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NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES ON TRADE IN PROTECTED SPECIES OF WILD FAUNA AND FLORA

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. Following a request by the United Kingdom, the European Council (Article 50) agreed on 11 April 2019¹ to extend further² the period provided for in Article 50(3) TEU until 31 October 2019.³ This means that the United Kingdom will be, as of 1 November 2019 ('the withdrawal date'), a 'third country'.^{4 5}

Preparing for the withdrawal is not just a matter for EU and national administrations but also for private parties.

In view of the uncertainties surrounding the ratification of the Withdrawal Agreement,⁶ all interested parties, and especially economic operators, are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to the transition period provided for in the Withdrawal Agreement,⁷ as of the withdrawal date, the EU rules on trade in protected species, and in particular Council

¹ European Council Decision (EU) 2019/584, OJ L 101, 11.4.2019, p. 1.

² Following a request by the United Kingdom, the European Council had decided a first extension on 22 March 2019 (European Council Decision (EU) 2019/476, OJ L 80I, 22.3.2019, p. 1).

³ On 11 April 2019, following a second request for an extension by the United Kingdom, the European Council also decided that the decision to extend until 31 October 2019 would cease to apply on 31 May 2019 if the United Kingdom had not held elections to the European Parliament and had not ratified the Withdrawal Agreement by 22 May 2019. As the United Kingdom had not ratified the Withdrawal Agreement by 22 May 2019, it held European elections on 23 May 2019.

⁴ A third country is a country not member of the EU.

⁵ In addition, if the Withdrawal Agreement is ratified by both parties before that date, the withdrawal takes place on the first day of the month following the completion of the ratification procedures.

⁶ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ, C 144 I, 25.4.2019, p. 1.

⁷ It is recalled that, in order for the transition period to apply, the Withdrawal Agreement has to be ratified by the EU and the United Kingdom.

Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein,⁸ no longer apply to the United Kingdom. This has in particular the following consequences:⁹

1. IMPORT AND EXPORT PERMITS FOR THE TRANSFER OF PROTECTED SPECIES BETWEEN THE EU-27 AND THE UNITED KINGDOM

According to Article 4 of Council Regulation (EC) No 338/97, the introduction into the EU of specimens of species included in Annexes A and B to that Regulation (hereafter "protected species") is subject to the prior presentation, at the customs office of entry, of an import permit issued by a management authority of the Member State of destination. Article 4 of Council Regulation (EC) No 338/97 also lays down the conditions determining the issuance of this import permit.

According to Article 5(1),(2) of Council Regulation (EC) No 338/97, the export from the EU to a third country of specimens of protected species are subject to the prior presentation, at the customs office at which the export formalities are completed, of an export permit issued by a management authority of the EU Member State in which the specimens are located. Article 5(1),(2) of Council Regulation (EC) No 338/97 also lays down the conditions determining the issuance of these export permits.

As of the withdrawal date, Articles 4 and 5(1),(2) of Council Regulation (EC) No 338/97 apply to the introduction and (re-) export of specimens of protected species between the United Kingdom and the EU-27.

2. RE-EXPORT CERTIFICATES

According to Article 5(1),(3) of Regulation (EC) No 338/97, the re-export from the EU to a third country is subject to a re-export certificate issued by a management authority of the Member State where the specimen is located.

As of the withdrawal date, the transfer of a specimen of protected species – previously imported from a non-EU country of origin – to the United Kingdom is a re-export and subject to a re-export certificate.

3. PERMITS FOR EXPORTS FROM THE EU TO OTHER THIRD COUNTRIES

According to Article 5(1) of Regulation (EC) No 338/97, the export permit must be obtained from a management authority of the Member State in which the specimens to be exported are located.

Export permits are mutually recognised amongst Member States according to Article 11(1) of Regulation (EC) No 338/97.

⁸ OJ L 61, 3.3.1997, p. 1.

⁹ Regarding more generally the notifications of export and imports, see also the "*Notice to stakeholders - Withdrawal of the United Kingdom and EU rules in the field of import/export licences for certain goods*" (https://ec.europa.eu/info/brexit/brexit-preparedness_en).

As of the withdrawal date, export permits issued by the United Kingdom as an EU Member State on the basis of Union law are no longer valid for the export from the EU-27 to a third country.¹⁰ This may lead to the need for a management authority of an EU-27 Member State to re-issue an export permit previously issued by the management authority of the United Kingdom. In this case, the fact that the permit had been previously issued by the United Kingdom on the basis of Regulation (EC) No 338/97 can be taken into account when issuing the permit.

4. CERTIFICATES FOR RE-EXPORTS FROM THE EU TO OTHER THIRD COUNTRIES

According to Article 5(1) of Regulation (EC) No 338/97, the re-export certificate must be obtained from a management authority of the Member State in which the specimens to be re-exported are located.

Re-export certificates are mutually recognised amongst Member States according to Article 11(1) of Regulation (EC) No 338/97.

As of the withdrawal date, re-export certificates issued by the United Kingdom as an EU Member State on the basis of Union law are no longer valid for the re-export from the EU-27 to a third country.¹¹ This may lead to the need for a management authority of an EU-27 Member State to re-issue an export permit previously issued by the management authority of the United Kingdom. In this case, the fact that the permit had been previously issued by the United Kingdom on the basis of Regulation (EC) No 338/97 can be taken into account when issuing the permit.

5. DEROGATIONS - PERSONAL AND HOUSEHOLD EFFECTS

Article 7(3) of Council Regulation (EC) No 338/97 provides for derogations for introduction and (re-)export of certain specimens being personal or household effects.¹² Where the relevant conditions are met, these derogations will apply to movements of personal and household effects between the United Kingdom and the EU-27 as of the withdrawal date.

6. TRAVELLING-EXHIBITION CERTIFICATE, PERSONAL OWNERSHIP CERTIFICATE, SAMPLE COLLECTION CERTIFICATE, MUSICAL INSTRUMENT CERTIFICATE

Chapter VII (travelling-exhibition certificate), VIII (personal ownership certificate), VIIIa (sample collection certificate) and VIIIb (musical instrument certificate) of Regulation (EC) No 865/2006 provide for certificates to facilitate cross-border movements of certain specimens of protected species.

¹⁰ See “*Notice to stakeholders - Withdrawal of the United Kingdom and EU rules in the field of import/export licences for certain goods*”(https://ec.europa.eu/info/sites/info/files/file_import/import_and_export_licences_en.pdf)

¹¹ See “*Notice to stakeholders - Withdrawal of the United Kingdom and EU rules in the field of import/export licences for certain goods*”(https://ec.europa.eu/info/sites/info/files/file_import/import_and_export_licences_en.pdf)

¹² See section 5.6. of the “*Notice on travelling between the EU and the United Kingdom following withdrawal of the United Kingdom from the EU*” (https://ec.europa.eu/info/sites/info/files/file_import/travelling_en.pdf).

These certificates can be used as import permit, export permit, or re-export certificate.¹³

These certificates are mutually recognised amongst Member States according to Article 11(1) of Regulation (EC) No 338/97.

These certificates issued by the CITES authority of the United Kingdom before the withdrawal date can, as of the withdrawal date, be used on the basis of the CITES convention, to which the United Kingdom continues to be a Party.¹⁴

7. CERTIFICATES EXEMPTING FROM THE PROHIBITION OF COMMERCIAL ACTIVITIES

According to Article 8(1) of Council Regulation (EC) No 338/97, commercial activities, such as an offer to purchase or an acquisition, of specimens of the species listed in Annex A are prohibited. However, Article 8(3) of Council Regulation (EC) No 338/97 provides that exemption from these prohibitions can be granted with a certificate by the management authority of the Member State where the specimens are located.¹⁵

These certificates are mutually recognised amongst Member States according to Article 11(1) of Regulation (EC) No 338/97.

As of the withdrawal date, these certificates issued by the United Kingdom as an EU Member State on the basis of Union law are no longer valid for commercial activities within the EU. This may lead to the need for a management authority of an EU-27 Member State to re-issue a certificate previously issued by the management authority of the United Kingdom. In this case, the certificate previously issued by the United Kingdom on the basis of Regulation (EC) No 338/97 can serve as the proof that the specimen has been obtained in accordance with the legislation in force on the protection of the species in question, and be taken into account when issuing the certificate.

8. DESIGNATED CUSTOMS OFFICES FOR THE INTRODUCTION INTO AND EXPORT FROM THE EU

According to Article 4 of Council Regulation (EC) No 338/97, the introduction of specimens protected under that Regulation is subject to the necessary checks and the prior presentation at the border customs office at the point of introduction.

¹³ Articles 31, 38, and 44b of Regulation (EC) No 865/2006.

¹⁴ See, with regard to travelling-exhibition certificates and certificate standard forms, Resolution Conf. 12.3 (Rev. CoP17) on *Permits and certificates*, <https://cites.org/sites/default/files/document/E-Res-12-03-R17.pdf>; with regard to personal ownership certificates, Resolution Conf. 10.20 on *Frequent cross-border movements of personally owned live animals*, <https://cites.org/sites/default/files/document/E-Res-10-20.pdf>; with regard to musical instrument certificates, Resolution Conf. 16.8 (Rev. CoP17) on *Frequent cross-border non-commercial movements of musical instruments*, <https://cites.org/sites/default/files/document/E-Res-16-08-R17.pdf>.

¹⁵ See also Article 48 of Regulation (EC) No 865/2006.

According to Article 5 of Council Regulation (EC) No 338/97, the (re-)export of certain specimens is subject to the necessary checks and the prior presentation at the customs office at which the export formalities are completed.

Member States have to designate these customs offices and notify them to the Commission, which publishes their list in the *Official Journal of the European Union*.^{16 17}

Where, as of the withdrawal date, specimens protected under Council Regulation (EC) No 338/97 leave or enter the EU customs territory, the permit or certificate required according to Council Regulation (EC) No 338/97 has to be presented to these customs offices.

The website of the Commission on the EU wildlife trade regulatory framework (http://ec.europa.eu/environment/cites/legislation_en.htm) provides general information concerning these issues. These pages will be updated with further information, where necessary.

European Commission
Directorate-General for the Environment

¹⁶ Article 12 of Council Regulation (EC) No 338/97.

¹⁷ OJ C 72, 18.3.2008, p. 52. See also the list published by the Commission services here: https://ec.europa.eu/environment/cites/pdf/list_points_of_entry.pdf.