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#### **NOTE**

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1007/2009 on trade in seal products - Analysis of the final compromise text with a view to agreement

#### **I. INTRODUCTION**

1. The Commission submitted the above-mentioned proposal to the Council and to the European Parliament (EP) on 6 February 2015. The aim of the proposal is to amend Regulation (EC) No 1007/2009 on trade in seal products in order to implement the recommendations and rulings that the Dispute Settlement Body (DSB) of the World Trade Organisation (WTO) adopted on 18 June 2014.

2. The European Economic and Social Committee adopted its Opinion <sup>1</sup> on the legislative proposal on 27 May 2015. On 4 June 2015, the Committee on Internal Market and Consumer Protection (IMCO) of the European Parliament (EP) adopted twelve amendments to the Commission's proposal and authorised to enter into negotiations with a view to a first reading agreement.
3. The Committee of the Permanent Representatives (Coreper) gave the Presidency a mandate for negotiating with the EP at its meeting on 17 June 2015. An informal trilogue took place on 25 June which was preceded by a technical tripartite meeting on 22 June 2015.
4. As a result of those discussions, a possible agreement *ad referendum* on a compromise text was reached among the Institutions. The consolidated and marked <sup>2</sup> text of this possible compromise is set out in the Annex to this note.

## II. ANALYSIS OF THE REVISED COMPROMISE TEXT WITH A VIEW TO AN AGREEMENT

5. The main new elements of the compromise text agreed *ad referendum* at the informal trilogue on 25 June, compared to the Council position <sup>3</sup> approved by Coreper on 17 June, refer to:
  - a) Conditions for the placing on the market of seal products (Article 3.1): the acceptance of Amendment 7 to Article 3(1)(b). Article 3(1)(a) and (c) remain unchanged in comparison with the Council's position.

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<sup>1</sup> NAT/666.

<sup>2</sup> Changes to the original Commission proposal are indicated in ***bold italics*** and ■ for deletions.

<sup>3</sup> Doc. 10046/15, third column in the Annex.

- b) Delegated and implementing powers (Article 3(4) to 3(6)): the conferral of delegated powers to the Commission regarding Article 3(5). For these delegated acts, the Commission will carry out consultations with experts, including Member States' experts, before adopting those delegated acts, as per usual practice. The standard article on the exercise of the delegation has been added. The EP accepted the Council's position on Article 3(4) and 3(6); therefore implementing powers will be conferred on the Commission, in accordance with the examination procedure.

In order to accommodate some of the requests made by the EP, Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 will be repealed and some of its provisions incorporated into the new Regulation.

- c) Rights of Indigenous peoples (Recital 2 and Amendment 2): a factual reference to the Convention C169 of the International Labour Organisation concerning Indigenous and Tribal Peoples in Independent Countries has been added in Recital 2, following EP insistence.
- d) Exemption for the management of marine resources (Recital 4): the recognition of the consequences that the elimination of this exemption has in certain Member States has been included in Recital 4.
- e) Information (Article 5a and Recital 5b): the Commission will inform the public and authorities about the EU regime on trade in seal products in application of this new article.
- f) Assessment of the impacts of the legislation (Article 7 and Amendment 12): Article 7(1) and Article 7(2) remain as in the Council's position of 17 June. The reference to "impacts" has been added in Article 7(3) as a compromise to more detailed requests from the EP. A new Recital (5c) has been included regarding the impacts of this legislation on the Inuit and other indigenous communities.

6. The compromise text also includes drafting suggestions made by the Lawyer-Linguist services of the European Parliament and the Council.
7. The Presidency considers that this text remains within the boundaries and the flexibility that this Committee gave to the Presidency with its mandate of 17 June. This possible compromise, if approved, will allow the EU, despite the time constraints under which both co-legislators have worked, to comply with its international trade obligations by the given deadline of 18 October 2015.

### III. CONCLUSION

8. The Permanent Representative Committee is invited to:
  - analyse the consolidated revised text as set out in the Annex to this note and confirm final agreement on the overall compromise text on this basis; and
  - authorise the Presidency, if appropriate, to send a letter to the European Parliament stating that if the Parliament were to adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form as set out in the Annex to this note <sup>4</sup>, the Council would, in accordance with Article 294 paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

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<sup>4</sup> Subject to the revision of the text by the lawyer-linguists.

**REGULATION (EU) 2015/...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
*of...*  
**amending Regulation (EC) No 1007/2009 on trade in seal products**  
*and repealing Commission Regulation (EU) No 737/2010*

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national *parliaments*,

Having regard to the opinion of the European Economic and Social Committee <sup>1</sup>,

Acting in accordance with the ordinary legislative procedure <sup>2</sup>,

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<sup>1</sup> *Not yet published in the Official Journal.*

<sup>2</sup> *Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ... (not yet published in the Official Journal).*

Whereas:

- (1) Regulation (EC) No 1007/2009 of the European Parliament and of the Council <sup>3</sup> was adopted with the objective of eliminating obstacles to the functioning of the internal market due to differences in national measures regulating trade in seal products. Those measures were adopted in response to public moral concerns about the animal welfare aspects of the killing of seals and the possible presence on the market of products obtained from *seals* killed in a way that causes excessive pain, distress, fear and other forms of suffering. Such concerns were supported by ■ evidence showing that a genuinely humane killing method cannot be consistently and effectively applied and enforced in the specific conditions in which seal hunting takes place. In order to achieve that objective, Regulation (EC) No 1007/2009 introduced, as a general rule, a prohibition of placing on the market of seal products.

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<sup>3</sup> Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ L 286, 31.10.2009, p 36).

- (2) At the same time, seal hunting is an integral part of the *socio-economy, nutrition, culture and identity* of the Inuit and other indigenous communities *making* a major contribution to their subsistence *and development, providing food and income to support the life and sustainable livelihood of the community, preserving and continuing the traditional existence of the community*. For those reasons, seal hunts traditionally conducted by Inuit and other indigenous communities do not raise the same public moral concerns as the hunts conducted primarily for commercial purposes. Moreover, it is broadly recognised that the fundamental, *economic* and social interests of Inuit and other indigenous communities should not be adversely affected, in accordance with *the* United Nations Declaration on the rights of Indigenous Peoples and other relevant international instruments. *In addition, three Member States (Denmark, the Netherlands and Spain) have ratified the Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No 169), adopted on 27 June 1989 by the International Labour Organisation* <sup>4</sup>. For those reasons, by way of exception, Regulation (EC) No 1007/2009 allows the placing on the market of seal products which result from hunts traditionally conducted by Inuit and other indigenous communities *for their subsistence* and which contribute to *it*.
- (3) *In* light of the objective pursued by Regulation (EC) No 1007/2009, **■** the placing *on* the Union market of *seal* products resulting from hunts by **■** Inuit and other indigenous communities *should be made* conditional upon those hunts being conducted *with due regard to animal welfare* in a manner which reduces pain, distress, fear or other forms of suffering of the animals hunted to the extent possible, while *taking into consideration the way of life* **■** of the Inuit and other indigenous communities *and the subsistence purpose of the hunt*. *Therefore, the* exception granted in respect of seal products resulting from hunts conducted by Inuit and other indigenous communities should be limited to hunts that contribute to the subsistence need of those communities **■** .

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<sup>4</sup> *Convention No 169 refers, inter alia, to the right of self-identification of indigenous communities and their right to exercise control, to the extent possible, over their own economic, social and cultural development.*

- (4) Regulation (EC) No 1007/2009 also allows, by way of exception, the placing on the market of seal products where the hunt is conducted with the sole purpose of sustainable management of marine resources. While recognizing the importance of hunts for the purpose of sustainable management of marine resources, in practice, however, these hunts may be difficult to distinguish from the large hunts conducted primarily for commercial purposes. This may lead to unjustified discrimination between the seal products concerned. Therefore, this exception should no longer be provided for. *Nevertheless, the removal of the exception related to marine resource management may create problems in those Member States where carcasses derived from legal seal hunts have been used as material for seal products, and which have been placed on the local markets occasionally and in small quantities. It is appropriate that the Commission includes information made available to it on the implementation of Regulation (EC) No 1007/2009, as amended by this Regulation, in those Member States in its assessment of the functioning and effectiveness of Regulation (EC) No 1007/2009.* This is without prejudice to the right of Member States to continue regulating hunts conducted for the purposes of management of marine resources.
- (5) In order to *ensure that the exception granted in respect of seal products resulting from hunts conducted by Inuit and other indigenous communities is not used for products resulting from a hunt which is conducted primarily for commercial reasons*, the power to adopt acts in accordance with Article 290 of the Treaty *on the Functioning of the European Union* should be delegated to the Commission *to, where necessary and on the basis of evidence, prohibit the placement on the market or limit the quantity that may be placed on the market of seal products resulting from the hunt concerned.* It is of particular importance that the Commission carry out appropriate consultations *during its preparatory work*, including at expert level. *It is also important that the Commission carries out appropriate consultations with the countries of origin concerned and relevant stakeholders.* The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.



- (6) *In order to ensure uniform conditions for the implementation of Regulation (EC) No 1007/2009, implementing powers should be conferred on the Commission to further specify the administrative arrangements for the recognition of bodies that may attest to the compliance with the conditions laid down for the placing on the market of seal products and for the issuance and control of attesting documents, and the administrative provisions necessary for ensuring compliance with the conditions for the import of seal products for the personal use of travellers or their families, as well as for the issuing of technical guidance notes. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>5</sup>.*
- (7) *In order to facilitate the implementation of Regulation (EC) No 1007/2009 and of its exceptions, the Commission should inform the public and competent authorities, in particular customs authorities, on the provisions of that Regulation including the detailed rules for the placing on the market of seal products resulting from hunts conducted by Inuit and other indigenous communities.*
- (8) *Member States should report on a regular basis on the actions taken to implement Regulation (EC) No 1007/2009. On the basis of those reports, the Commission should report to the European Parliament and to the Council on the implementation of Regulation (EC) No 1007/2009, including the impacts on the socio-economic development of the Inuit and other indigenous communities.*
- (9) *In view of the extent to which the matter is already regulated in Regulation (EC) No 1007/2009, as amended by this Regulation, Commission Regulation (EU) No 737/2010 <sup>6</sup> should be repealed.*

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<sup>5</sup> *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).*

<sup>6</sup> *Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products (OJ L 216, 17.8.2010, p. 1).*

(10) Regulation (EC) No 1007/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### Article 1

Regulation (EC) No 1007/2009 is amended as follows:

(1) *In Article 2, the following point is inserted:*

*"4a) '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 who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions;"*

(2) Article 3 is replaced by the following:

#### "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 and other indigenous communities, provided that ***all of*** the following conditions are ***fulfilled***:
  - (a) the hunt has █ traditionally ***been*** conducted by ***-such*** community;
  - (b) the hunt ***is conducted for and*** contributes to █ 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 such 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 placing on the market, a seal product shall be accompanied by a document attesting compliance with the conditions set out in paragraph 1.*

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

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

2. 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 to *prohibit the placement on the market or* limit the quantity **■** that may be placed on the market-*of products resulting from the hunt concerned. It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts.*
6. The Commission shall *adopt implementing acts on* technical guidance notes setting out an indicative list of the codes of the Combined Nomenclature which may cover seal products subject to this Article. *Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5(2)."*

(3) The following Article **■** is inserted:

"Article 4a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 3(5) shall be conferred on the Commission for a period of five years from ... **■** <sup>+</sup>. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

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<sup>+</sup> *OJ: please insert the date of entry into force of this Regulation.*

3. The delegation of power referred to in Article 3(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 3(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."

(4) Article 5 is *replaced by the following*:

***"Article 5  
Committee procedure***

1. ***The Commission shall be assisted by the committee established pursuant to Article 18(1) of Council Regulation (EC) No 338/97 \*. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.***
2. ***Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.***

3. *As regards measures adopted pursuant to Article 3(4), where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply."*

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\* *Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 061, 3.3.1997, p. 1)."*

- (5) *The following article is inserted:*

*"Article 5a  
Information*

*The Commission shall inform the public, with a view to raise their awareness, and competent authorities including customs authorities of the provisions of this Regulation and of the rules under which seal products resulting from hunts conducted by Inuit and other indigenous communities can be placed on the market."*

- (6) *Article 7 is replaced by the following:*

*"Article 7  
Reporting*

1. *By 31 December 2018 and every four years thereafter Member States shall submit to the Commission a report outlining the actions taken to implement this Regulation.*

2. *The Commission shall submit to the European Parliament and to the Council a report on the implementation of this Regulation within 12 months of the end of each reporting period referred to in paragraph 1. The first report shall be submitted by 31 December 2019.*
3. *In its reports submitted in accordance with paragraph 2, the Commission shall assess the functioning, effectiveness and impacts of this Regulation in achieving its objectives."*

## *Article 2*

*Regulation (EU) No 737/2010 is repealed with effect from the date of application of the implementing act to be adopted pursuant to Article 3(4) of Regulation (EC) No 1007/2009.*

## *Article 3*

1. This Regulation shall enter into force on the **third** day following that of its publication in the *Official Journal of the European Union*.
2. *This Regulation shall apply from 18 October 2015.*

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

Done at █ ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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