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Accompanying document to the

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**banning the placing on the market and the import to and the export from the
Community of cat and dog fur and products containing such fur**

IMPACT ASSESSMENT

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Executive summary

The Commission's proposal aims at the harmonisation of national bans concerning the trade (import bans, bans on placing on the market or combinations of both) in cat and dog fur and products thereof. This harmonisation of national bans at Community level is necessary to prevent obstacles to the functioning of the Internal Market and thus at ensuring the free movement of fur and fur products in general.

Several Member States have legislation in place or are in the process of adopting or examining for the purpose of restricting the production of cat and dog fur or the trade in products containing such fur. Whilst there seems to be a very large consensus across all Member States as to the unacceptability of trade and imports of cat and dog fur and products thereof in the Community, Member States are tackling the issue through different measures, ranging from the ban on the rearing of cats and dogs for fur production purposes, to the ban on production and/or import of fur produced from those animals or to labelling requirements. The coexistence of different legislative instruments all aimed at remedying the same problem, implies that fur traders and importers are faced with a set of different legal requirements in the different Member States they wish to trade in or import to. As a consequence, the internal market for fur risks to be fragmented.

1. INTRODUCTION – PROBLEM IDENTIFICATION

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 to and the export from the Community of fur from cats and dogs and products thereof. It also establishes information requirements aimed at ensuring that information on new detection methods is made available to the Commission and exchanged between Member States, with a view to the possible establishment of common detection methodologies at EU level to identify the species of origin of fur and fur products imported or being put on the market.

The bans are intended to replace the existing varied measures established in several Member States to implement the prohibition to produce and/or trade fur from cats and dogs, and aim at preventing obstacles to the functioning of the Internal Market and thus at ensuring the free movement of fur and fur products in general. The provisions of the draft regulation also aim at ensuring that cat and dog fur and products containing such fur (fur is also used as lining or ornament on clothes, or on toys) produced outside the Community cannot be imported to it or cannot be exported outside the Community.

There is evidence that cat and dog fur and products thereof are currently entering the EU and being traded within it, undeclared as such, even though it is difficult to quantify the proportion of cat and dog fur out of the overall figures regarding fur trade in general. The evidence available suggests that most of these products originate from third countries, as there is no tradition of rearing cats and dogs for fur production purposes in the Member States.

For several years consumers have been concerned about the possibility that they could buy fur or fur products made from cats and dogs. As these animals are considered to be companion animals, their fur or fur products are generally not accepted for ethical reasons. The Commission as well as the Member States received during the last years a massive number of letters and petitions on the issue of the cat and dog fur trade expressing consumers', politicians' and citizens' deep indignation and repulsion regarding the trade in cat and dog fur or fur products. These feelings were provoked by scenes presented on the internet and broadcasted on television showing how cats and dogs exploited for fur production are treated in Asia. The footage shows the cruel manner in which animals are killed or skinned alive.

Consumers' concerns are partly explained by the fact that cat and dog fur is not easily distinguishable to persons from other fur and synthetic material made to imitate fur.

As cat and dog fur is also less expensive than other types of fur and can be used as a substitute for more expensive types of fur, an incentive exists for unfair or fraudulent practices in the exploitation of fur products, including fraudulent or deceptive labelling and other practices aimed at distinguishing the true nature or origin of the product.

As a result of the concerns expressed by consumers and 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 fur from cats and dogs. National legislators are tackling the issue with different measures, ranging from the ban on the rearing of cats and dogs for fur production purposes, to the ban on production and/or import of fur produced from those animals or to labelling requirements. In some cases, the restrictions target only cats and dogs, whilst in others they also cover other domestic animals. 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 created by the information and data being made available regarding the slaughter of companion animals for fur production purposes.

15 Member States have legislation in place to the effect of restricting the production of cat and dog fur or the trade in products containing such fur.

Whilst there seems to be a very large consensus across all Member States as to the unacceptability of trade and imports of cat and dog fur and products thereof in the Community, the coexistence of different legislative instruments all aimed at remedying the same problem, implies that traders are faced with a set of different legal requirements in the different Member States they wish to trade in, import or export to. As a consequence, the internal market for fur may be fragmented:

1. as the co-existence of a variety of legal requirements prevents “normal” fur legitimately imported to or produced in the Community from circulating freely within its boundaries, intra-community trade fluxes being subject to a number of different restrictions enforced at national level;
2. as traders need to adjust their commercial practices to the different provisions in force in each Member State, thus facing additional costs due for instance to the necessity to acquire specific legal expertise or to the need to ensure compliance with labelling requirements;
3. as consumers of fur products in general are discouraged from buying cross borders, due to the uncertainty regarding the applicable legal framework in a country other than their own. Such uncertainty operates as a dissuasive factor with those consumers who want to avoid buying cat and dog fur or contribute in any way to such trade.

The Treaty does not allow the Community to legislate on the basis of ethical concerns. Some Member States have on the other hand taken those concerns into consideration when legislating in matters as the one at hand.

The Treaty, however, attributes to the Community to adopt measures aimed at preventing obstacles that may affect the functioning of the internal market. Trade in fur from fur animals is a legitimate trade under Community legislation. Obstacles to such trade must therefore be countered.

It follows from the Court of Justice's well established 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.

As the Court held in its judgement of 14 December 2004 in case C-434/02 (Arnold André), *“where there are obstacles to trade or it is likely that such obstacles will emerge in future because the Member States have taken or are about to take divergent measures with respect to a product or a class of products such as to ensure different levels of protection and thereby prevent the product or products concerned from moving freely within the Community, Article 95 EC authorises the Community legislature to intervene by adopting appropriate measures, in compliance with Article 95(3) EC and with the legal principles mentioned in the Treaty or identified in the case-law, in particular the principle of proportionality.*

Depending on the circumstances, those appropriate measures may consist in [...] provisionally or definitively prohibiting the marketing of a product or products”.

Having regard also to the public's growing awareness and unease with the presence of cat and dog fur in the fur and fur products markets it is likely that obstacles to the free movement of those products would emerge by adoption of new rules in Member States to prevent the placing on the market of cat and dog fur.

The harmonization of the different prohibitions and/or other restrictive measures currently in place is the easiest and lightest way of preventing obstacles for the market of fur from fur animals.

The evidence made available to the Commission leads to consider that the vast majority of the cat and dog fur products present in the Community originate from third countries. Thus, the establishment of the ban trade must be accompanied by an equivalent ban on imports of the same products into the Community.

The import ban, whilst reinforcing the ban on intra-community trade, also responds to the ethical concerns expressed by EU consumers as to the possible introduction in the Community of fur from animals kept and slaughtered inhumanely. The ban on exports should ensure that cat and dog fur and derived products are not produced in the Community for export purposes.

2. OBJECTIVES OF THE PROPOSAL

The Commission's proposal aims at the harmonisation at Community level of national bans, the reinforcing of controls and data sharing concerning the trade (import bans, bans on placing on the market or combinations of both) in cat and dog fur and products thereof. This harmonisation of national bans at Community level is necessary to prevent obstacles to the functioning of the Internal Market and thus at ensuring the free movement of fur and fur products in general.

3. POLICY OPTIONS

The policy options considered in this assessment are the following:

Option 1: No action;

Option 2: Establishing a ban on trade in cat and dog fur or fur products;

Option 3: Self-regulation;

Option 4: Mandatory labelling.

4. IMPACT - POSITIVE AND NEGATIVE

The advantages and disadvantages of the four options and the reasons to follow option 2 are hereby summarised.

Option 1: No action

This option would leave the current situation unchanged and therefore not respond to the existing obstacles to the functioning of the internal market for fur products. Neither would it address the likely occurrence of further disruptions to that market due to the forthcoming adoption of new legislative measures by different Member States.

The increasing public concern about cat and dog fur or fur products being put on the internal market against a widespread feeling of repulsion for such products would also remain unaddressed.

National bans and other restrictive measures adopted at national level as regards the trade in cat and dog fur are not able to dispel consumers' concerns.

Option 2: Establishing a ban on trade in cat and dog fur or fur products

This option would address directly the core of the issue being tackled with a variety of different instruments at Member States' level (the undesirable presence of cat and dog fur on the fur and fur products market), thus eliminating the need for fur and fur product traders to adjust their commercial behaviour to the different requirements in place in the different Member States.

At the same time, this option would respond to the public expectations that fur from cats and dogs or such fur products are not imported and/or placed any more on the internal market. It will avoid consumers being discouraged from buying fur or fur products because they are not sure of buying fur from animals traditionally kept as fur animals.

Only very little official data are available concerning trade or imports of cat and dog fur or derived products, although it can be assumed from the anecdotal evidence available that such products represent a marginal part of the overall volume of fur and fur products being traded in or imported to the Community. Therefore, it is impossible to quantify exactly the effects of a ban that would prohibit trade and imports of such products.

For that reason it could also be assumed that the volume of trade in fur and fur products derived from animals normally reared for fur production is likely not to be adversely affected by the enforcement of the proposed ban. Of course, this statement does not apply to trade in cat and fur and derived products which are not declared as such, being such trade illegal in many Member States.

Option 3: Self-regulation

Voluntary labelling schemes already exist and aim at identifying the species of fur. These initiatives have been endorsed by fur trader associations in Italy, Germany, Norway and the United Kingdom. In September 2003, the International Fur Trade Federation, a federation of trade associations and organisations representing all sectors of the fur trade in 30 countries worldwide¹, presented a new labelling initiative to improve consumer information. This label contains the scientific Latin name as well as the name of the species either in the local language and/or the English translation. The scheme has been approved in Italy by the Italian Standardisation Organisation² (UNI). This labelling scheme is mostly used for high quality fur.

Due to the particular nature of the trade, voluntary labelling schemes are usually not adhered to by traders using cat and dog fur or derived products thereof. In addition, also existing schemes do not always include labelling of fur that is used as an ornament and for linings or toys.

Voluntary labelling schemes are unsatisfactory to respond to deceitful labelling or illicit trade and they have actually proven useless in preventing the introduction of cat and dog fur in the Community. Consumers are concerned to buy cat and dog fur even if the product got a label as there have been reports published in newspapers and broadcasted on TV that cat and dog fur is sold labelled fraudulently under the name of another species or under a fancy name.

Option 4: mandatory labelling

This option would entail the establishment of a mandatory labelling requirement for all fur and products containing fur, whereby all such products must be labelled in a way that allows the identification of the species from which the fur (or fur component) has been obtained. Such general requirement would impose a considerable burden on all fur traders (including those who do not trade in cat and dog fur), not proportionate to the result being sought, as cat and dog fur represents only a small proportion of fur traded on the European market.

¹ On the web: <http://www.iftf.com/newhome.html>

² UNI standard 11007.

Mandatory labelling would prove particularly burdensome and costly in the case of minute fur products, where the mere presence of a tiny fur component would trigger the obligation to identify the origin of the fur that was used.

5. MONITORING THE RESULTS AND THE IMPACT OF THE PROPOSAL

Member States have to provide the official controls that are necessary to ensure the implementation of the ban on imports, exports and the trade in cat and dog fur and products thereof. As a consequence Competent Authorities have to make use of proper analytical methods to detect fur from these species.

The Commission is aware that some Member States have already developed and applied several analytical methods for distinguishing cat and dog fur from other fur. They have informed the Commission that the following analytical methods have been assessed and are currently used:

Analytical method	Knowledge to the Commission provided by	Costs/ Laboratories	Reliability of the method
DNA analysis (without any specification)	Sweden	-	According to Swedish experts DNA analysis of skin and fur to determine the species of origin is often unsuccessful due to the treatment of the skins.
Eukaryotic DNA/mitochondrial DNA (mtDNA) testing	<ol style="list-style-type: none"> 1. Food and consumer product safety Authority (VWA), the Netherlands 2. Italy (only about mtDNA) 	<ol style="list-style-type: none"> 1. Costly and complex method that can only be carried out by a limited number of specialised laboratories. 2. performed e.g. by the Laboratorio Chimico Camera Commercio Torino 	<ol style="list-style-type: none"> 1. According to studies undertaken by the VWA the mtDNA testing is less conclusive than MALDI-TOF test because it is less unique. Hair should not be chemically treated. If the sample material has not been contaminated with other DNA or chemically treated this method is highly reliable. Problems to isolate the DNA occur if the fur has been heavily treated as it is often the case, e.g. with tanned fur. 2. In Italy this method is used for the enforcement of the national ban on import and trade.

Analytical method	Knowledge to the Commission provided by	Costs/ Laboratories	Reliability of the method
SIAM (Specific Identification of Animals with MALDI-TOF Mass Spectrometry)	Department for Environment, Food and Rural Affairs (DEFRA, the United Kingdom) and the German laboratory that provides that method	Commercially offered by one laboratory in Germany that got the requisite database to run these tests. The equipment to perform this analysis exists also in laboratories in other Member States. The database needed for a reliable analysis can be developed.	According to the DEFRA the method is sufficiently reliable if the fur has not been treated by chemicals or dyes. In addition the German laboratory pointed out that after the study for the UK had been done the method was improved and is today reliable also for “normal” treated fur (e.g. fur to produce garments). Pursuant to the VWA it is a satisfactory verification method.
Microscopy	VWA	Cheaper than DNA testing. Performing is relatively simple and the method could be carried out by a larger number of laboratories.	According to the VWA it is a quite reliable method but needs in cases of doubt verification by the SIAM.
Chemical distinction	VWA	The method is not particularly complex and can be done by several labs. Costs lie according to the VWA between DNA and microscopy.	Allows only distinguishing between artificial and natural fibres.

On this basis Member States will be able *inter alia* to communicate information on the analytical method used in their territory, to identify the species from which a fur is derived and to provide concrete results from the enforcement of the proposed measure. Hereby the enforcement of the Regulation will be enhanced.

The checks carried out during border inspections and on the territory of the Member States as well as the results of these checks will constitute the principal indicator for the achievement of the objectives of the proposed Regulation. The outcomes derived from an increased number of checks performed on the basis of the proposed measure and the future discussions in the Standing Committee on the Food Chain and Animal Health on the developments of the analytical methods will lead the Commission and Member States’ authorities to get a clearer overview of the enforcement status. The Standing Committee would represent a suitable forum to exchange the information necessary for the monitoring of the efficiency of the proposed measure.

6. CONSULTATION OF STAKEHOLDERS AND MEMBER STATES' EXPERTS

At the Agriculture Council on 30 May 2005 and on 19 June 2006 (as explicitly stated in the Presidency Conclusions), Member States have specifically requested the Commission to introduce measures for a ban on trade of cat and dog fur at Community level. Member States have clearly expressed the view that such a ban would be more effective than national bans. The technical consultation of the Member States' experts has been performed initially in the framework of the Standing Committee on the Food Chain and Animal Health both in March and June/July 2005, with information being communicated both orally and in written form. In May 2006, Member States have anew been asked through a formal letter from the Commission to EU Chief Veterinary Officers, for an update of the situation as regards to the national legislation and its enforcement.

Several Members of the European Parliament but also national parliaments have repeatedly requested that the Commission takes an initiative on the issue. Furthermore, a massive number of letters from concerned citizens on the issue have been sent to the Commission in recent years expressing deep indignation and repulsion regarding this trade and their concerns that they could buy cat and dog fur without recognizing it.

There is no official data on the trade in cat and dog fur available. Requests to EUROSTAT and the Member States have not yielded any significant data as there is no special customs code for this kind of fur and products made thereof. Cat and dog fur are at the moment only detected incidentally on the internal market.

The Commission has been in contact several times with the main fur trader organisation (IFTF – International Fur Trade Federation) which pointed out that their members are not trading in cat and dog fur and that the trade in cat and dog fur is difficult to detect. The IFTF is only concerned that a ban on trade in cat and dog fur could provoke further initiatives to ban the trade in fur from other species.

Several animal welfare organisations have written to the Commission demanding action and in certain cases providing pictures and videos about the inhumane treatment of these animals in Asia.