



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.10.1996
COM(96) 517 final - 370 SYN

Re-examined proposal for a
COUNCIL REGULATION (EC)

**on the protection of species of wild fauna and flora
by regulating trade therein**

(presented by the Commission pursuant to Article 189 c (d)
of the EC Treaty)

EXPLANATORY MEMORANDUM

On 6 December 1991, the Commission made a proposal for a Council Regulation (EC) laying down provisions with regard to the possession of and trade in specimens of species of wild fauna and flora (Doc. COM(91) 448 final - SYN 370, OJ C26 of 3.2.92, p.1).

The Economic and Social Committee adopted its opinion on 26 May 1992 (OJ C233 of 31.8.92, p. 19).

The European Parliament delivered its opinion on first reading on 21 June 1993 (OJ C194 of 19.6.93, p. 289).

An amended Commission proposal was submitted to the Council on 21 January 1994 (Doc. COM(93) 599 final - COD 370, OJ C131 of 12.5.94, p.1).

The Council, having altered the legal basis of the proposal from Articles 100a and 113 into Article 130s(1), reconsulted the European Parliament on this change in September 1995.

On 15 December 1995, the European Parliament delivered a positive opinion on the amended legal basis (OJ C17 of 22.1.96, p. 430).

On 26 February 1996, the Council adopted Common Position (EC) No 26/96 with a view to adopting Council Regulation (EC) No .../96 on the protection of species of wild fauna and flora by regulating trade therein (OJ C196 of 6.7.96, p. 58).

The European Parliament approved the Council's Common Position on 18 September 1996, subject to 19 proposed amendments (Minutes of the Session of 18 September 1996, PE 252.049, pp. 7-14).

The Commission examined the amendments proposed by the European Parliament at second reading, the findings of which are given below:

Amendments accepted by the Commission

Amendment 10 on Article 8.3 *specifies that exemptions from the prohibitions of Article 8.1 can only be granted taking account of the provisions of Directives 79/409/EEC (Birds Directive) and 92/43/EEC (Fauna, flora and habitats Directive)*. However, rather than adhere to this limitative amendment, the Commission is of the opinion that exemptions should be *in accordance with the requirements of other Community legislation on the conservation of wild fauna and flora*.

Amendment 13 on Article 8.4 is similar to amendment 10, here with regard to general derogations to be granted by the Commission. Also in this case a reference to the requirements of other Community legislation on the conservation of wild fauna and flora is a useful addition to the provision concerned.

Amendment 15 on Article 11.3 provides *that Member States shall inform the Commission of recurring additional conditions and requirements imposed on permits and certificates* so that their format may be adapted to practical needs. This is a useful addition that will contribute to the use of up-to-date forms for permits and certificates.

Amendment 17 on the addition of a new paragraph 3 to Article 14 *establishes the Enforcement Working Group as a subgroup of the Committee and outlines areas to be dealt with*. It is indeed useful to formalize this Working Group, which was informally established by the Committee of Regulation 3626/82.

Amendments 20 and 22 concern *the reporting requirements of Article VIII.7.b of the Convention on legislative, regulatory and administrative measures taken for its implementation*. This is indeed a useful addition to Article 15, not only in the context of evolving Community measures on the implementation of the Convention, but also to the implementation of the Regulation as such.

Amendment 21 concerns the *reference in Article 15.6 to Council Directive 90/313/EEC on the freedom of access to information on the Environment*. It is true that the text of the Common Position gives the wrong impression that this Directive is about guaranteeing the confidentiality of information. The proposed amendment, however, misses the essential element that certain confidential information cannot be provided to third parties. The Commission therefore proposes to amend Article 15.6 by replacing "In accordance with Directive 90/313/EEC" to "Without prejudice to Directive 90/313/EEC".

Amendment 24 on Article 21.3 *establishes a deadline for the Commission to carry out the check concerning imports of species included in Annex C1 to Regulation 3626/82 that are now listed in Annex B or C, two months before the entry into force of the Regulation*. It is further proposed to *establish the same deadline for a Commission proposal for making Annex D a representative list of species in accordance with the criteria of Article 3.4(a)*. The proposals concerned are already in preparation and are planned to be adopted in early 1997.

Amendments not accepted by the Commission

The Commission cannot accept the following amendment proposals:

- 1 This proposal for an amendment to recital 11 was linked to an amendment that was rejected by the Parliament. It is therefore without object.
- 2 This proposal for a new recital is inappropriate as it not accompanied by an amendment to Article 18 that would ensure the desired democratic control by the European Parliament. Such an amendment would, in any event, not have been institutionally feasible.
- 3 Would add a recital referring to Declaration 24 annexed to the Final Act of the Treaty on the establishment of the European Community concerning animal welfare. This Declaration, however, is not applicable to the policy area covered by the Regulation.

- 4/5 Aim at the inclusion in Annex B of non-European bird species that are unlikely to survive transport or captivity for a considerable proportion of their potential lifespan. This proposal falls outside the scope of the Regulation as it is not related to the conservation status of the species concerned. The proposal is further unjustifiably restricted to exotic birds.
- 8 Proposes additional housing conditions for imports of live animals listed in Annex A that are unrealistic.
- 9 This proposal unnecessarily changes wording from Article IV.3 of the Convention;
- 11 This amendment totally rules out the use of Annex A species for essential biomedical purposes and reduces their use for the advancement of science, whereas the conditions of the Regulation related to such uses are sufficiently strict.
- 12 This amendment would make many captive breeding programmes in zoos impossible.
- 16 The proposed wording to be added to Article 12.2 about the need to further the exchange of knowledge between Member States' experts and with those of the Parties to the Convention cannot be part of a Regulation.
- 23 The proposed requirement to consult countries of origin about amendments to the Annexes would seriously affect the speed with which species listings can take place. In addition, the proposal only relates to amendments to Annexes B to C and not to Annex A. Consultation of countries of origin is furthermore foreseen in Article 4.6.

Based on its acceptance of certain amendment proposals from the European Parliament, and in accordance with Article 189C(d) of the EC Treaty, the Commission submits the annexed proposals to amend the text of the Common Position to the Council.

**RE-EXAMINED PROPOSAL FOR A
COUNCIL REGULATION
ON THE PROTECTION OF SPECIES OF WILD FAUNA AND FLORA
BY REGULATING TRADE THEREIN**
(presented by the Commission pursuant to Article 189C(d) of the EC Treaty)

COMMON POSITION

AMENDED TEXT

Article 8.3

Exemption from the prohibitions referred to in paragraph 1 may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis where the specimens:

...

In accordance with the requirements of other Community legislation on the conservation of wild fauna and flora,

exemption from the prohibitions referred to in paragraph 1 may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis where the specimens:

...

Article 8.4

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 Article 3(1)(b)(ii) may be defined by the Commission in accordance with the procedure laid down in Article 18.

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 Article 3(1)(b)(ii) may be defined by the Commission in accordance with the procedure laid down in Article 18.

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

Article 11.3

Any permit or certificate issued in accordance with this Regulation may stipulate conditions and requirements imposed by the issuing authority to ensure compliance with the provisions thereof.

Any permit or certificate issued in accordance with this Regulation may stipulate conditions and requirements imposed by the issuing authority to ensure compliance with the provisions thereof. Where such conditions or requirements need to be incorporated in the design of permits or certificates, Member States shall inform the Commission thereof.

Article 14.3 (new)

(a) An Enforcement Working Group shall be established as a subgroup of the Committee referred to in Article 18, consisting of the representatives of each Member State's authorities with responsibility for monitoring compliance with the provisions of this Regulation. The Working Group shall be chaired by the representative of the Commission.

(b) The Enforcement Working Group shall examine any technical question relating to the enforcement of this Regulation raised by the chairman, either on his own initiative or at the request of the members of the Group or the Committee.

(c) The Commission shall convey the opinions of the Enforcement Working Group to the Committee.

Article 15.4 (a)

The management authorities of the Member States shall communicate to the Commission before 15 June each year all the information relating to the preceding year required for drawing up the reports referred to in Article VIII.7 of the Convention and equivalent information on international trade in all specimens of species listed in Annexes A, B and C and on introduction into the Community of specimens of species listed in Annex D. The information to be communicated and the format for its presentation shall be specified by the Commission in accordance with the procedure laid down in Article 18.

The management authorities of the Member States shall communicate to the Commission before 15 June each year all the information relating to the preceding year required for drawing up the reports referred to in Article VIII.7 **(a)** of the Convention and equivalent information on international trade in all specimens of species listed in Annexes A, B and C and on introduction into the Community of specimens of species listed in Annex D. The information to be communicated and the format for its presentation shall be specified by the Commission in accordance with the procedure laid down in Article 18.

Article 15.4 (c) and (d) (new)

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(c) Without prejudice to the provision of Article 20, the management authorities of the Member States shall before 15 June of each second year, and for the first time in 1999, communicate to the Commission all the information relating to the preceding two years required for drawing up the reports referred to in Article VIII.7 (b) of the Convention and equivalent information on the provisions of this Regulation that fall outside the scope of the Convention. The information to be communicated and the format for its presentation shall be specified by the Commission in accordance with the procedure laid down in Article 18.

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(d) On the basis of the information referred to in (c), the Commission shall before 31 October of each second year, and for the first time in 1999, draw up a report on the implementation and enforcement of this Regulation.

Article 15.6

In accordance with Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment, the Commission shall take appropriate measures to protect the confidentiality of information obtained in implementation of this Regulation.

Without prejudice to Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment, the Commission shall take appropriate measures to protect the confidentiality of information obtained in implementation of this Regulation.

Article 19.2

adopt the measures referred to in Article 4(6) and (7), Article 5(5) and (7)(b), Article 7(1)(c), (2)(c) and (3), Article 8(4), Article 9(6), Article 11(5), Article 15(4)(a) and (5) and Article 21(3);

adopt the measures referred to in Article 4(6) and (7), Article 5(5) and (7)(b), Article 7(1)(c), (2)(c) and (3), Article 8(4), Article 9(6), Article 11(5), Article 15(4)(a), **(c)** and (5) and Article 21(3);

Article 21.3

Before this Regulation is implemented the Commission, in accordance with the procedure laid down in Article 18 and in consultation with the Scientific Review Group, must check that there is no justification for restrictions on the introduction into the Community of the species listed in Annex C1 to Regulation (EEC) No 3626/82 which are not included in Annex A to this Regulation.

Two months before this Regulation is implemented, the Commission in accordance with the procedure laid down in Article 18 and in consultation with the Scientific Review Group: **(a)** must check that there is no justification for restrictions on the introduction into the Community of the species listed in Annex C1 to Regulation (EEC) No 3626/82 which are not included in Annex A to this Regulation; **(b) shall adopt a Regulation amending Annex D into a representative list of species meeting the criteria laid down in Article 3.4(a).**

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DOCUMENTS

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