

COMMISSION NOTICE**Guidance document****Proof of legal acquisition for live animals of Annex B species and necessary documentary evidence**

(2019/C 107/02)

The Commission guidance document aims to support EU Member States competent authorities in implementing the EU Wildlife Trade Regulations ⁽¹⁾ in situations where the legal acquisition or introduction into the EU of live specimens of animal species listed in Annex B of Regulation (EC) No 338/97 needs to be demonstrated through documentary evidence, so that Member States apply equivalent standards for documents accepted as proof of legal acquisition.

1. Background

Specimens of species listed in Annex A of Regulation (EC) No 338/97 ('the Basic Regulation') are as a general rule not allowed to be used for commercial purposes. Commercial purposes include the 'purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain, sale, keeping for sale, offering for sale, and transport for sale' (Article 8(1)).

The prohibitions applicable to specimens of Annex A-listed species also apply to specimens of species listed in Annex B for which it cannot be proven to the satisfaction of the EU Member States competent authorities that they were acquired (and where applicable, introduced into the EU) under CITES, the Regulations and relevant national conservation legislation (Article 8(5)).

To use specimens of species listed in Annex A for commercial purposes in general requires an exemption to be issued by the management authority in charge which takes the form of a certificate. The form and content of this certificate are clearly defined in the EU Wildlife Trade Regulations. In contrast, for specimens of species listed in Annex B a certificate is not required if such specimens are to be used for commercial purposes. The form and content of the proof of legal importation or legal acquisition referred to in Article 8(5) are not determined by the Basic Regulation. As a consequence, the EU Member States competent authorities may have different understandings of the content of such a proof.

Documentary evidence may be required to prove that a specimen of an Annex A, B or C-listed species was acquired in one Member State, and is to be exported from another, in accordance with the legislation of the Member State of origin ⁽²⁾.

Likewise, documentary evidence may also be required for re-exports in order to prove that specimens of Annex A, B or C-listed species were imported in compliance with:

- the Basic Regulation (after its entry into force on 3 March 1997);
- the Council Regulation (EEC) No 3626/82 ⁽³⁾ (between 1 January 1984 and the last day of validity of an import permit issued under that Regulation);
- before 1984 in accordance with CITES; or
- before any of these became applicable to the species or in the EU Member State of acquisition (Articles 5(3) and 5(4) of the Basic Regulation (see Section 3.5.8 of the 'Reference Guide' ⁽⁴⁾)).

⁽¹⁾ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 61, 3.3.1997, p. 1) ('Basic Regulation') and its implementing regulations, in particular: 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) ('Implementing Regulation'), and Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No 865/2006 (OJ L 242, 7.9.2012, p. 13) ('Permits Regulation').

⁽²⁾ Articles 5(2)(b) of Regulation (EC) No 338/97, referenced also in Article 5(4): regarding specimens taken from the wild, 'documentary evidence shall be furnished by means of a certificate stating that the specimen was taken from the wild in accordance with the legislation in force on its territory', i.e. the territory of the Member State of origin.

⁽³⁾ OJ L 384, 31.12.1982, p. 1.

⁽⁴⁾ European Commission/TRAFFIC, 'Reference Guide — European Union Wildlife Trade Regulations', latest edition available at http://ec.europa.eu/environment/cites/pdf/referenceguide_en.pdf

For that purpose certificates under Article 47 of the Implementing Regulation must be issued.

Some further information is provided in the 'Reference Guide.' However, there is no further information on cases where documentary evidence is not governed by the EU Wildlife Trade Regulations, especially for trade within the EU concerning Annex B species (Article 8(5) of the Basic Regulation).

Therefore guidance is required to ensure that EU Member States are consistent in their approach and apply equivalent standards for legal acquisition documents including what is accepted as proof of legal acquisition. Consistency across EU Member States can be achieved by setting out guidance on the interpretation of Articles 5(2)(b), 5(3), 5(4) and 8(5) of the Basic Regulation. EU Member States are invited to use the information provided below on a case-by-case basis and in a way that is proportionate to each situation that they have to deal with.

2. Document status

The guidance document was prepared by Commission staff and a draft was endorsed by the Committee on Trade in Wild Fauna and Flora that was established under Article 18 of the Basic Regulation, and therefore by the EU Member States competent authorities.

The guidance document is intended to assist national authorities in the application of the Basic Regulation. It is not legally binding; its sole purpose is to provide information on certain aspects of the Basic Regulation and of the Implementing Regulation and on measures considered to be best practice. It does not replace, add to or amend the provisions of applicable Union law referred to in Section 1 of this document, which remain as the legal basis that must be applied. The document should also not be considered in isolation; it must be used in conjunction with the legislation, and not as a 'stand-alone' reference. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

The Commission will publish the guidance document online and EU Member States may also publish it. It will be reviewed by the Committee on Trade in Wild Fauna and Flora in due course.

3. Interpreting Articles 5(2)(b), 5(3), 5(4) and 8(5) of the Basic Regulation

The guidance document focuses on the live specimens of animals listed in Annex B. It distinguishes between animals that are 'imported' and animals that are 'captive-bred in the EU' ⁽⁵⁾.

There are some Annex B-listed species that are commonly captive-bred within the EU where national legislation or the relevant competent national authorities have determined that there is a low risk of illegally acquired specimens entering trade ⁽⁶⁾. Enforcement checks for such species may be considered as lower priority. The guidance below is aimed at the higher-risk species.

EU Member States are encouraged to share information about the species that they consider of lower risk because they are mainly traded as EU captive-bred specimens with both the Commission and other EU Member States.

EU Member States are encouraged to apply the information below in a proportionate way and on a case-by-case basis.

a) *Imported specimens* ⁽⁷⁾

In the case of imported Annex B-listed species, exchanging information between EU Member States and having a consultation procedure between EU Member States concerned is deemed necessary and sufficient. In some cases, in particular where specimens are marked and can be clearly assigned to a document, a specific consultation is not needed.

⁽⁵⁾ On rare occasions, there may be also a need to prove legal origin of specimens taken from the wild in the EU. In general, commercial activities can be performed in relation to them only under very specific circumstances. It may be generally expected that an official authorisation (capture permit) for taking from the wild (based on national legislation, usually implementing EU Directives) is given. It should be possible to trace back the specimens to such an authorisation. The issue is not further dealt within this guidance.

⁽⁶⁾ In this regard, some EU Member States have produced lists of lower-risk Annex B animal species.

⁽⁷⁾ If the specimen was imported before the EU Wildlife Trade Regulations became applicable to it, this should be specified and justified. In case of pre-Convention specimens, the 'date of acquisition' (defined in Article 1(1) of the Implementing Regulation) should be indicated.

The following checklist should be considered as the minimum documentation or information that needs to be provided:

- For the importer referred to on the permit: original (yellow, no 2) copy of the import permit with custom endorsement on the importation.
- Sellers of all or some specimens covered by the permit should provide a declaration or other documents, providing the following minimum information:
 - If all animals are sold in one lot, the original copy for the holder of the used import permit may be handed over to the buyer, preferably with an invoice or receipt that confirms the transfer from the importer.
 - If the lot is split (or when the original copy of the import permit is not handed over) the following information should be provided if possible:
 - species (scientific name);
 - full number of import permits, dates of issuance, issuing authorities;
 - origin: source code, country of origin (and country of re-export — if relevant);
 - reference to the animals as detailed as possible (e.g. specimens 6-10/100, marking, sex, date of birth/hatch or estimated age, other features — if available)
 - original signature (and stamp) of the last seller, date of transaction, name and address.

This suggested checklist is also included in the Annex to this guidance document.

The information mentioned may be covered by a separate document, produced exclusively for the transaction. The information may be included in other documents (or copies), such as a receipt, invoice, logbook/stock list identifying specimens which are being sold, or registration document. If such documents do not include all the information, they should be supplemented accordingly.

b) *Specimens derived from captive-breeding within the EU*

The documents that are provided by the seller to the buyer should include at least the following:

- species (scientific name);
- number of specimens;
- marking — if available;
- name and address of breeder (for traceability reasons);
- information about parental stock and subsequent information on origin 'C' or 'F' of the specimens in question (taking into account Art. 54 of the Implementing Regulation) — relating to documents confirmed by a management authority; breeder's declarations not confirmed by a management authority do not have to determine origin 'C' or 'F', but rather provide maximum information on known parental specimens;
- date of birth/hatch or estimated age — if available;
- sex — if available;
- other features — if relevant;
- original signature of the last seller, date of transaction.

This suggested checklist is included in the Annex to this guidance document.

The information mentioned in the checklist may be covered by a separate document, produced exclusively for the purpose of the transaction. The information may be included in other documents (or copies), such as a receipt, invoice, logbook/stock list/breeders' records identifying specimens which are being sold, or registration document. If these documents do not include all the information, they should be supplemented accordingly. If other documents are available, e.g. TRACES system documents (like TRACES 'INTRA' certificates), they may be used as supplementary documents.

Documents issued by a Member State's competent authority based on their national legislation may be used in some Member States. Preferably these documents would include all information mentioned above or be supplemented accordingly — especially, if they are not issued for the specific transaction, with name and address, signature (and stamp) of the last seller, date of transaction etc.

As a basis for issuing such documents or confirming breeders' declarations, a system of additional rules on for example registration and bookkeeping may serve as basis for enforcement checks.

ANNEX

Information to be provided to the new owner for the legal acquisition of live animals of Annex B species under Article 8(5) of Council Regulation (EC) No 338/97

Species (scientific name):	
Description of the specimens:	
Type of specimens (e.g. live)	
Number of specimens	
Sex (if available)	
Date of birth/hatch or estimated age (if available)	
Marking (if available) — ID number and type	
Other features	
Origin:	
Source code (codes given on the other side). For captive-bred animals: information about parental stock of the specimens in question	
Country of origin and country of (re-)export, (if relevant)	
Type of acquisition:	
<input type="checkbox"/> import document type (import permit and potential other document — in this case please specify type of the document (e.g. export permit) — and justify exemption), full number and date of issuance, issuing authority ⁽¹⁾ ;	
<input type="checkbox"/> captive-breeding name and address of the breeder, registration number — if relevant, or other information that could enable confirmation of the breeder	
<input type="checkbox"/> other (e.g. taken from the wild ⁽²⁾) please specify and justify legal origin	

⁽¹⁾ If the specimen was imported before the Wildlife Trade Regulations became applicable to it, please specify and justify. In case of pre-Convention specimens the 'date of acquisition' (see Article 1(1) of the Implementing Regulation) should be indicated.

⁽²⁾ For imported specimens the box above should be used.

Information on ancestors for captive-bred specimens (including all available information: marking, date of birth/hatch, holder — if available etc.):

Father		Father	
		Mother	
Mother		Father	
		Mother	

Information on the seller (given for each transaction):

Seller's data (*)	
Signature (and stamp) of the seller	
Date of transaction (**)	
New owner's data (**)	

(*) or person using the specimens commercially in other way/moving the specimens within the EU

(**) leave empty if the declaration is provided for the purpose of using specimens commercially/movement within the EU by the original owner or if unknown (legal acquisition justified on previous page)

Information on enclosures (e.g. documents or copies on: ancestry, genetic tests, taken from the wild, expert opinions on pre-Convention origin, import documents, purchase/donation documents, etc.)

Source codes:

- W** Specimens taken from the wild
- R** Specimens of animals reared in a controlled environment, taken as eggs or juveniles from the wild, where they would otherwise have had a very low probability of surviving into adulthood
- C** Animals bred in captivity in accordance with Chapter XIII of Regulation (EC) No 865/2006, as well as parts and derivatives thereof
- F** Animals born in captivity, but for which the criteria of Chapter XIII of Regulation (EC) No 865/2006 are not met, as well as parts and derivatives thereof
- I** Confiscated specimens
- O** Pre-Convention
- U** Source unknown (must be justified) ^(?)
- X** Introduced from the sea

^(?) If the source of an animal is unknown and cannot be supplemented by another source code, such an animal may not be used for commercial purposes. Also the proof of legal possession seems to be impossible.