Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (Text with EEA relevance)

REGULATION (EC) No 1007/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 September 2009

on trade in seal products

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) Seals are sentient beings that can experience pain, distress, fear and other forms of suffering. In its declaration on banning seal products in the European Union[(3)], the European Parliament requested the Commission immediately to draft a regulation to ban the import, export and sale of all harp and hooded seal products. In its resolution of 12 October 2006 on a Community Action Plan on the Protection and Welfare of Animals 2006-2010[(4)], the European Parliament called on the Commission to propose a total import ban on seal products. In its Recommendation 1776 (2006) of 17 November 2006 on seal hunting, the Parliamentary Assembly of the Council of Europe recommended inviting the Member States of the Council of Europe practising seal hunting to ban all cruel hunting methods which do not guarantee the instantaneous death, without suffering, of the animals, to prohibit the stunning of animals with instruments such as hakapiks, bludgeons and guns, and to promote initiatives aimed at prohibiting trade in seal products.

(2) The import into Member States for commercial purposes of skins of harp seal pups and hooded seal pups and products derived therefrom is prohibited under Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom[(5)].

(3) Seals are hunted within and outside the Community and used for obtaining products and articles, such as meat, oil, blubber, organs, fur skins and articles made therefrom, which include products as diverse as Omega-3 capsules and garments incorporating processed seal skins and fur. Those products are sold commercially on different markets, including the Community market. Given the nature of those products, it is difficult or impossible for consumers to distinguish them from similar products not derived from seals.

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(4) The hunting of seals has led to expressions of serious concerns by members of the public and governments sensitive to animal welfare considerations due to the pain, distress, fear and other forms of suffering which the killing and skinning of seals, as they are most frequently performed, cause to those animals.

(5) In response to concerns of citizens and consumers about the animal welfare aspects of the killing and skinning of seals and the possible presence on the market of products obtained from animals killed and skinned in a way that causes pain, distress, fear and other forms of suffering, several Member States have adopted or intend to adopt legislation regulating trade in seal products by prohibiting the import and production of such products, while no restrictions are placed on trade in these products in other Member States.

(6) There are therefore differences between national provisions governing the trade, import, production and marketing of seal products. Those differences adversely affect the operation of the internal market in products which contain or may contain seal products, and constitute barriers to trade in such products.

(7) The existence of such diverse provisions may further discourage consumers from buying products not made from seals, but which may not be easily distinguishable from similar goods made from seals, or products which may include elements or ingredients obtained from seals without this being clearly recognisable, such as furs, Omega-3 capsules and oils and leather goods.

(8) The measures provided for in this Regulation should therefore harmonise the rules across the Community as regards commercial activities concerning seal products, and thereby prevent the disturbance of the internal market in the products concerned, including products equivalent to, or substitutable, for seal products.

(9) In accordance with the Protocol on protection and welfare of animals annexed to the Treaty, the Community is to pay full regard to the welfare requirements of animals when formulating and implementing, inter alia, its internal market policy. The harmonised rules provided for in this Regulation should accordingly take fully into account considerations of the welfare of animals.

(10) To eliminate the present fragmentation of the internal market, it is necessary to provide for harmonised rules while taking into account animal welfare considerations. In order to counter barriers to the free movement of products concerned in an effective and proportionate fashion, the placing on the market of seal products should, as a general rule, not be allowed in order to restore consumer confidence while, at the same time, ensuring that animal welfare concerns are fully met. Since the concerns of citizens and consumers extend to the killing and skinning of seals as such, it is also necessary to take action to reduce the demand leading to the marketing of seal products and, hence, the economic demand driving the commercial hunting of seals. In order to ensure effective enforcement, the harmonised rules should be enforced at the time or point of import for imported products.

(11) Although it might be possible to kill and skin seals in such a way as to avoid unnecessary pain, distress, fear or other forms of suffering, given the conditions in which seal hunting

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occurs, consistent verification and control of hunters' compliance with animal welfare requirements is not feasible in practice or, at least, is very difficult to achieve in an effective way, as concluded by the European Food Safety Authority on 6 December 2007.

(12) It is also clear that other forms of harmonised rules, such as labelling requirements, would not achieve the same result. Additionally, requiring manufacturers, distributors or retailers to label products that derive wholly or partially from seals would impose a significant burden on those economic operators, and would also be disproportionately costly in cases where seal products represent only a minor part of the product concerned. Conversely, the measures contained in this Regulation will be easier to comply with, whilst also reassuring consumers.

(13) In order to ensure that the harmonised rules provided for in this Regulation are fully effective, those rules should apply not only to seal products originating from the Community, but also to those introduced into the Community from third countries.

(14) The fundamental economic and social interests of Inuit communities engaged in the hunting of seals as a means to ensure their subsistence should not be adversely affected. The hunt is an integral part of the culture and identity of the members of the Inuit society, and as such is recognised by the United Nations Declaration on the Rights of Indigenous Peoples. Therefore, the placing on the market of seal products which result from hunts traditionally conducted by Inuit and other indigenous communities and which contribute to their subsistence should be allowed.

(15) This Regulation establishes harmonised rules concerning the placing on the market of seal products. It is therefore without prejudice to other Community or national rules regulating the hunting of seals.

(16) 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 Commission[(6)].

(17) In particular, the Commission should be empowered to define the conditions for the placing on the market of seal products which result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence; to define the conditions for the import of seal products which is of an occasional nature and consists exclusively of goods for the personal use of travellers or their families; and to define the conditions for the placing on the market of seal products resulting from hunts regulated by national law with the sole purpose of the sustainable management of marine resources. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation 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.

(18) With the aim of facilitating enforcement operations carried out by the relevant national authorities, the Commission should issue technical guidance notes providing non-binding indications about the codes of the Combined Nomenclature which may cover seal products subject to this Regulation.

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(19) 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.

(20) Member States should report on a regular basis on the actions taken to implement this Regulation. On the basis of those reports, the Commission should report to the European Parliament and to the Council on the implementation of this Regulation.

(21) 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. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes harmonised rules concerning the placing on the market of seal products.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. ‘seal’ means specimens of all species of pinnipeds (*Phocidae*, *Otariidae* and *Odobenidae*);

2. ‘seal product’ means all products, either processed or unprocessed, deriving or obtained from seals, including meat, oil, blubber, organs, raw fur skins and fur skins, tanned or dressed, including fur skins assembled in plates, crosses and similar forms, and articles made from fur skins;

3. ‘placing on the market’ means introducing onto the Community market, thereby making available to third parties, in exchange for payment;

4. ‘Inuit’ means indigenous members of the Inuit homeland, namely those arctic and subarctic areas where, presently or traditionally, Inuit have aboriginal rights and interests, recognised by Inuit as being members of their people and includes Inupiat, Yupik (Alaska), Inuit, Inuvialuit (Canada), Kalaallit (Greenland) and Yupik (Russia);

4a. **[**[F1]‘other indigenous communities’ means communities in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and

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who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions;**]**

5. 'import' means any entry of goods into the customs territory of the Community.

Textual Amendments

F1 Inserted by Regulation (EU) 2015/1775 of the European Parliament and of the Council of 6 October 2015 amending Regulation (EC) No 1007/2009 on trade in seal products and repealing Commission Regulation (EU) No 737/2010 (Text with EEA relevance).

[F2 Article 3

Conditions for placing on the market

1 The placing on the market of seal products shall be allowed only where the seal products result from hunts conducted by Inuit or other indigenous communities, provided that all of the following conditions are fulfilled:

a the hunt has traditionally been conducted by the community;

b the hunt is conducted for and contributes to the subsistence of the community, including in order to provide food and income to support life and sustainable livelihood, and is not conducted primarily for commercial reasons;

c the hunt is conducted in a manner which has due regard to animal welfare, taking into consideration the way of life of the community and the subsistence purpose of the hunt.

The conditions set out in the first subparagraph shall apply at the time or point of import for imported seal products.

1a At the time of its being placed on the market, a seal product shall be accompanied by a document attesting compliance with the conditions set out in paragraph 1 ('attesting document').

An attesting document shall, upon request, be issued by a body recognised for that purpose by the Commission.

Such recognised bodies shall be independent, competent to carry out their functions and subject to an external audit.

2 By way of derogation from paragraph 1, the import of seal products shall also be allowed where it is of an occasional nature and consists exclusively of goods for the personal use of travellers or their families. The nature and quantity of those goods shall not be such as to indicate that they are being imported for commercial reasons.

3 The application of paragraphs 1 and 2 shall not undermine the achievement of the objective of this Regulation.

4 The Commission shall adopt implementing acts to further specify the administrative arrangements for the recognition of bodies that may attest to the compliance with the conditions set out in paragraph 1 of this Article and for the issuance and control of attesting documents, as well as the administrative provisions necessary for ensuring compliance with paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5(2).

5 If there is evidence that a seal hunt is conducted primarily for commercial reasons, the Commission shall be empowered to adopt delegated acts in accordance with Article 4a in order