article 2(d), Article 4(6) and (7), Article 5(5) and (7), Article 7, Article 8(4), Article 9(6), Article 11(5), Article 12(4) and (5), Article 15(1), (4), first and third subparagraphs, and (5), Article 18 and Article 19(1) of the draft recast act are concerned, it was discussed whether or not those texts should have been entirely identified with the grey-shaded type generally used for marking substantive changes.

On the one hand, the Legal Services of the European Parliament and of the Commission considered that the presentation used in those texts for identifying the replacements of certain wordings currently contained in the corresponding provisions of Regulation (EC) No 338/97 with new wordings, taken from standard wordings agreed between the three institutions, sufficiently describes the substantive amendments proposed for those existing provisions.

On the other hand, the Legal Service of the Council considered that the change in procedure cannot be separated from the substantive issues to which that procedure relates and that therefore the entire texts of the said provisions should have been identified by using that grey-shaded type.

Nevertheless, the three legal services shared the view that the draft texts submitted by the Commission for those new provisions should be understood as meaning that the Commission had intended to propose only that the reference to the regulatory procedure with scrutiny currently contained in certain of the corresponding texts of the existing act be replaced with a delegation to the Commission of the power to adopt acts in accordance with Article 290 TFEU and that the reference to the regulatory procedure currently contained in the others be replaced with a conferral of implementing powers on the Commission in accordance with Article 291 TFEU and Regulation (EU) No 182/2011.

As regards the replacement of references to the regulatory procedure with scrutiny with delegations to the Commission of the power to adopt acts in accordance with Article 290 TFEU, it was also the common understanding of the three legal services that, as part of the recast exercise, the legislator should evaluate, in accordance with the Treaties, whether that proposed alignment of the existing comitology provisions with the new system of delegated acts can be considered acceptable or whether, with regard to one or more of the provisions concerned, a different solution should be envisaged, such as conferring implementing powers on the Commission or on the Council in accordance with Article 291 TFEU and Regulation (EU) No 182/2011, or none of those, so leaving the relevant measures for the legislative procedure.



Similarly, as regards the replacement of references to the regulatory procedure with conferrals of implementing powers on the Commission in accordance with Article 291 TFEU and Regulation (EU) No 182/2011, it was also the common understanding of the three legal services that, as part of the recast exercise, the legislator should evaluate, in accordance with the Treaties, whether that proposed alignment of the existing comitology provisions with the new system of implementing acts can be considered acceptable or whether, with regard to one or more of the provisions concerned, a different solution should be envisaged, such as delegating powers to the Commission in accordance with Article 290 TFEU or conferring implementing powers on the Council in accordance with Article 291 TFEU or none of those, so leaving the relevant measures for the legislative procedure.

C. PENNERA  
Jurisconsult

H. LEGAL  
Jurisconsult

L. ROMERO REQUENA  
Director General