

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.7.2008
COM(2008) 469 final

2008/0160 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

concerning trade in seal products

(presented by the Commission)

{SEC(2008) 2290}

{SEC(2008) 2291}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal for a Regulation of the European Parliament and of the Council is intended to ban the placing on the market and the import in, transit through, and the export from the Community of seal products. Trade in those products would however be possible when certain conditions, which concern the manner and method whereby seals are killed and skinned, are met. It also establishes information requirements aimed at ensuring that seal products whose trade would be possible by derogation to the prohibitions otherwise in force would be clearly identified as coming from a country meeting the required conditions, or alternatively as having been killed and skinned by persons acting under the jurisdiction of countries where the said conditions are met.

The bans are intended to replace the varied measures adopted, or whose adoption is planned, by certain Member States to prohibit the import, production and distribution, as the case may be, of products derived from seals, so that harmonised conditions govern the trade in those products within the Community. The provisions of the draft Regulation also aim at ensuring that seal products produced outside the Community cannot be imported into it, transit through it, or be exported from the Community.

Seal products are imported in the Community and being traded within it. The evidence available suggests that most of these products originate from third countries, even though some production exists within the Community as seals are killed and skinned in Finland and Sweden, while seal products are produced in other Member States, such as the United Kingdom (Scotland), using seal fur skins coming from other countries.

For several years, many members of the public have been concerned about the animal welfare aspects of the killing and skinning of seals and about trade occurring in products possibly derived from seals that have been killed and skinned with avoidable pain, distress and other forms of suffering, which seals, as sentient mammals, are capable of experiencing. Those concerns have therefore been expressed by members of the public out of ethical reasons. The Commission received during the last years a massive number of letters and petitions on the issue expressing citizens' deep indignation and repulsion regarding the trade in seal products in such conditions.

As a result of the concerns expressed by citizens, several Member States have adopted, or are in the process of adopting or examining, legislation aiming at restricting or banning economic activities linked to the production of seal products. National legislators are tackling the issue with different measures banning the import, production, commercialisation, or placing on the market, as the case may be, of products derived from seals or certain seal species. Increasing awareness among and pressure from the public on national legislators are likely to result in further legislative initiatives in the Member

States aimed at responding to the widespread concern of members of the public as mentioned above.

Two Member States have legislation in place to the effect of restricting trade in seal products.

Whilst trade in seal products is (or may soon be) subject to restrictive rules in certain Member States, no specific requirements to that effect have been enacted in other Member States so that different trade conditions coexist within the Community varying from one (group of) Member State to the other (group) of Member States. As a consequence, the internal market is fragmented as traders need to adjust their commercial practices to the different provisions in force in each Member State.

The Treaty establishing the European Community does not provide for a specific legal basis allowing the Community to legislate in the field of ethics as such. However, where the Treaty empowers the Community to legislate in certain areas and that the specific conditions of those legal bases are met, the mere circumstance that the Community legislature relies on ethical considerations does not prevent it from adopting legislative measures. It should be noted, in that respect, that the Treaty enables the Community to adopt measures aimed at establishing and maintaining an internal market, which is a market without internal frontiers according to Article 14 of the Treaty.

It follows from the Court of Justice's settled case-law that, where there are differences between the laws, regulations or administrative provisions of the Member States which are such as to obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market, Community measures are justified in order to prevent such obstacles. Depending on the circumstances, those measures may consist in provisionally or definitely prohibiting the marketing of a product or products¹.

There are differences between the laws, regulations and administrative provisions of the Member States with respect to seal products. Two of them have already prohibited the marketing of such products and a third has notified its intention to do so. Other Member States have intense public discussions about the need for such legislation. Those measures are intended, according to their authors, to stop trade in seal products mainly on the basis of ethical reasons related to animal welfare. Those prohibitions of marketing contribute to a heterogeneous development of that market and are therefore such as to constitute obstacles to the free movement of goods.

Having regard also to the public's growing awareness and sensitivity to ethical considerations in how seal products are obtained, it is likely that obstacles to the free movement of those products would arise by reason of the adoption by the Member States of new rules reflecting those concerns.

¹ Judgement of 14 December 2004 in case C-434/02 (Arnold André), paragraphs 34 and 35.

Action by the Community legislature on the basis of Article 95 EC is therefore justified with respect to seal products².

The harmonisation of the different prohibitions and/or other restrictive measures currently in place is the easiest and lightest way of ensuring that the welfare of the seals from which products are derived is taken into account when trade in seal products takes place, under the condition that certain requirements are met.

The Court of Justice has recognised that the protection of animal welfare is a legitimate objective in the public interest³.

The Court of Justice has also held that, where the conditions for recourse to Article 95 EC as a legal basis are fulfilled, the Community legislature cannot be prevented from relying on that legal basis on the ground that public health protection is a decisive factor in the choices to be made⁴.

It follows from a combined reading of the above case-law that the Community legislature cannot be prevented from relying on Article 95 EC on the ground that animal welfare considerations would be a decisive factor in the choices to be made.

In any case, the draft Regulation, insofar as it seeks to establish uniform conditions under which seal products may be traded in derogation to the prohibitions otherwise applicable, contributes to ensure the free movement of those goods within the internal market.

As the vast majority of seal products present in the Community originate from third countries, the establishment of the ban trade must be accompanied by an equivalent ban on imports of the same products into the Community.

A ban on transit and exports should also ensure that seal products do not transit through the Community nor are produced in the Community for export. Such additional bans would contribute to render the ban on intra-Community trade more effective, as there is a risk that seal products placed under a transit procedure or allegedly produced for export may be fraudulently brought on to the Community market.

Insofar as the provisions of this Regulation affect commercial activities in seal products with third countries, beyond what is strictly required to preserve the ban on intra-Community trade, it should also be considered as a measure governing international trade.

The various prohibitions provided for by this Regulation would respond to the animal welfare concerns expressed by members of the public as to the possible introduction into the Community of seal products obtained from seals that

² See paragraphs 37, 38, 39 and 41 of case C-434/02.

³ See Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handels e.a.*, paragraph 22.

⁴ See paragraph 32 of Case C-434/02.

might not have been killed and skinned without causing avoidable pain, distress and other forms of suffering.

It should however be possible for trade in seal products to take place where the killing and skinning methods used would be such as offering reasonable guarantees that the killing and skinning occur without causing avoidable pain, distress and other forms of suffering.

The regulatory framework so established would therefore be designed so as giving incentives to countries concerned to review and improve, where need be, their legislation and practice concerning the methods to be complied with when killing and skinning seals.

The fundamental economic and social interests of Inuit communities traditionally engaged in the hunting of seals should not be adversely affected. Seal products deriving from traditional hunts traditionally conducted by Inuit communities and which contribute to their subsistence should therefore not be covered by the prohibitions provided for by this Regulation.

- **General context**

Products derived from seals are traded within and outside the Community.

Within the Community, seals are killed and skinned in Sweden, Finland and the United Kingdom (Scotland) with a view to obtain products derived from seals, or for pest control reasons. Outside the Community, seals are killed and skinned to the same effect in Canada, Greenland, Namibia, Norway and Russia.

The Community has adopted since long appropriate legislation seeking to ensure that hunting within and outside the Community would not lead to endanger the conservation status of several seal species (see below).

Beyond those conservation concerns, methods used to kill seals and seal pups have raised serious among members of the public, organisations and certain Member States for several years on account of the fear, pain, distress and other form of suffering experienced by seals and seal pups.

On 17 November 2006, the Parliamentary Assembly of the Council of Europe adopted a recommendation on seal hunting inviting member and observer states practising seal hunting, amongst other issues, *"to ban all cruel hunting methods, which do not guarantee the instantaneous death, without suffering, of the animals, and to prohibit the stunning of animals with instruments such as hakapiks, bludgeons and guns"*.

On 26 September 2006, the European Parliament adopted a declaration requesting the European Commission to regulate the import, export and sale of all harp and hooded seal products, while ensuring that this regulation would not have an impact on traditional Inuit seal hunting.

Belgium adopted on 16 March 2007 an Act prohibiting the manufacture and placing on the market of products derived from seals while the Netherlands

adopted a Decree of 4 July 2007 amending the Flora and Fauna Act (Designation of Species of Animals and Plants) Decree and the Protected Species of Animals and Plants (Exemption) Decree in connection with the prohibition of the trade in products of harp seals and hooded seals. Germany intends to adopt an Act banning the import, processing and placing on the market of seal products. Similar initiatives from other Member States may not be excluded in the future.

- **Existing provisions in the area of the proposal**

Trade in seal products is subject to a certain extent to existing Community provisions, the scope and rationale of which are however significantly different.

Council Directive 83/129/EEC of 28 March 1983 prohibits the commercial importation into Member States of skins of certain seal pups⁵ and products derived therefrom⁶. The Directive was adopted further to various studies which had have raised doubts concerning the population status of the harp and hooded seals, and especially as to the effect of non-traditional hunting on the conservation and population status of hooded seals. As hunting, as traditionally practised by the Inuit people, leaves seal pups unharmed, the Directive does not apply to products resulting from this particular form of hunting.

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁷ protects all seal species present in the Community. As with all other species (and habitats) covered by the Directive, the overall aim thereof is to maintain or restore a favourable conservation status with regard to the seal species occurring in the Community.

As part of the measures designed to achieve this goal, Article 15 of the Directive prohibits the use of all indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations of such species. The prohibited methods and means of capture and killing are listed in Annex VI (a) and the prohibited forms of capture and killing from modes of transport are listed in Annex VI (b).

The Directive prohibits all forms of deliberate capture or killing of specimens of those species listed in its Annex IV (a), which include the following seal species: *Monachus monachus* and *Phoca hispida saimensis*. It also requires Member States, in the light of the surveillance of the conservation status of the species concerned, to ensure that the taking in the wild of specimens of those species of wild fauna listed in Annex V – which includes all seal species occurring in the Community not listed in Annex IV – as well as their exploitation is compatible with their being maintained at a favourable conservation status. Such measures may include the regulation of the methods

⁵ Whitecoat pups of harp seals and pups of hooded seals (blue-backs).

⁶ OJ L 91, 9.4.1983, p. 30. Directive as amended by Directive 89/370/EEC (OJ L 163, 14.6.1989, p. 37).

⁷ OJ L 206, 22.7.1992, p. 7. Directive as last amended by Directive 2006/105/EC of 20 November 2006 adapting Directives 73/239/EEC, 74/557/EEC and 2002/83/EC in the field of environment, by reason of the accession of Bulgaria and Romania (OJ L 363, 20.12.2006, p. 368).

of taking specimens, the application, when specimens are taken, of hunting rules which take account of the conservation of such populations, or the regulation of the purchase, sale, offering for sale, keeping for sale or transport for sale of specimens.

Member States are obliged to report every six years on the implementation of the measures taken under Directive 92/43. The latest reporting period covered 2001-2006 and revealed information for the first time on the conservation status of all seal species to which the Directive applies.

Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein⁸ implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Cites) within the Community. The aim of the Regulation (and of Cites) is to guarantee the conservation of species of wild fauna and flora by regulating trade therein. Pursuant to Cites and the Regulation, trade will only take place if it does not threaten the survival of the species concerned. Several species of Pinnipeds are listed in either Appendix I or II to Cites and the corresponding Annexes A and B to the Regulation. The proposal for a Regulation only covers one species – the Namibian Cape fur seal (*Arctocephalus pusillius pusillus*) –, which is also currently listed under Cites (Appendix II thereof).

In summary, the existing legislation pursues conservation objectives and its actual implementation depends to a certain extent (at least with respect to Directive 92/43) of the evolution in the conservation status of the species concerned. In any case, it does not prohibit all commercial activities in respect of all seal species as purports this proposal for a Regulation, nor does it address specifically the methods whereby seals are killed and skinned from an animal welfare viewpoint.

- **Consistency with the other policies and objectives of the Union**

The protection of animal welfare is a legitimate objective which the Community can pursue in the public interest when exercising the legislative powers conferred upon it by the EC Treaty⁹. Animal welfare considerations are taken into account by the Community legislature in various fields. In certain areas, such as the internal market, Community institutions are even bound to pay full regard to animal welfare requirements when legislating¹⁰.

Animal welfare is also at the centre of the Community Action Plan on the Protection and Welfare of Animals 2006-2010¹¹. This Action Plan reflects the Protocol to the EC Treaty on the Protection of Animals defined as sentient beings. As agreed at the time of the adoption of the Action Plan and in order to

⁸ OJ L 61, 3.3.1997, p. 1. Regulation as last amended by Commission Regulation (EC) No 318/2008 (OJ L 95, 8.4.2008, p. 3).

⁹ See Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handels e.a.*, paragraph 22.

¹⁰ Protocol (No 33) on protection and welfare of animals annexed to the Treaty establishing the European Community (OJ C 340, 10.11.1997, p. 110). This Protocol reflects itself Declaration No 24 on the protection of animals annexed to the Final Act of the Treaty on European Union.

¹¹ COM(2006)13 final of 23.1.2006.

support the harmonisation of animal welfare standards adopted in the Community both on public and private bases, the Commission has launched a feasibility study to create a European Centre for the Protection and Welfare of Animals. The European Centre could be developed in a way to assist the Community and Member States in the management of animal welfare issues both at Community and international level. As and when established, such a Centre could for instance assist the Commission in the implementation of the labelling/marketing requirements whose basic features are to be established by this Regulation.

There is no conflict between this proposal and other existing Community legislation (see above): the former focuses on animal welfare considerations while the latter addresses conservation issues and, insofar as this Regulation would impose stricter provisions in terms of trade, it could perfectly do so as the existing Community legislation only provides for minimum requirements. Conversely, should trade in seal products be allowed to occur under the benefit of a derogation, it is necessary to ensure that the specific regimes provided for under the existing Community legislation continues to apply.

As to the import ban, it is in conformity with Article XX(a) of the General Agreement on Trade and Tariffs (GATT), under which the adoption or enforcement by any contracting party of measures necessary to protect public morals is allowed provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination. The proposed Regulation is non-discriminatory as the various prohibitions it provides for will apply to intra-Community trade as well as to imports and exports.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

An Internet-based public consultation was conducted by the European Commission providing the possibility for EU citizens as well as non-EU citizens to express their views on regulation of seal hunting, as an input to the policy-making process. 73,153 answers were received from citizens in 160 countries worldwide. This high number of responses (and additionally around 1,350 e-mails) indicates that seal hunting is a very salient issue to a large number of citizens. The responses showed massive dissatisfaction with current seal hunting practices, at least how they are perceived by the general public. A clear majority of respondents in nearly all the geographical area analysed preferred a ban. The majority of respondents resided in the United Kingdom, the USA and Canada.

Furthermore, a stakeholder consultation was organised by the European Food Safety Agency (EFSA) in the framework of its work to establish a scientific opinion on the animal welfare aspects of the killing and skinning of seals (see

below). The stakeholders were invited to express their opinion on the completeness and reliability of the data presented in the draft report prepared by the EFSA working group, in order to avoid any possibility of leaving out some important scientific evidence. Moreover, the European Commission organised a workshop with experts from sealing countries, animal welfare non-governmental organisations as well as fur trade and hunters associations with the objective to receive feed-back on the factual information under the country reporting exercise (national hunt management systems) conducted in the framework of the overall Commission assessment. Bilateral meetings were also held with a whole range of stakeholders and took place at political as well as at technical level.

Summary of responses and how they have been taken into account

The results of the consultation showed that many respondents are against seal hunting for reasons of principle, which again may be rooted in a certain perception of the human-nature relation. However, the results also showed that for some respondents the level of acceptability of seal hunting is influenced by how the seal hunt is managed and undertaken, and for what reasons.

The proposal takes the outcome of the consultations held into account as it seeks to respond to the concerns expressed as to the placing on the Community market, including further from imports from third countries, of seal products obtained from seals that might not have been killed and skinned without causing avoidable pain, distress and other forms of suffering. Furthermore, the overall scheme of the proposal is so designed as to give incentives to sealing countries to improve the methods in which seals are killed and skinned.

- **Collection and use of expertise**

The Commission, in its response to the European Parliament on 16 January 2007, recognised the high level of public concerns regarding the animal welfare aspects of seal hunting. In line with its commitment to high animal welfare standards, it undertook to make a full objective assessment of the animal welfare aspects of seal hunting and, based on the results, to report back to the European Parliament with possible legislative proposals if warranted by the situation. The Commission carried out its assessment on the basis of various elements, among which, as far recourse to expertise is concerned, the independent scientific opinion of the European Food Safety Authority (EFSA) and a study commissioned to support the impact assessment process.

In follow-up to the request from the European Commission in May 2007, EFSA adopted on 6 December 2007 an independent scientific opinion on the animal welfare aspects of methods for the killing and skinning of seals¹².

EFSA concluded that *"it is possible to kill seals rapidly and effectively without causing them avoidable pain or distress. However, the Panel also reported*

¹² The EFSA Journal (2007) 610, 1-122.

evidence that, in practice, effective and humane killing does not always happen".

EFSA does not explicitly take position on the methods currently used for killing and skinning seals. It rather establishes a number of criteria for assessing the acceptability of methods applied in the different seal hunts.

Given the scarcity of robust, scientifically peer reviewed data, the EFSA Risk Assessment process was conducted in a qualitative way. Nevertheless, the general conclusions and recommendations are considered to be rigorous enough to inform the policy-making process.

Building upon the EFSA scientific opinion, a study (commissioned by the Commission)¹³ examined the regulatory frameworks for, and the management practices of, the different seal hunts.

Legislative and enforcement provisions in a number of sealing countries, both within the European Community and beyond were assessed and best practices identified. The assessments were based on desk study research and information provided during the overall consultation process; the study team did not visit all the range states worldwide.

The study also assessed the impact of a possible ban of seal products on trade and other socio-economic aspects.

- **Impact assessment**

Both legislative and non-legislative policy measures were considered in the impact assessment. Furthermore, policy measures that are not linked directly to seal hunt management systems, such as a total prohibition of placing on the Community market and/or of imports/exports, as well as measures that could be linked to the good or bad practices of the seal hunt management systems, were analysed.

The environmental dimension of the assessment is limited to the impacts of animal welfare aspects for seals which, however, are difficult to measure because the effectiveness of killing methods used for seals vary according to the methods used, the skill of the operators and the environmental conditions. Furthermore, economic impacts are limited to those impacts to trade and local economies, both on the side of the sealing countries as well as of potential transit and transformation countries, while the social dimension touches mainly upon the conditions for the Inuit population.

A total prohibition of placing on the Community market of seal products is assessed to have minor economic impacts in Member States of the Community. This assumes, however, that transshipment of sealskins and other seal products and imports of sealskins for further processing and exports can continue. The impacts are assessed to be slightly more significant for non-Community range states. This is a result of the fact that the size of the seal hunts in these non-

¹³ COWI "Assessment of the potential impact of a ban of products derived from seal species", April 2008

Community countries are much larger than in the Community range states, and that the Community market - apart for Russia - is of some importance. This option would also deny consumers the choice to purchase seal products in the Community.

A total prohibition of imports and exports would have medium economic impacts on the Community Member States, although those impacts could be significant for Finland and Germany, if such ban would also cover transit trade. The impacts would be slightly higher for the non-Community range states. This is again a result of the fact that the size of the seal hunts in non-Community countries is much larger than in the Community range states, and that the Community market - apart for Russia - is of some importance. However, if the ban is extended to transit trade, Canada will in particular suffer, unless this trade can be shifted from Germany and Finland to outside of the Community (for instance to Norway). Hence, Norway may actually strengthen its position as a transit trader. With regard to consumers they would only have a very limited choice of seal products derived from seal species hunted in the Community and offered for sale on local markets only.

Denmark and Italy are by far the two largest importers of raw fur skin from seal for further processing/sales on the Community market, and will thus also be affected by such regulation. Denmark imports the raw fur skins directly coming from Canada and Greenland (that are not categorised as goods in transit), while Italy imports the raw fur skins from Russia, Finland and the UK (Scotland). Greece also has a noticeable trade in raw skins originating in the two latter range states.

Benefits from a labelling system might include a price mark-up on the consumer market and at the same an increase of the image of seal hunting in general. If the system is voluntary, it might encourage a natural self-selection process regarding compliance and thus maintain the balance between the animal welfare, economic and social dimensions, i.e. those who pursue the label might benefit more than it costs, and the welfare of the seals could be enhanced. Furthermore, it is assessed that the impact will be largest if it is a widespread international labelling system rather than a specific Community system.

Bi-/multilateral agreements between the Community and one or more range states could be made, which could enlarge the geographical area not to be covered by any legislative measures. The impact will be similar to that of a limited ban that allows trade if the hunting of the seals complies with some established standards as discussed above.

Given the animal welfare concerns expressed by the public, the European Parliament and Member States, stand-alone non-legislative measures are not considered sufficient to address the issue.

The EFSA scientific opinion clearly indicates that there is reported evidence that, in practice, effective killing does not always happen, which is reinforced by the further assessment findings. There are therefore reasonable grounds to consider undertaking precautionary steps to ensure that products derived from

seals, which are killed and skinned in a way that causes them avoidable pain, distress and suffering, are denied access to the Community market.

Labelling alone of seal products is not an alternative to a ban on trade in those products as labelling would only be relevant to assuage the ethical animal welfare concerns of citizens and consumers as and when the killing and skinning methods in force in the sealing countries would accord with the criteria provided for in this Regulation. There should therefore be incentives for sealing countries to adapt their legislation and practice to that effect, which can only be achieved by means of trade prohibitions.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

This proposal for a Regulation of the European Parliament and of the Council is intended to ban the placing on the market and the import in, transit through, and the export from the Community of seal products. Trade in those products would however be possible when certain conditions, which concern the manner and method whereby seals are killed and skinned, are met. It also establishes information requirements aimed at ensuring that seal products whose trade would be possible by derogation to the prohibitions otherwise in force would be clearly indicated as coming from a country meeting the above-mentioned conditions, or alternatively as having been killed and skinned by persons acting under the jurisdiction of countries where the said conditions are met.

- **Legal basis**

The proposal is based on Articles 95 and 133 of the Treaty. In the drafting of this proposal, the Commission has taken due account of the case law of the Court of Justice where the Court set up the conditions for the recourse to Article 95¹⁴.

As the proposal also aims at banning imports and exports of the products in question from outside the Community, reference to the provisions of Article 133 is also necessary. The proposal has indeed a twofold component as it simultaneously pursues two different objectives (the ban on intra-Community trade and the ban on imports and exports) which are inseparably linked without one being secondary and indirect in relation to the other.

The procedures laid down for the adoption of Community legislation under Articles 95 and 133 respectively of the EC Treaty are not incompatible with each other.

¹⁴ Judgment of 10 December 2002 in Case C-491/01 *British American Tobacco and Imperial Tobacco* [2002] ECR I-11453, paragraphs 60 and 61; judgments of 14 December 2004 in Case C-434/02 *Arnold André* [2004] ECR I-11825, paragraph 34 and in Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 33; judgment of 12 July 2005 in Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health* [2006] ECR I-6451, paragraph 32 and of 6 December 2005 in Case C-66/04 *United Kingdom v European Parliament and Council* [2005] ECR I-10553, paragraph 41.

- **Subsidiarity principle**

The proposal aims at the harmonisation of laws concerning the trade in seal products. This harmonisation at Community level is necessary to eliminate the present fragmentation of the internal market, which results from the existing differences between Member States' provisions governing the trade, import, production and marketing of seal products, while taking into account animal welfare considerations. Such result could only be obtained by measures taken at Community level since national measures, including total bans, are by definition only enforceable in parts of the internal market.

Similarly, the possible continuance of trade in seal products, by derogation to the prohibitions otherwise applicable, are better taken at Community level as this ensures that uniform conditions are met before derogations are granted and that trade of those products benefiting from derogations is governed by harmonised rules throughout the internal market. The same reasoning holds true with respect to the labelling and marking requirements applying to products benefiting from derogations, as national legislation on the same subject would by definition not be applicable in the whole Community and would lead to market fragmentation.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle and choice of instruments**

The proposal complies with the proportionality principle for the following reason(s).

Labelling alone of seal products is not an alternative to a ban on trade in those products as labelling would only be relevant to assuage the ethical animal welfare concerns of citizens and consumers as and when the killing and skinning methods in force in the sealing countries would accord with the criteria provided for in this Regulation. There should therefore be incentives for sealing countries to adapt their legislation and practice to that effect, which can only be achieved by means of trade prohibitions.

In these circumstances, prohibitions coupled with the possibility to issue derogations constitute the least burdensome measures to be taken which can effectively achieve the pursued objectives.

Appropriate requirements should be provided for ensuring that derogations to trade prohibitions can be properly enforced under this Regulation. To that effect, provisions should be made relating to certification schemes as well as on labelling and marking. Certification schemes should ensure that seal products are certified as coming from seals which have been killed and skinned in accordance with the appropriate requirements, which are effectively enforced, and whose object is to ensure that seals are killed and skinned without causing avoidable pain, distress and any other form of suffering.

All measures adopted by the Commission to implement this Regulation will comply with the proportionality principle.

- **Choice of instruments**

Proposed instrument: Regulation.

It offers the advantages of having general and uniform application, being binding in its entirety and directly applicable in all Member States on the same day, without the additional administrative burden of a national act being necessary for transposition

Other means would not be adequate. A Directive requires national measures of implementation and increases the risk of divergent application. The enforcement of a ban relies on Member States while they keep the freedom on how to ensure that seal products are no longer placed on the market, imported and exported and to develop the methods of how to enforce the ban. Similarly, there is a need to guarantee the uniform application of possible derogations to the trade prohibitions otherwise applicable.

4. BUDGETARY IMPLICATION

The Proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

- **Simplification**

The Proposal does not have a simplification element as it does not touch existing legislation.

It should be noted with respect to Regulation No 338/97 that it would not be appropriate to remove from that Regulation seal species which are currently included therein, as such decisions are intrinsically linked to the decisions to be made by the governing bodies of the Convention on International Trade in Endangered Species (Cites). (Even though the Community is not a Party to Cites, Regulation No 338/97 expressly purports to implement that Convention within the Community).

See below with respect to Seal Pups Directive 83/129/EEC.

- **Repeal of existing legislation**

The adoption of the Proposal will not lead to the repeal of existing legislation as the latter either covers other elements or is based on different grounds and seeks to assuage different concerns as it relates to the conservation status of the seal species concerned.

Concerning more specifically the Seal Pups Directive 83/129/EEC (as amended), it is clear that this Regulation encompasses the prohibition of commercial imports of the specific products covered by this legislation. Yet, this Directive must remain unaffected as this Regulation contemplates the possibility for trade to continue by derogations to the prohibitions otherwise

applicable. Should such derogations be granted, it is necessary to ensure that the conservation objectives pursued by Directive 83/129 are still met, which in turn implies that the ban import the latter provides for continues to apply. It would therefore not be appropriate to repeal Directive 83/129.

- **Review/revision/sunset clause**

The Proposal does not include any of these clauses.

- **Recasting**

The Proposal does not involve recasting.

- **Correlation table**

N/A as correlation tables are only required with respect to Directives.

- **European Economic Area (EEA)**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

concerning trade in seals products

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 95 and 133 thereof,

Having regard to the proposal from the Commission¹⁵,

Having regard to the opinion of the European Economic and Social Committee¹⁶,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁷,

Whereas:

- (1) Seals are animals that can experience pain, distress, fear and other forms of suffering.
- (2) Seals are hunted within and outside the Community and used for obtaining products and articles, such as meat, oil, blubber, fur skins and articles made therefrom, which are sold commercially on different markets, including the Community.
- (3) The hunting of seals has led to expressions of serious concerns by members of the public, governments as well as the European Parliament sensitive to animal welfare considerations since there are indications that seals may not be killed and skinned without causing avoidable pain, distress and other forms of suffering. The European Food Safety Authority concluded, in its scientific opinion on the Animal Welfare aspects of the killing and skinning of seals, that it is possible to kill seals rapidly and effectively without causing them avoidable pain or distress, whilst also reporting that in practice, effective and humane killing does not always happen¹⁸.
- (4) In response to the concern about the animal welfare aspects of the killing and skinning of seals, several Member States have adopted or intend to adopt legislation regulating trade in seal products, by prohibiting their import, and production, while no restrictions are placed on the trade in these products in other Member States.

¹⁵ OJ C , , p. .

¹⁶ OJ C , , p. .

¹⁷ OJ C , , p. .

¹⁸ Scientific Opinion of the Panel on Animal Health and Welfare on a request from the Commission on the Animal Welfare aspects of the killing and skinning of seals. The EFSA Journal (2007) 610, 1-122.

- (5) There are therefore differences between Member States' provisions governing the trade, import, production and marketing of seal products. Those differences between national measures affect the operation of the internal market. The measures provided for in this Regulation should therefore harmonise the rules across the Member States as regards commercial activities concerning seal products.
- (6) To eliminate the present fragmentation of the internal market, there is a need to provide for harmonised rules while taking into account animal welfare considerations. A ban on placing seal products on the market is appropriate to that effect.
- (7) A vast majority of seal products in the Community originate from third countries. In order to be more effective, the ban on intra-Community trade should be accompanied by a ban on the introduction of the same products into the Community.
- (8) A ban on transit and exports should also ensure that seal products do not transit through the Community nor are produced in the Community for export. Such bans would contribute to render the ban on intra-Community trade more effective, as there is a risk that seal products placed under a transit procedure or allegedly produced for export may be fraudulently brought on to the Community market.
- (9) Insofar as the provisions of this Regulation affect commercial activities in seal products with third countries, beyond what is strictly required to preserve the ban on intra-Community trade, it should also be considered as a measure governing international trade.
- (10) The various prohibitions provided for by this Regulation should respond to the animal welfare concerns expressed by members of the public as to the placing on the Community market, including further to imports from third countries, of seal products obtained from seals that might not have been killed and skinned without causing avoidable pain, distress and other forms of suffering.
- (11) It is appropriate, however, to provide for the possibility of derogations from the general ban on the placing on the market and the import in, or export from, the Community of seal products insofar as the appropriate conditions based on animal welfare considerations are met. To that effect, criteria should be provided for the compliance with which should ensure that seals are killed and skinned without causing avoidable pain, distress and other forms of suffering. Any such derogation should be granted at Community level so that uniform conditions apply throughout the Community with respect to the trade specifically allowed under those derogations and the smooth functioning of the internal market is preserved.
- (12) Seal products should only be placed on the market, imported, transiting, or exported if they meet the conditions provided for to that effect by this Regulation. However, if placed on the market, imported or exported in accordance with a derogation granted under this Regulation, seal products will also have to comply with the relevant Community legislation, including animal health and food and feed safety provisions, as appropriate. This Regulation should not affect the obligations under Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human

consumption¹⁹ concerning the disposal of seal products for public and animal health reasons.

- (13) The fundamental economic and social interests of Inuit communities traditionally engaged in the hunting of seals as a means to ensure their subsistence should not be adversely affected. The hunt is an integrated part of the culture and the identity of the members of the Inuit society. It represents a source of income and contributes to the subsistence of the hunter. Therefore, seal products deriving from hunts traditionally conducted by Inuit communities and which contribute to their subsistence should not be covered by the prohibitions provided for in this Regulation.
- (14) Appropriate requirements should be provided for ensuring that derogations to trade prohibitions can be properly enforced under this Regulation. To that effect, provisions should be made relating to certification schemes as well as on labelling and marking. Certification schemes should ensure that seal products are certified as coming from seals which have been killed and skinned in accordance with the appropriate requirements, which are effectively enforced, and whose object is to ensure that seals are killed and skinned without causing avoidable pain, distress and any other form of suffering.
- (15) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission²⁰.
- (16) In particular, the Commission should be empowered to adopt all measures necessary to ensure that procedures are in place allowing applications for derogation to the trade prohibitions set out in this Regulation to be lodged and handled in an efficient manner, as well as to ensure the proper implementation of the provisions of this Regulation concerning certification schemes and labelling and marking. Since those measures are of a general scope and are designed to amend non-essential elements of this Regulation by supplementing it, *inter alia*, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. The Commission should also be empowered to decide on derogations to trade prohibitions under this Regulation, suspension or revocation thereof. Since those measures are adopted to ensure the management of the scheme provided for in this Regulation and apply it in individual cases, they must be adopted in accordance with the management procedure provided for in Article 4 of Decision 1999/468/EC.
- (17) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (18) Member States should report on a regular basis on the actions taken to enforce this Regulation. On the basis of those reports, the Commission should itself report to the European Parliament and the Council on the application of this Regulation.

¹⁹ OJ L 273, 10.10.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 523/2008 of 11 June 2008 (OJ L 153, 12.6.2008, p. 23).

²⁰ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (19) Since the objective of this Regulation, namely the elimination of obstacles to the functioning of the internal market by harmonising national bans concerning the trade in seal products at Community level, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. International trade may be regulated by the Community pursuant to Article 133 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve the objectives it pursues,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes harmonised rules concerning the placing on the market and the import in, transit through, or export from, the European Community of seal products.

Article 2

Definitions

For the purpose of this Regulation:

1. 'seal' means specimens of Pinnipeds belonging to the species listed in Annex I;
2. 'seal product' means all products, either processed or unprocessed, deriving or obtained from seals, including meat, oil, blubber, and raw fur skins and fur skins, tanned or dressed, including fur skins assembled in plates, crosses and similar forms as well as articles made from seal fur skins;
3. 'placing on the market' means introducing onto the Community market, thereby making available to third parties, whether in exchange for payment or not;
4. 'import' means any entry of goods into the customs territory of the Community, with the exception of imports that:
 - (i) are of an occasional nature, and
 - (ii) consist exclusively of goods for the personal use of the travellers or their families;
5. 'transit' means the transport of goods between two points outside the Community through the territory of the Community with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport and during which any interruption in the movement arises only from the arrangements necessitated by this form of traffic;
6. 'export' means any departure of goods from the customs territory of the Community;

7. 'applicants requesting a derogation' mean countries, including Member States, requesting a derogation under Article 5 of this Regulation on whose territory or under whose jurisdiction the seals from which seal products are made, have been killed and skinned as well as the country under whose jurisdiction fall the persons who kill and skin seals where the killing and skinning take place on the territory of another country. When adopting the implementing measures referred to in Article 5(5), the Commission will decide, in line with the objectives of this Regulation, under which conditions entities other than countries should be included.

Article 3

Bans

1. The placing on the market and the import in, transit through, or export from, the Community of seal products shall be prohibited.
2. Paragraph 1 shall not apply to seal products resulting from hunts traditionally conducted by Inuit communities and which contribute to their subsistence.
3. The Commission shall adopt all measures necessary to implement paragraph 2, including evidentiary requirements relating to the proof of the origin of seal products referred to in that paragraph.

Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 9(3).

Article 4

Conditions of placing on the market, import, transit and export

1. Notwithstanding Article 3(1), the placing on the market, and the import in, transit through, or export from, the Community of seal products shall be allowed where the following conditions are met:
 - (a) they have been obtained from seals killed and skinned in a country where, or by persons to whom, adequate legislative provisions or other requirements apply ensuring effectively that seals are killed and skinned without causing avoidable pain, distress and any other form of suffering;
 - (b) the legislative provisions or other requirements referred to in point (a) are effectively enforced by the relevant authorities;
 - (c) an appropriate scheme is in place whereby seal products, including seal skins and other raw materials derived from seals used to produce seal products, are certified as coming from seals to which the conditions laid down in points (a) and (b) apply, and
 - (d) the fulfilment of the conditions laid down in points (a), (b) and (c) is evidenced by:

- (i) a certificate, and
- (ii) a label or marking, where a certificate does not suffice to ensure the proper enforcement of this Regulation,

in accordance with Articles 6 and 7.

2. Member States shall not impede the placing on the market, import and export of seal products which comply with the provisions of this Regulation.

Article 5

Derogations

1. Applicants requesting a derogation which demonstrate to the satisfaction of the Commission that the conditions provided for in Article 4(1) are met shall be granted a derogation.
2. The Commission shall appraise the fulfilment of the conditions laid down in point (a) of Article 4(1) on the basis of the criteria set out in Annex II.
3. Derogations granted pursuant to paragraph 1 shall be suspended or revoked where any of the conditions referred to in that paragraph would cease to be met.
4. The Commission shall grant derogations, and decide on suspension or revocation thereof, in accordance with the procedure referred to in Article 9(2).
5. The Commission shall adopt all measures necessary to implement this Article, such as measures on the applications to be submitted to the Commission, including evidentiary requirements, in order to obtain a derogation. In doing so, the Commission shall take into consideration the different conditions which may occur in the territories of different countries.

Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 9(3).

Article 6

Certificates

1. Certificates referred to in Article 4(1)(d)(i) shall fulfil the following minimum conditions:
 - (a) they shall display all relevant information necessary to attest that the seal product or products they refer to meet the condition laid down in Article 4(1)(c); and
 - (b) they shall be validated by an independent body or public authority attesting the accuracy of the information displayed therein.

2. The Commission shall adopt all measures necessary to implement this Article. It may, in particular, specify the information to be displayed and the evidentiary requirements to be submitted to attest that the condition laid down in point (b) of paragraph 1 is met.

Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 9(3).

Article 7

Labelling and marking

1. The label or marking referred to in Article 4(1)(d)(ii) shall be affixed in an intelligible, indelible and visible manner.
2. The Commission shall adopt all measures necessary to implement this Article, such as measures specifying the conditions which marking and label shall meet and the circumstances under which they shall be affixed. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 9(3).

Article 8

Amendments to the Annexes

The Commission may amend the annexes. Those measures, designed to amend non-essential elements of this regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 9(3).

Article 9

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 18(1) of Council Regulation (EC) No 338/97²¹.
2. Where reference is made to this paragraph, Article 4 and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

²¹ OJ L 61, 3.3.1997, p. 1.

Article 10

Penalties and enforcement

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those provisions by 31 December 200X, and shall notify it without delay of any subsequent amendment thereto.

Article 11

Reports

1. Member States shall send every five years to the Commission a report outlining the actions taken to enforce this Regulation.
2. On the basis of the reports referred to in paragraph 1, the Commission shall report to the European Parliament and the Council on the application of this Regulation within twelve months of the end of the five-year reporting period concerned.

Article 12

Entry into force and applicability

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Articles 3 and 4 shall apply 6 months after the date of entry into force of the Regulation unless the implementing measures referred to in Articles 3(3), 5(5), 6(2) and 7(2) are not in force on that date, in which case they shall apply on the day following the entry into force of those implementing measures.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

Species of Pinnipeds referred to in Article 2

1. *Arctocephalus pusillus pusillus*;
2. *Callorhinus ursinus*;
3. *Cystophora cristata*;
4. *Erignathus barbatus*;
5. *Eumetopias jubatus*;
6. *Halichoerus grypus*;
7. *Histrophoca fasciata*;
8. *Odobenus rosmarus rosmarus*;
9. *Odobenus rosmarus divergens*;
10. *Pagophilus groenlandicus*;
11. *Phoca largha*;
12. *Phoca vitulina*;
13. *Phoca vitulina richardii*;
14. *Pusa caspica*;
15. *Pusa hispida*;
16. *Pusa sibirica*;
17. *Zalophus californianus*.

ANNEX II

Criteria for appraising the adequacy of the legislative provisions and other requirements in force referred to in Article 5(2)

1. ANIMAL WELFARE PRINCIPLES:

Animal welfare principles are specified in the applicable legislation or other requirements.

2. HUNTING TOOLS:

The characteristics of the weapons used to kill seal are specified. It is made explicit in the legislation or other requirements which weapons are allowed for stunning and/or killing pups and which are allowed for stunning and/or killing adult seals.

3. VERIFYING INSENSIBILITY AND DEATH BY USING APPROPRIATE MONITORING METHODS:

Requirements are specifically outlined for using appropriate monitoring methods and thereby oblige the hunter to verify that the seal is irrevocably unconscious before bleeding it out and before continuing to the next seal.

4. BLEEDING-OUT OF STUNNED ANIMALS:

Bleeding-out of all animals is required directly following adequate stunning, that is, before proceeding to stun another seal.

5. HUNTING CONDITIONS:

Requirements are specified as to secure that the seal and/or the hunter is sufficiently stable and that the target can be properly visualised. Other factors, relevant for the hunt in question, are also regulated.

6. TRAINING OF HUNTERS:

A defined level of knowledge and ability of the hunter regarding seal biology, hunting methods and the "three-step" procedure, hereunder practical use of the hunting tools, such as shooting tests are required. The "three-step" procedure is a method of effective hitting/shooting, effective monitoring (by application of the blink reflex or skull palpation that the animal is irreversibly unconscious or dead), and effective bleeding-out in order to ensure that a seal is killed without avoidable pain, distress and suffering.

7. INDEPENDENT MONITORING:

A system for monitoring and observation of the hunt, securing regular supervision of the hunt and independence of the inspectors is provided for.

8. ABILITY OF THIRD PARTY TO MONITOR:

Third party monitoring of the hunt is possible, with a minimum of administrative or logistic barriers.

9. REPORTING REQUIREMENTS:

Clear requirements for reporting targeting both hunters and inspectors are provided for, which cover where and when animals are killed and which weapons and ammunition are used. The range of relevant environmental factors is also to be reported.

10. SANCTIONS AND COMPLIANCE:

Statistical information on the hunt, instances of non-compliance with the applicable requirements and related enforcement actions is compiled and systemised.