

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council concerning trade in seal products

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(2009/C 218/12)

On 25 September 2008 the Council decided to consult the European Economic and Social Committee, under Article 251 of the Treaty establishing the European Community, on the

'Proposal for a Regulation of the European Parliament and of the Council concerning trade in seal products'

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 28 January 2009. The rapporteur was Mr NARRO.

At its 451st plenary session, held on 25 and 26 February 2009 (meeting of 26 February), the European Economic and Social Committee adopted the following opinion by 95 votes to 59 with 30 abstentions.

1. Conclusions

1.1 The EESC welcomes the Commission's initiative to bring about the harmonised regulation of trade in seal products. The current state of affairs in this area is unsustainable, and significant changes should be promoted at international level.

1.2 Given the lack of a specific legal basis in the Treaty for dealing with animal welfare issues, the Committee considers the choice of Article 95 of the TEC 'fragmentation of the internal market' to be the right one under which to take legislative action in this field. Community case-law confirms the legitimacy of this decision.

1.3 The Committee proposes delaying the entry into force of the derogations system, and suggests that the Commission present a detailed progress report in 2012 on laws governing seal hunting, to serve as the basis for the possible granting of derogations from 2012 onwards.

1.4 The ban should be complete during the first three years of application of the new arrangements, with the sole exception of hunting by Inuit communities for subsistence purposes.

1.5 In order to ensure that the measures set out in the proposed legislation are feasible, it is crucial that the Commission be able to set up effective systems for scrutiny. Scrutiny cannot be managed exclusively by the State applying for a derogation. The Commission must ensure that the stipulations of the relevant legal provisions are properly applied in the field.

1.6 The Committee calls on the Commission to carry out studies into the possible effects of climate change on species conservation.

2. Introduction

2.1 The group of animals known as Pinnipeds covers a total of 33 species of seal, sea lion, fur seal, elephant seal and walrus. These are mammals of varying size, which gather in large numbers to reproduce on either land or ice.

2.2 Although environmental organisations⁽¹⁾ have begun to warn of a sharp fall in the seal population due, among other factors, to the effects of climate change, hunters' organisations and the governments of countries where seals reproduce deny there is any threat to the species' conservation. They point to the 15 million or so seals that can be hunted. In recent years, the debate on seal hunting has focused on animal welfare issues, leaving species conservation aspects in the background. The EU has specific legislation on seal conservation⁽²⁾.

2.3 Commercial seal hunting takes place in Canada, Greenland, Namibia, Norway and Russia. All these countries have introduced different laws to govern the practice. The absence of reliable data on seal populations and the numbers of animals killed annually has been acknowledged by the European Food Safety Authority (EFSA). According to data supplied by the national authorities of each country, the country where most seal hunting takes place is Canada,

⁽¹⁾ IFAW technical briefing 2008/01.

⁽²⁾ Directive 92/43 of 21 May 1992.

with some 300 000 animals killed annually. According to Canadian government data ⁽¹⁾, 275 000 seals were hunted in 2008, with a total of 17 000 licences being granted. Far behind Canada come Greenland ⁽²⁾ and Namibia ⁽³⁾, accounting for 160 000 and 80 000 animals killed each year respectively.

2.4 Seals are killed and skinned in two European Union countries, Finland and Sweden. Seal products are manufactured in the United Kingdom (Scotland). This activity is not of a commercial nature within Community territory, as it is in Norway or Canada, but has the dual purpose of recreation and controlling fish-eating populations.

2.5 Seals are killed in order to use their skins for coats, blubber for oils, meat for animal feed, and genitals – increasingly appreciated in Asia – for producing aphrodisiacs.

2.6 There are different ways of killing seals. The most commonly used are guns and hakapiks (a type of club with a hook and a hammer head). This implement, although of rather primitive and crude appearance, is considered by scientists to be the most effective means of quickly stunning and killing seals.

2.7 In a scientific opinion published in 2007 ⁽⁴⁾, the EFSA pointed out that ‘seals can be [...] killed rapidly and effectively without causing avoidable pain [or] distress ...’. It recognises, however, that in practice humane and effective killing does not always occur. The various national laws are responsible for regulating the size and ways of using the hakapik, together with firearm calibre and ammunition velocity.

3. Summary of the Commission proposal

3.1 On 26 September 2006 the European Parliament adopted a declaration ⁽⁵⁾ requesting the European Commission to regulate the import, export and sale of products from two types of seal: harped and hooded seal. The declaration also called for special consideration for traditional Inuit seal hunting.

3.2 The Parliamentary Assembly of the Council of Europe adopted a recommendation on seal hunting inviting its members to ban all cruel hunting methods that do not guarantee the instantaneous death of animals.

3.3 Over the last few years, Belgium, the Netherlands and Slovenia have adopted national laws to prohibit the manufacturing and placing on the market of seal products. Other EU countries have also decided to regulate in this area, and national legislation is currently being drafted.

3.4 In early 2007 the European Commission conducted a consultation with stakeholders which closed with the scientific opinion presented by the EFSA ⁽⁶⁾. In April 2008 the European Commission's Directorate-General for the Environment published a study on the potential impact of banning seal products.

3.5 On 23 July 2008 the European Commission published a proposal for a regulation ⁽⁷⁾ concerning trade in seal products. Articles 95 and 133 of the Treaty establishing the European Community provided the legal basis. Article 95 concerns the fragmentation of the internal market, while Article 133 focuses on the common commercial policy. The criteria for using the legal basis provided by Article 95 have been established in the case-law of the Court of Justice.

3.6 The European Commission's draft regulation prohibits the placing on the market, import in, export from and transit through the Community of seal products. However, it sets up a system of derogations allowing for exceptions from the general rule, provided that a series of animal welfare conditions, set out in the regulation ⁽⁸⁾, are met. These conditions aim to ensure that seals are killed and skinned without avoidable pain, distress and any other form of suffering.

3.7 The European Commission grants an automatic exemption for traditional hunting for subsistence purposes by Inuit communities. The implementing legislation will establish appropriate measures for ensuring the origin of seal products.

3.8 Every five years, the Member States will send a report to the Commission outlining the actions taken to enforce the regulation.

4. General comments

4.1 The EESC warmly welcomes the European Commission's initiative to bring about the harmonised regulation of acceptable methods of seal hunting and of placing seal products on the market.

⁽¹⁾ *Seals and Sealing in Canada*, Facts about Seals, 2008.

⁽²⁾ Greenland home rule 2006.

⁽³⁾ EFSA opinion on *Animal Welfare aspects of the killing and skinning of seals*, December 2007.

⁽⁴⁾ EFSA Scientific Opinion of 6 December 2007, EFSA Journal (2007) 610, pp. 1-122.

⁽⁵⁾ European Parliament Declaration 38/2006.

⁽⁶⁾ EFSA Scientific Opinion of 6 December 2007, EFSA Journal (2007) 610, pp. 1-122.

⁽⁷⁾ COM(2008) 469 final.

⁽⁸⁾ Article 4(1) of the draft regulation.

4.2 The draft regulation focuses on animal welfare, and does not address the species conservation issue. European environmental organisations have emphasised the need to include conservation aspects in the legislative text. However, the EU has robust conservation legislation and has specific tools for seal conservation that are complementary to the measures included in the proposal.

4.3 It is clear that climate change (and especially the melting of polar ice) will directly affect living and reproduction conditions for seals. For this reason, the European Commission is urged to carry out relevant scientific studies and assessment in order to provide real data on the potential negative effect of climate change on the seal population and, if appropriate, to review and adopt Community instruments in the area of conservation.

4.4 The Treaty establishing the European Community does not provide the EU with a specific legal basis for regulating animal welfare aspects. The lack of an explicit legal basis has prompted the EU to bridge the gap by using other, but equally legitimate, legal bases to address this issue. In this case, the controversial Article 95 'fragmentation of the internal market' enables the EU to harmonise legislation with an animal welfare background, a concept which has been described in Community case-law as being a matter of 'general interest'. In its opinion on cat and dog fur ⁽¹⁾, the EESC accepted this legal basis for legislation on animal welfare questions, and emphasised that it complies with the trade rules drawn up by the World Trade Organization.

4.5 The absence of Community scrutiny in this area, the lack of data (officially acknowledged by the EFSA), and the underlying economic interest make it difficult to obtain an accurate, undistorted view of seal hunting outside the EU. The possible changes to legislation in the countries where seals are killed, to comply with the new Community criteria, will not necessarily, in practice, bring about a significant improvement in the conditions under which seals are killed.

4.6 The blanket prohibition, accompanied by a system of subsequent derogations, entails an innovative instrument which could constitute a valuable precedent for future Community law-making. Consequently, the EESC does not entirely reject the Community derogations scheme, but calls for its implementation to be delayed, so that during the first three years of application of the regulation the ban would be complete, with the sole exception of Inuit communities, whose livelihoods depend on seal hunting. This delay would enable the EU to take the technical steps needed to create a more detailed and robust derogations system than that sketched out in the

original proposal, would facilitate scrutiny and provide further evidence on which to assess the possible granting of derogations.

4.7 The submission of a Community report in 2012 on the changes made to national laws on sealing hunting, practical implementation and monitoring mechanisms could be of considerable assistance in enabling the Community authorities, from that date onwards, to evaluate the progress made and decide whether to grant derogations. The lack of data argues for greater efforts by the Community to compile all relevant and necessary data.

4.8 The EESC hopes that the Commission's legislative proposal will provide a real incentive for those countries where seal hunting is carried out to gear their laws and practices to more 'humane' ways of killing seals. The present situation regarding the killing of seals cannot be sustained, and progress must be made on the necessary changes, although the limits to the EU's powers in this area are recognised.

4.9 The EESC draws attention to the need for the Member States to adopt a system of effective, dissuasive and proportionate penalties, in order to guarantee the reach and effectiveness of the new legislation on seal hunting. An effective system of penalties will help to strengthen the internal market and protect consumers.

5. Specific comments

5.1 Although the draft regulation does not enter into the rights or wrongs of seal hunting, the EESC should comment on a number of questions that crop up regularly in this regard. Firstly, it must be unequivocally stated that killing seals cannot be defined as a fisheries activity, but rather as hunting of mammals. Secondly, the claim that seals are to blame for declining marine resources, and more specifically of cod banks, is questionable. There is no scientific research to back this argument, which is used to justify seal hunting in some countries. The complexity of the marine ecosystem is such that clear-cut claims of this kind cannot be made.

5.2 In its proposal, the Commission makes no distinction between large- and small-scale seal hunting. The Commission's thinking is quite right, given that the ultimate purpose of the proposal is based on animal welfare considerations. Introducing specific exceptions for European countries where small-scale seal hunting is carried out cannot be justified from the animal welfare point of view, and could put the international legality of the entire proposal into question.

⁽¹⁾ OJ C 168, 20.7.2007, p. 42.

5.3 Monitoring work in this area is particularly difficult and complex, and has to be done under highly adverse weather conditions. Monitoring must identify the actual number of animals killed and the degree of compliance in the field with the relevant legal provisions. A monitoring system run entirely by a country applying for a derogation would not immediately seem to be the best way of guaranteeing the independence of the process. The EU should set up a team of experts to carry out *in situ* monitoring in countries applying for derogations. Countries wishing to export to the Community market should be responsible for funding this European body of inspectors. In this way, the EU would have more information for evaluating the effectiveness of the certification and labelling scheme.

5.4 The setting up of a certification and optional labelling system in countries applying for a derogation is a response to the feelings of European citizens, which have been expressed repeatedly and reflected in the public consultation conducted by the European Commission. The certification and labelling initiatives must in any case be backed up by general bans on the placing on the market of seal products. Otherwise, it is

doubtful that the animal welfare objectives pursued by the Commission in its proposal will be achieved.

5.5 The certification requirements must be set out in the regulation's implementing legislation in such a way as to provide a precise definition of certification and labelling conditions. In the past, the lack of precision in this area has given rise to imprecise labelling that confuses and misleads consumers. Products can often be found on the market that have been manufactured using seal products but are labelled as 'marine oil' or 'fish oil'. It is crucial that product labels should indicate not only the species of seal from which they come, but also the origin of the animal.

5.6 The committee that is to assist the European Commission in the procedure for granting derogations should facilitate the involvement of all organisations and operators concerned by the procedure.

Brussels, 26 February 2009.

The President
of the European Economic and Social Committee
Mario SEPI
