Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

25 April 2013 *

(Trade in seal products — Regulation (EC) No 1007/2009 — Detailed rules for implementation — Regulation (EU) No 737/2010 — Prohibition on placing such products on the market — Exception in favour of Inuit communities — Plea of illegality — Legal basis — Subsidiarity — Proportionality — Misuse of powers)

In Case T-526/10,

Inuit Tapiriit Kanatami, established in Ottawa (Canada),

Nattivak Hunters and Trappers Association, established in Qikiqtarjuaq (Canada),

Pangnirtung Hunters' and Trappers' Association, established in Pangnirtung (Canada),

Jaypootie Moesesie, residing in Qikiqtarjuaq,

Allen Kooneeliusie, residing in Qikiqtarjuaq,

Toomasie Newkingnak, residing in Qikiqtarjuaq,

David Kuptana, residing in Ulukhaktok (Canada),

Karliin Aariak, residing in Iqaluit (Canada),

Canadian Seal Marketing Group, established in Quebec (Canada),

Ta Ma Su Seal Products, Inc., established in Cap-aux-Meules (Canada),

Fur Institute of Canada, established in Ottawa,

NuTan Furs, Inc., established in Catalina (Canada),

GC Rieber Skinn AS, established in Bergen (Norway),

Inuit Circumpolar Council Greenland (ICC-Greenland), established in Nuuk, Groenland (Denmark),

Johannes Egede, residing in Nuuk,

Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK), established in Nuuk,

William E. Scott & Son, established in Edinburgh (United Kingdom),

* Language of the case: English.

Association des chasseurs de phoques des Îles-de-la-Madeleine, established in Cap-aux-Meules,

Hatem Yavuz Deri Sanayi iç Ve Diş Ticaret Ltd Şirketi, established in Istanbul (Turkey),

Northeast Coast Sealers' Co-Operative Society, Ltd, established in Fleur-de-Lys (Canada),

represented by J. Bouckaert and H. Viaene, lawyers,

applicants,

v

European Commission, represented by E. White, P. Oliver and K. Mifsud-Bonnici, acting as Agents,

defendant,

supported by

European Parliament, represented initially by I. Anagnostopoulou and L. Visaggio, and subsequently by L. Visaggio and D. Gauci, acting as Agents,

and by

Council of the European Union, represented by M. Moore and K. Michoel, acting as Agents,

interveners,

APPLICATION for annulment of 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 2010 L 216, p. 1),

THE GENERAL COURT (Seventh Chamber),

composed of A. Dittrich (President), I. Wiszniewska-Białecka and M. Prek (Rapporteur), Judges,

Registrar: J. Weychert, Administrator,

having regard to the written procedure and further to the hearing on 11 October 2012,

gives the following

Judgment

Facts, procedure and forms of order sought

1 On 16 September 2009, the European Parliament and the Council of the European Union adopted Regulation (EC) No 1007/2009 on trade in seal products (OJ 2009 L 286, p. 36) ('the basic regulation'), which, according to Article 1 thereof, has as its purpose the establishment of harmonised rules concerning the placing on the market of seal products.

2 Article 3(1) of the basic regulation provides:

'The placing on the market of seal products shall be allowed only where the seal products result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence. These conditions shall apply at the time or point of import for imported products.'

3 Recital 14 in the preamble to the basic regulation states in that regard that 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. According to that recital, 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.

4 It follows from Article 3(4) and Article 5(3) of the basic regulation that measures for, inter alia, the implementation of the authorisation in favour of Inuit communities have to be adopted by the European Commission.

5 Article 8 of the basic regulation provides that, although that regulation is to enter into force on the 20th day following its publication in the *Official Journal of the European Union*, Article 3 is to apply from 20 August 2010.

6 By application lodged at the Court Registry on 11 January 2010, Inuit Tapiriit Kanatami, Nattivak Hunters and Trappers Association, Pangnirtung Hunters' and Trappers' Association, Mr Jaypootie Moesesie, Mr Allen Kooneeliusie, Mr Toomasie Newkingnak, Mr David Kuptana, Ms Karliin Aariak, Mr Efstathios Andreas Agathos, the Canadian Seal Marketing Group, Ta Ma Su Seal Products, Inc., Fur Institute of Canada, NuTan Furs, Inc., GC Rieber Skinn AS, Inuit Circumpolar Conference Greenland (ICC), Mr Johannes Egede and Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK) brought an action seeking the annulment of the basic regulation. By order of the General Court of 6 September 2011 in Case T-18/10 *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* [2010] ECR II-5599 (currently under appeal) that action was dismissed as inadmissible.

7 On 10 August 2010, the Commission adopted Regulation (EU) No 737/2010 laying down detailed rules for the implementation of the basic regulation (OJ 2010 L 216, p. 1) ('the contested regulation'). Under Article 12 thereof, that regulation was to enter into force on the third day following its publication in the *Official Journal of the European Union*.

8 On 9 November 2010 the applicants, Inuit Tapiriit Kanatami, Nattivak Hunters and Trappers Association, Pangnirtung Hunters' and Trappers' Association, Mr Jaypootie Moesesie, Mr Allen Kooneeliusie, Mr Toomasie Newkingnak, Mr David Kuptana, Ms Karliin Aariak, the Canadian Seal Marketing Group, Ta Ma Su Seal Products, Inc., Fur Institute of Canada, NuTan Furs, Inc., GC Rieber Skinn AS, Inuit Circumpolar Council Greenland (ICC-Greenland), Mr Johannes Egede, Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK), William E. Scott & Son, Association des chasseurs de phoques des Îles-de-la-Madeleine, Hatem Yavuz Deri Sanayi iç Ve Diş Ticaret Ltd Şirketi and the Northeast Coast Sealers' Co-Operative Society, Ltd brought the present action, seeking the annulment of the contested regulation.

9 By documents lodged at the Court Registry on 11 and 23 February 2011 respectively, the Parliament and the Council applied for leave to intervene in the present case in support of the form of order sought by the Commission. The applicants and the Commission did not lodge observations on those applications.

10 By order of 13 April 2011, the President of the Seventh Chamber of the General Court granted the Parliament and the Council leave to intervene.

11 On 7 July 2011, the Parliament and the Council lodged their statements in intervention.

12 On 9 August 2011 the applicants lodged a letter containing amendments to the form of order they sought regarding costs. By decision of the President of the Seventh Chamber of the Court of 29 August 2011, that letter was placed on the file. On 8 and 12 September 2011, the Commission and then the Council and the Parliament lodged their observations on those amendments to the forms of order sought by the applicants.

13 On 13 September 2011 the applicants submitted observations on the statements in intervention of the Parliament and the Council.

14 The applicants claim that the Court should:

— declare the application admissible;

— annul the contested regulation;

— declare the basic regulation inapplicable pursuant to Article 277 TFEU;

— order the Parliament and the Council to pay the costs.

15 The Commission and the Parliament contend that the Court should:

— dismiss the action;

— order the applicants jointly and severally to pay the costs.

16 The Council contends that the Court should:

— dismiss the action;

— order the applicants jointly and severally to pay the costs.

— not order the Council to pay the applicants' costs, in whole or in part.

17 In the letter of 9 August 2011 (see paragraph 12 above) and at the hearing, the applicants asked the Court to order the Commission to bear its own costs and theirs and to order the Parliament and the Council to bear their own costs.

Law

Admissibility

18 In its statement in intervention, the Council argued that most of the applicants did not satisfy the requirements of admissibility laid down in Article 263 TFEU in that they were not all directly concerned by the contested regulation.

19 In its rejoinder and at the hearing the Commission submitted that the action appeared admissible as regards at least some of the applicants. However, at the hearing, it made clear that, in its view, not all the arguments put forward by those applicants were admissible and therefore should not be taken into account.

20 It must be noted that the Courts of the European Union are entitled to assess, according to the circumstances of each case, whether the proper administration of justice justifies the dismissal of the action on the merits without a prior ruling on its admissibility (Case C-23/00 P *Council* v *Boehringer* [2002] ECR I-1873, paragraphs 51 and 52; Case C-233/02 *France* v *Commission* [2004] ECR I-2759, paragraph 26; judgment of the General Court of 18 March 2010 in Case T-190/07 *KEK Diavlos* v *Commission*, not published in the ECR, paragraph 32).

21 In the circumstances of the case and for the sake of economy of procedure, the applicants' claim for annulment should be considered first, without a prior ruling on the admissibility of the action as a whole, or on the admissibility of certain arguments or of the objection of illegality raised by the applicants, as the action is, in any event and on the grounds set out below, wholly unfounded.

Substance

22 In support of their action the applicants rely principally on a plea of the illegality of the basic regulation. They argue that it is inapplicable to the present case, which deprives the contested regulation of any legal basis and should result in its annulment. By their second plea, raised in the alternative, the applicants seek the annulment of the contested regulation on the ground of an alleged misuse of power.

The first plea, alleging that the contested regulation has no legal basis

23 In this plea the applicants raise an objection of illegality of the basic regulation. This plea is in three parts.

24 On a preliminary point, it must be borne in mind that, according to settled case-law, Article 277 TFEU gives expression to the general principle conferring upon any party to proceedings the right to challenge indirectly, in seeking annulment of a decision against which it can bring an action, the validity of a previous act of the institutions which forms the legal basis of the decision which is being challenged, if that party was not entitled under Article 263 TFEU to bring a direct action challenging that act, by which it was thus affected without having been in a position to ask that it be declared void (see, to that effect, Case 92/78 *Simmenthal* v *Commission* [1979] ECR 777, paragraph 39, and Case 262/80 *Andersen* v *Parliament* [1984] ECR 195, paragraph 6).

– The first part, alleging the wrong choice of legal basis for the basic regulation

25 The basic regulation was adopted on the basis of Article 95 EC. According to Article 1 thereof, that regulation establishes harmonised rules concerning the placing on the market of seal products.

26 In their first submission, the applicants maintain that the Parliament and the Council erred in law in taking Article 95 EC as the legal basis for the adoption of the basic regulation. They claim that it follows from the Explanatory Memorandum of the Proposal for a Regulation of the European Parliament and of the Council concerning trade in seal products (COM(2008) 469 final, of 23 July 2008, 'proposal for the basic regulation'), and the recitals in the preamble to the basic regulation, that the primary objective of the basic regulation is clearly the protection of animal welfare and not the functioning of the internal market.

27 In that regard, it must be borne in mind that, according to settled case-law, in the context of the organisation of the powers of the Community, the choice of the legal basis for a measure must rest on objective factors amenable to judicial review. Such factors include, in particular, the aim and the content of the measure (Case C-479/04 *Laserdisken* [2006] ECR I-8089, paragraph 30 and the case-law cited).

28 It is also settled case-law that the object of measures adopted on the basis of Article 95(1) EC must genuinely be to improve the conditions for the establishment and functioning of the internal market. While a mere finding of disparities between national rules and the abstract risk of infringements of fundamental freedoms or distortion of competition is not sufficient to justify the choice of Article 95 EC as a legal basis, the Union legislature may have recourse to it in particular where there are differences between national rules which are such as to obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market (Case C-58/08 *Vodafone and Others* [2010] ECR I-4999, paragraph 32 and the case-law cited).

29 Recourse to that provision is also possible if the aim is to prevent the emergence of such obstacles to trade resulting from the divergent development of national laws. However, the emergence of such obstacles must be likely and the measure in question must be designed to prevent them (*Vodafone and Others*, paragraph 28 above, paragraph 33 and the case-law cited).

30 However, it must be borne in mind that recourse to Article 95 EC is not justified where the measure to be adopted has only the incidental effect of harmonising market conditions within the Union (Case C-209/97 *Commission* v *Council* [1999] ECR I-8067, paragraph 35 and the case-law cited).

31 It follows from the foregoing that when there are obstacles to trade, or it is likely that such obstacles will emerge in the future, because the Member States have taken, or are about to take, divergent measures with respect to a product or a class of products, which bring about different levels of protection and thereby prevent the product or products concerned from moving freely within the Union, Article 95 EC authorises the Union legislature to intervene by adopting appropriate measures, in compliance with Article 95(3) EC and with the legal principles mentioned in the EC Treaty or identified in the case-law, in particular the principle of proportionality (Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 33, and Case C-434/02 *Arnold André* [2004] ECR I-11825, paragraph 34).

32 The Court has also held that by using the expression 'measures for the approximation' in Article 95 EC the authors of the Treaty intended to confer on the Union legislature a discretion, depending on the general context and the specific circumstances of the matter to be harmonised, as regards the method of approximation most appropriate for achieving the desired result, in particular in fields with complex technical features (*Vodafone and Others*, paragraph 28 above, paragraph 35 and the case-law cited).

33 Depending on the circumstances, those appropriate measures may consist in requiring all the Member States to authorise the marketing of the product or products concerned, subjecting such an obligation of authorisation to certain conditions, or even provisionally or definitively prohibiting the marketing of certain products (*Swedish Match*, paragraph 31 above, paragraph 34 and the case-law cited).

34 It is in the light of all of the above considerations that the question of whether the conditions governing recourse to Article 95 EC as the legal basis for the basic regulation have been met must be examined.

35 In the present case it is clear from the basic regulation that its principal objective is not to safeguard the welfare of animals but to improve the functioning of the internal market.

36 To begin with, it must be pointed out, in that regard, that, at the time when the basic regulation was adopted, there were differences between the laws, regulations and administrative provisions of the Member States as regards the products concerned.

37 Thus, it is apparent from the proposal for the basic regulation that, in response to concern and pressure from citizens, several Member States had adopted or were in the process of adopting or examining legislative measures aimed at restricting or banning economic activity linked to the production of seal products and that that situation was likely to result in further legislative initiatives

in the Member States. The Commission observed that different commercial conditions coexisted within the Union, varying from one Member State or group of Member States to another, and that this resulted in a fragmentation of the internal market, as traders had to adapt their practices to the different provisions in force in each Member State.

38 Similarly, recitals 4 and 5 in the preamble to the basic regulation state that '[t]he hunting of seals has led to expressions of serious concerns by members of the public and governments sensitive to animal welfare considerations' because of the suffering caused to those animals when they were killed and skinned, and that it was. '[i]n response to concerns of citizens and consumers about … animal welfare … and the possible presence on the market of products obtained from animals killed and skinned in a way that causes … suffering, [that] several Member States [had] adopted or intend[ed] to adopt legislation regulating trade in seal products by prohibiting the import and production of such products, while no restrictions [were] placed on trade in these products in other Member States'.

39 According to recitals 6 to 8 in the preamble to the basic regulation, the 'differences between national provisions governing the trade, import, production and marketing of seal products … adversely affect[ed] the operation of the internal market in products which contain[ed] or [might] contain seal products, and constitute[d] barriers to trade in such products ... [and might] further discourage consumers from buying products not made from seals, but which [might] not be easily distinguishable from similar goods made from seals, or products which [might] include elements or ingredients obtained from seals without this being clearly recognisable'. The objective of the basic regulation was therefore to 'harmonise the rules across the [Union] 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'.

40 It follows from consideration of those recitals that, while, in response to the concern of citizens and consumers over the question of animal welfare, several Member States adopted or intended to adopt measures regulating trade in seal products, the Union legislature, for its part, took action in order to harmonise the rules in question and thus prevent the disturbance of the internal market in the products concerned.

41 In that regard, it must be borne in mind that, according to case-law, provided that the conditions for recourse to Article 95 EC as a legal basis are fulfilled, the Union legislature cannot be prevented from relying on that legal basis on the ground that the protection of animal welfare is a decisive factor in the choices to be made. Such a situation may be found, by analogy, in relation to public health protection (Case C-376/98 *Germany* v *Parliament and Council* [2000] ECR I-8419, paragraph 88; Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 62; and Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I-6451, paragraph 30), and as regards consumer protection (*Vodafone and Others*, paragraph 28 above, paragraph 36).

42 Moreover, it should be noted that the protection of animal welfare is a legitimate objective in the public interest, the importance of which was reflected, in particular, in the adoption by the Member States of the Protocol on the protection and welfare of animals, annexed to the EC Treaty (OJ 1997 C 340, p. 110). Moreover, the Court has held on a number of occasions that the interests of the Union include the health and protection of animals (judgment of 10 September 2009 in Case C-100/08 *Commission* v *Belgium*, not published in the ECR, paragraph 91).

43 As is apparent from recitals 9 and 10 in the preamble to the basic regulation, it is against that background that, aware of its obligations to pay full regard to the welfare requirements of animals when formulating and implementing its internal market policy under the Protocol, the Union legislature concluded that, to eliminate the present fragmentation of the internal market, it was necessary to provide for harmonised rules while taking into account animal welfare considerations.

44 In order to be effective, the measure envisaged in the present case had to constitute an appropriate response taking into account the reasons which led to the rules which existed or were planned in the various Member States. In that connection, it appears from recital 10 in the preamble to the basic regulation that, to restore consumer confidence while, at the same time, ensuring that animal welfare concerns are fully met, 'the placing on the market of seal products should, as a general rule, not be allowed'. In addition, the Union legislature took the view that, to allay the concerns of citizens and consumers regarding 'the killing and skinning of seals as such, it [was] 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'.

45 As is apparent from recital 13 in the preamble to the basic regulation, the Union legislature took the view that the most effective means of preventing existing and expected disturbances of the operation of the internal market in the products concerned was to reassure consumers by offering them a general guarantee that no seal product would be marketed on the Union market, inter alia by banning the import of such products from third countries.

46 However, the Union legislature provided for an exception to that ban in the case of seal hunting by Inuit communities and other indigenous communities for the purposes of subsistence. Recital 14 in the preamble to the basic regulation states that '[t]he 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'.

47 Moreover, it appears from recitals 3, 7 and 8 in the preamble to the basic regulation that the regulation also aims to remove obstacles to the free movement of products not derived from seals, but which, precisely because of their nature, may be difficult, or even impossible, to distinguish from similar goods made from seals, or products which may include elements or ingredients obtained from seals without this being clearly recognisable (see paragraph 39 above). Indeed by reassuring consumers that, apart from products which result from hunts traditionally conducted by indigenous communities for the purposes of subsistence, seal products are no longer marketed in the Union, the question of differentiating such products from those not derived from seals no longer arises and all the categories of product in question can circulate freely in the Union.

48 Against that background, the intervention of the Union legislature on the basis of Article 95 EC appears justified.

49 That conclusion is not undermined by the various arguments of the applicants by which they dispute the truth of several of the considerations set out in the foregoing paragraphs. In particular, as regards the existence of differences between national rules, the applicants argue that it appears from the proposal for the basic regulation that only two Member States had already adopted legislation governing trade in seal products and that a third was preparing to do so. In addition, they argue that the Commission's statement that 'similar initiatives from other Member States may not be excluded in the future' is not sufficient to establish an obstruction in the functioning of the internal market.

50 First, as regards the above statement, which is taken from the proposal for the basic regulation, it is enough to point out that it was not included in the basic regulation, the terms of which reflect a situation which had already changed in the interim. Thus, recitals 5 and 6 in the preamble to the basic regulation mention that 'several' Member States have adopted or intend to adopt legislation regulating trade in seal products, while no restrictions are placed on trade in those products in other Member States. In that regard, the Commission pointed out that, at the time the basic regulation was adopted, bans on seal products were in place in three Member States, another Member State had adopted a ban which had not yet entered into force, two other Member States had published and notified draft legislation to that effect to the Commission and three other Member States had made known their intention to also adopt bans in the absence of measures adopted by the Union.

51 Second, regardless of the exact number of Member States which had already adopted legislation on this question or which had clearly signalled an intention to do so at the time of the adoption of the basic regulation, it must be observed that those divergent measures were such as to constitute obstacles to the free movement of seal products. Against that background, the fact that a minimum number of Member States have already adopted legislation or intend to do so cannot constitute a decisive criterion as regards the possibility of adopting a harmonisation measure at Union level (see, to that effect, *Swedish Match*, paragraph 31 above, paragraph 37, and *Arnold André*, paragraph 31 above, paragraph 38).

52 Accordingly, it must be held that, in the present case, the Union legislature correctly concluded that, in the absence of action at Union level, it was likely that, given the adoption by the Member States of new rules reflecting the growing concern of citizens and consumers over the question of the welfare of seals, obstacles to trade in products containing or likely to contain seal products would arise (see, to that effect, *Swedish Match*, paragraph 31 above, paragraph 39) or even already existed.

53 The applicants also point out that, in the case leading to the judgment in *Swedish Match*, paragraph 31 above, the key element taken into account by the Court was the fact that the market in tobacco products was one in which trade between Member States represents a relatively large part. However, that was not the case as regards trade in seal products, in particular as regards trade between Member States which had already adopted legislation in this area.

54 In that connection, it must be borne in mind that the Court has held that recourse to Article 95 EC as a legal basis does not presuppose the existence of an actual link with free movement between the Member States in every situation covered by the measure founded on that basis. As the Court has previously pointed out, to justify recourse to Article 95 EC as the legal basis what matters is that the measure adopted on that basis must actually be intended to improve the conditions for the establishment and functioning of the internal market (Case C-380/03 *Germany* v *Parliament and Council* [2006] I-11573, paragraph 80 and the case-law cited).

55 In any event, the applicants' argument cannot succeed. As regards their assertion that the production of seal products in the European Union is negligible, it must be pointed out that the extent of such production cannot be relevant to the determination of the extent of trade in the products concerned between the Member States because, in making that determination, account must also be taken of trade in products imported into the Union.

56 In addition, it must be pointed out that, according to recitals 7 and 8 in the preamble to the basic regulation, the existence of diverse national 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'. As was observed in paragraph 47 above, it must be considered that the objective of the harmonisation measures provided for by that regulation is to prevent the disturbance of the internal market in the products concerned, including products equivalent to seal products or which can be used to replace them. As is apparent from the definition of seal products appearing in Article 2 of the basic regulation and recital 3 in the preamble to that regulation, seal products and products not derived from seals but similar to them or including ingredients derived from seals are very varied and include products which are very widely consumed and in which trade between the Member States is certainly not negligible.

57 Against that background, the applicants' assertion that only trade affecting Member States which had already adopted legislation in this area had to be taken into account cannot be upheld either. As the products concerned by the harmonisation measure have a wide definition, it is clear that all the Member States are affected by trade in them.

58 It must be concluded, on the basis of all the foregoing considerations, that the existing differences, which were likely to grow further, between the national provisions governing trade in seal products were such as to justify the intervention of the Union legislature on the basis of Article 95 EC.

59 Thereafter, on the basis of that conclusion, it must be ascertained whether Articles 1, 3 and 4 inter alia of the basic regulation are actually intended to improve the conditions for the establishment and functioning of the internal market.

60 According to Article 1 of the basic regulation, the regulation 'establishes harmonised rules concerning the placing on the market of seal products'. Further, it is apparent from recital 15 that it is 'without prejudice to other Community or national rules regulating the hunting of seals'.

61 Thus, Article 3(1) of the basic regulation provides that '[t]he placing on the market of seal products shall be allowed only where the seal products result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence. These conditions shall apply at the time or point of import for imported products'.

62 What is more, in order to ensure that the products authorised under Article 3(1) of the basic regulation and all the products not made from seals, but which might not be easily distinguishable from similar goods made from seals, or products which might include elements or ingredients obtained from seals without this being clearly recognisable, are able to circulate freely on the internal market of the Union, the legislature provided, in Article 4 of the basic regulation that 'Member States shall not impede the placing on the market of seal products which comply with [the basic regulation]'. It must be considered that this provision gives the basic regulation its full effect as regards its objective of improving the conditions for the functioning of the internal market. That article precludes Member States from impeding the circulation in the Union of all those categories of product by means, inter alia, of more restrictive provisions which they might find necessary to ensure the welfare of animals or to reassure consumers. Thus, Article 4 of the basic regulation expresses the objective set out in Article 1 of that regulation.

63 Finally, the applicants' argument that 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 (OJ 1983 L 91, p. 30) is based on grounds at least comparable to those of the basic regulation, whereas it was adopted on the basis of Article 235 EEC, subsequently Article 308 EC, then Article 352 TFEU, cannot be accepted. According to case-law, the legal basis for an act must be determined having regard to its own aim and content and not to the legal basis used for the adoption of other Community acts which might, in certain cases, display similar characteristics (see Case C-411/06 *Commission* v *Parliament and Council* [2009] ECR I-7585, paragraph 77 and the case-law cited). In any event, it would appear that this directive, adopted on the basis of the EEC Treaty meets objectives other than those of the basic regulation.

64 It follows from the foregoing that the basic regulation does in fact have as its object the improvement of the conditions for the functioning of the internal market and, therefore, that it could legitimately be adopted on the basis of Article 95 EC.

65 In a second submission, put forward in the alternative, the applicants maintain that Article 95 EC does not constitute a sufficient legal basis for the adoption of the basic regulation because, given that, in their view, the prohibition provided for essentially affects trade with non-Member countries, Article 133 EC ought to have been used as well. They point out that the proposal for the basic regulation made reference to both provisions and assert that the differences between that proposal and the final text approved do not justify recourse to Article 95 EC alone. Prohibiting the placing on the market of products which are mainly produced outside the European Union in effect installs an import ban.

66 According to settled case-law, if an examination of an act of the Union reveals that it pursues a twofold aim, or that it has a twofold component, and if one of those is identifiable as the main one, and the other is merely incidental, the measure must be based on a single legal basis, namely that required by the main aim or component (*British American Tobacco (Investments) and Imperial Tobacco*, paragraph 41 above, paragraph 94).

67 Exceptionally, if on the other hand it is established that the act simultaneously pursues a number of objectives or has several components that are indissociably linked, without one being secondary and indirect in relation to the other, such an act will have to be founded on the various corresponding legal bases (see *Commission* v *Parliament and Council*, paragraph 63 above, paragraph 47 and the case-law cited).

68 Accordingly, it must be examined whether the basic regulation also pursues a common trade policy objective and has components arising from that policy which are indissociably linked to components aimed at the improvement of the functioning of the internal market, to such an extent that the act should have been based on a two-fold legal basis.

69 In that regard, it must be observed, first, that, unlike the proposal for the basic regulation, the basic regulation itself does not, as such, prohibit either the import or export of seal products. Article 3(1) of that regulation prohibits only the placing on the market of such products, specifying that, as regards imported products, that prohibition is to apply at the time or point of import, to ensure effectiveness as is clear from recital 10 in the preamble to that regulation. In that connection, Article 2(5) of the basic regulation defines 'import' as 'any entry of goods into the customs territory of the Community'.

70 The import of seal products is thus prohibited only in cases where those products are intended to be placed on the market in the Union. Furthermore, it must be observed that, as the Commission has pointed out, by prohibiting the placing on the market of seal products, the basic regulation does not prevent the entry, warehousing, processing or manufacture of seal products in the Union, if they are intended for export and are never released for free circulation in the Union. Moreover, Article 3(2) of the basic regulation also provides that, first, the import of seal products is allowed where it is of an occasional nature and consists exclusively of goods for personal use and not for commercial purposes and, second, the placing on the market of seal products on a non-profit basis is also allowed where the seal products result from by-products of hunting that is regulated by national law and conducted for the sole purpose of the sustainable management of marine resources. Finally, the prohibition on placing on the market also concerns seal products from the Member States, even if it is common ground that the proportion of such products is very small.

71 It must be concluded that the prohibition on imports is in fact laid down in order to prevent the placing on the market of seal products and, by that means, to achieve the sole objective of the basic regulation which is to improve the functioning of the internal market. In that context, the effects of that regulation on external trade are merely secondary.

72 Consequently, it must be held that the sole objective pursued by the basic regulation and, in particular, by the last sentence of Article 3(1) thereof, is to ensure the effectiveness of the measures intended to improve the functioning of the internal market, and that there is no additional objective concerning the implementation of the common trade policy. In the light of that conclusion and the case-law set out in paragraphs 66 and 67 above, it must be held that the basic regulation could not have both Article 95 EC and Article 133 EC as its legal basis at one and the same time.

73 In any event, it must be borne in mind in that regard that in its judgment in *British American Tobacco (Investments) and Imperial Tobacco*, paragraph 41 above, paragraph 98, the Court held that, in the case in question, the incorrect reference to Article 133 EC as a second legal basis for that directive does not of itself mean that the directive is invalid. The Court held that such an error in the citations of a Union

act is no more than a purely formal defect, unless it gave rise to irregularity in the procedure applicable to the adoption of that act (see *Swedish Match*, paragraph 31 above, paragraph 44 and the case-law cited).

74 The same approach should be applied, by analogy, in the present case. In particular, it must be observed that Articles 95 EC and 133 EC entail identical voting arrangements in the Council.

75 Thus, Article 95(1) EC provides that measures enacted on its basis are to be adopted in accordance with the co-decision procedure referred to in Article 251 EC and after consulting the Economic and Social Committee. Under the co-decision procedure provided for by Article 251 EC, the Council generally acts by a qualified majority, unless it intends to accept amendments to its common position proposed by the Parliament which have been the subject of a negative opinion of the Commission, in which case it must decide unanimously. As regards Article 133(4) EC, it provides that, in exercising the powers conferred upon it by that provision, the Council is to act by a qualified majority.

76 Therefore, recourse to the two-fold legal basis which Articles 95 EC and133 EC constituted would have had no effect on the voting rules applicable within the Council. Moreover, recourse to Article 95 EC alone did not prejudice the rights of the Parliament as that article refers expressly to the co-decision procedure referred to in Article 251 EC (see, by analogy, Case C-300/89 *Commission* v *Council ('titanium dioxide')* [1991] ECR I-2867, paragraphs 17 to 21).

77 In those circumstances, it must be concluded that, even if the basic regulation is also covered by Article 133 EC, recourse to Article 95 EC alone as a legal basis could not have vitiated the procedure for the adoption of that regulation with irregularity, so that the latter cannot thereby be invalidated (see, by analogy, *Swedish Match*, paragraph 31 above, paragraphs 43 to 45, and *British American Tobacco (Investments) and Imperial Tobacco*, paragraph 41 above, paragraphs 106 to 111).

78 Therefore, the first part of this plea must be dismissed.

– The second part, alleging breach of the principles of subsidiarity and proportionality

79 First, the applicants point out that the principal, or indeed only, objective of the basic regulation is the protection of animal welfare and that such an objective does not fall within the exclusive competence of the Union. However, the institutions do not demonstrate in what way legislation to protect the welfare of seals adopted at Union level is the best adapted or necessary.

80 It is appropriate to bear in mind that, at the time when the basic regulation was adopted, the principle of subsidiarity was set out in the second paragraph of Article 5 EC, according to which the Union, in areas which do not fall within its exclusive competence, is to take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union. That principle was given practical effect by the protocol on the application of the principles of subsidiarity and proportionality annexed to the EC Treaty (OJ 1997 C 340, p. 173), which, in paragraph 5, also lays down guidelines for the purposes of determining whether those conditions are met.

81 As regards legislative acts, the protocol states, in paragraphs 6 and 7, that the Community is to legislate only to the extent necessary and that Community measures should leave as much scope for national decision as possible, consistent however with securing the aim of the measure and observing the requirements of the Treaty.

82 In addition, the protocol states in its paragraph 3 that the principle of subsidiarity does not call into question the powers conferred on the European Community by the Treaty, as interpreted by the Court of Justice.

83 In that regard, first, the applicants' argument based on the erroneous assertion that the objective of the basic regulation is the protection of animal welfare must be rejected. As was held in paragraph 64 above, the object of the regulation is the improvement of the conditions of functioning of the internal market, taking into account the protection of animal welfare.

84 As regards Article 95 EC, the Court has held that the principle of subsidiarity applies where the Union legislature makes use of that legal basis, inasmuch as that provision does not give it exclusive competence to regulate economic activity on the internal market, but only a certain competence for the purpose of improving the conditions for its establishment and functioning by eliminating barriers to the free movement of goods and the freedom to provide services or by removing distortions of competition (*British American Tobacco (Investments) and Imperial Tobacco*, paragraph 179).

85 Clearly, the objective of the basic regulation cannot be satisfactorily achieved by action undertaken only in the Member States and requires action at Union level, as the heterogeneous development of national legislation in this case demonstrates (see paragraphs 38 and 39 above). It follows that the objective of the action envisaged could be better achieved at Union level.

86 As the applicants put forward no other evidence in support of their argument, it must be rejected.

87 Second, as regards the alleged breach of the principle of proportionality, it must be borne in mind that, according to settled case-law, that principle requires that measures adopted by European Union institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (Case C-15/10 *Etimine* [2010] ECR I-6681, paragraph 124 and the case-law cited).

88 With regard to judicial review of compliance with those conditions the Court has accepted that in the exercise of the powers conferred on it the Union legislature must be allowed a broad discretion in areas in which its action involves political, economic and social choices and in which it is called upon to undertake complex assessments and evaluations. Thus the criterion to be applied is not whether a measure adopted in such an area was the only or the best possible measure, since its legality can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution is seeking to pursue (see *Vodafone and Others*, paragraph 28 above, paragraph 52 and the case-law cited).

89 However, even where it has such discretion, the Union legislature must base its choice on objective criteria. Furthermore, in assessing the burdens associated with various possible measures, it must examine whether objectives pursued by the measure chosen are such as to justify even substantial negative economic consequences for certain operators (see *Vodafone and Others*, paragraph 28 above, paragraph 53 and the case-law cited).

90 In the present case, it is apparent from recitals 10 to 14 in the preamble to the basic regulation that it pursues the objective of improving the functioning of the internal market, while taking into account the protection of animal welfare and the particular situation of Inuit communities and other indigenous communities. In addition, a comparison between the proposal for the basic regulation and the regulation itself demonstrates that the legislature specifically examined the situation in the Union which called for that measure and considerably limited its scope in comparison with the Commission proposal. In particular, the basic regulation provides only for a prohibition on the placing on the market of the products concerned and exercises the option of fixing a very general rule of prohibition

with, essentially, only one exemption, while delegating to the Commission, under Article 3(4) of the basic regulation, the adoption of measures relating to its implementation. It must be concluded that the measures provided for were strictly limited to those the legislature considered necessary in order to eliminate the obstacles to free circulation of the products indicated.

91 First, the arguments put forward by the applicants are incapable of establishing that the basic regulation is manifestly inappropriate for achieving the objective pursued.

92 They do not put forward any further arguments in support of their assertion that the prohibition on seal products provided for by the basic regulation could not further the creation of the internal market. Moreover, their argument based on the erroneous statement that the objective of the basic regulation is the protection of animal welfare must be rejected, as it was in connection with the analysis of the alleged breach of the principle of subsidiarity (see paragraphs 83 and 84 above).

93 Second, the applicants' argument that the basic regulation goes beyond what is necessary to achieve its objectives must also be rejected. The proportionate nature of that regulation cannot be examined in relation to objectives other than those pursued by that regulation.

94 The applicants' argument that a labelling measure would be less restrictive and more effective for achieving the objectives of the basic regulation cannot succeed either.

95 It is apparent from the basic regulation that the adoption of a measure allowing the placing on the market of only such seal products as respect animal welfare requirements and, in particular, a labelling requirement were examined and rejected by the legislature. In that regard, recitals 11 and 12 in the preamble to that regulation state that '[a]lthough 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 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' and that '[i]t is also clear that other forms of harmonised rules, such as labelling requirements, would not achieve the same result [and that a]dditionally, 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[, whereas c]onversely, the measures contained in this Regulation will be easier to comply with, whilst also reassuring consumers'.

96 It must be concluded that, having analysed the question of the scope of such measures in practice, the legislature took the view that they did not allow the objective pursued to be met and that a general prohibition on the placing on the market of seal products was the best means of guaranteeing the free movement of goods. None of the arguments put forward by the applicants is capable of establishing that those findings are erroneous. In that regard, it should be pointed out that the fact that no entity has yet been recognised under Article 6 of the contested regulation is not relevant to the validity of the basic regulation but to that of the contested regulation.

97 Thirdly, as regards the question whether the basic regulation is proportionate in the strict sense, the applicants maintain that the regulation has disproportionate effects on the Inuit communities in the sense that it has a considerable effect on the survival of those communities. They argue that the Inuit exemption is a dead letter, inter alia because the Inuit people themselves do not trade seal products.

98 In support of that assertion the applicants confine themselves to referring to specific paragraphs of the application. However, it should be pointed out that those paragraphs describe only the way of life of Inuit communities, the seal hunting they practise and the difficulties of the life and survival of the people. Only paragraph 34 of the application deals with the effects of the measure on their situation in stating that as the contested regulation, read in conjunction with the basic regulation and given the

restrictive interpretation it has already received, prohibits the marketing of seal products, the majority of the seal product exports to the European Union are destined to disappear and that, as a result, the export of Inuit seal products to the European Union will be severely affected. They conclude that the contested regulation is likely to result in the loss of a substantial market and of related infrastructure. At the hearing, the applicants added that the Inuit had no other option than to rely on commercial undertakings and their infrastructures and to bear the difficulties connected with the disputed system of recognised bodies issuing attestations relating to seal products authorised in the European Union. Such considerations, which are very general in nature and not substantiated, do not demonstrate that the Inuit communities have suffered harm which is disproportionate compared with the objective pursued by the basic regulation.

99 Thirdly, as regards the criticism of the instrument chosen, that is to say, the regulation, it must be pointed out that paragraph 6 of the protocol on the application of the principles of subsidiarity and proportionality provided that '[o]ther things being equal, directives should be preferred to regulations'.

100 That provision must be read in its context, in particular in the light of the first sentence of that paragraph of the protocol on the application of the principles of subsidiarity and proportionality according to which the form of Union action is to be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. Thus, it must be observed that, in providing that directives were to be preferred '[o]ther things being equal', that provision allowed the legislature a discretion as to the instrument to be adopted.

101 On page 16 of the proposal for the basic regulation, the Commission expressed the view that instruments other than a regulation would not be adequate, inter alia, because a directive required national measures of implementation and increased the risk of divergent application, and that there was a need to guarantee the uniform application of possible derogations to the trade prohibitions otherwise applicable.

102 In the light of the measure provided for by the basic regulation, consisting essentially of a ban together with an exemption and two exceptions and requiring measures for its implementation at Union level, it must be considered that the Union legislature respected those requirements and that it has not been established that a directive would have been more appropriate. In addition, in establishing a general rule, applicable from the 20th day following its publication in the *Official Journal of the European Union*, and in providing, in Article 8, that its Article 3, concerning the substance of the measure, was applicable from 20 August 2010, the basic regulation ensured the rapid entry into force of the prohibition, while leaving the Commission the necessary time to adopt the measures for its implementation.

103 Accordingly, the second part of this plea must be rejected.

– The third part, alleging breach of fundamental rights

104 According to the applicants, the basic regulation breaches Article 1 of Additional Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR') and Article 8 of the ECHR, read in the light of Articles 9 and 10 and as interpreted by the case-law of the Court, and their fundamental right to be heard. Those rights should also be interpreted in the light of the provisions relating to the protection of indigenous peoples in international law, as enshrined, in particular, in Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted on 13 September 2007.

105 As a preliminary point, it must be pointed out that the protection conferred by the articles of the ECHR relied on by the applicants is implemented in Union law by Articles 17, 7, 10 and 11 respectfully of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389). It is therefore appropriate to refer only to those provisions (see, to that effect, Case C-386/10 P *Chalkor* v *Commission* [2011] ECR I-13085, paragraph 51).

106 First, the applicants maintain that the basic regulation does not take account of their right to property, in the sense that it has effects on the right of the applicants to exploit seal products, a significant source of income for them, commercially in the Union and, consequently, on the health and welfare of Inuit peoples. Such a restriction of the use of the applicants' right to property is justified only if it is proportionate to the objective pursued. The applicants assert that the findings of the judgment in Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, are applicable to them, because that prohibition entailed a considerable restriction of their use of their right to property.

107 It must be observed, first of all, that the facts in the present case are very different from those in the case leading to the judgment in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 106 above, which concerned an asset-freezing measure regarding which the Court held that, even if it was a protective measure which was not intended to deprive the persons concerned of their property, it undeniably entailed a restriction on the use of the right to property of the applicant in that case, a restriction which, moreover, had to be classified as considerable, given the general scope of the asset-freezing measure and the date from which it had been applicable. In the present case, the applicants rely, essentially, on an impairment of their right to property in so far as it relates to seals caught.

108 It must be borne in mind that the basic regulation does not prohibit the placing on the market of seal products derived from forms of hunting traditionally practised by Inuit communities and other indigenous communities for the purposes of subsistence. The applicants maintain that this provision is an 'empty box'. However, even if the findings of the judgment in *Kadi and Al Barakaat International Foundation* v *Council and Commission*, could be applied by analogy to the present case, the applicants do not put forward any evidence to show that, because of that provision of the basic regulation alone, their right to property is impaired. As was observed in paragraph 98 above, the explanations given in the paragraphs of the application to which the applicants refer cannot be used for that purpose.

109 Moreover, as the applicants are of very different origins and, for the most part, do not belong to the Inuit community, they should have demonstrated the effects on their right to property in relation to the different categories into which they fall. In that regard, it must be observed that the Court has made clear that the guarantees accorded by the right to property cannot be extended to protect mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity (see, to that effect, Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others* v *Council and Commission* [2008] ECR I-6513, paragraph 185). Accordingly, the argument of the applicants on that point cannot be upheld.

110 Secondly, as regards the alleged infringement of the right to be heard, the applicants argue that, according to case-law, the applicable procedures must, in the case where the property rights of a person are considerably restricted, afford the person concerned by the contested measure a reasonable opportunity of putting his case to the competent authorities. In addition, that right must be interpreted in the light of Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples.

111 That argument cannot succeed. First, as regards the right to be heard before their right to property is restricted, it must be observed that the applicants have not established that there has been any impairment of their right to property (see paragraphs 106 to 109 above).

112 Next, it must be recalled that the Union must respect international law in the exercise of its powers, the Court having in addition stated that a measure adopted by virtue of those powers must be interpreted, and its scope limited, in the light of the relevant rules of international law (see *Kadi and Al Barakaat International Foundation* v *Council and Commission*, paragraph 106 above, paragraph 291 and the case-law cited). The document relied on by the applicants is a declaration and thus does not have the binding force of a treaty. It cannot be considered that that declaration can grant the Inuit autonomous and additional rights over and above those provided for by Union law.

113 In that regard, it must be borne in mind that, according to case-law, in the context of a procedure for the adoption of a Union act based on an article of the Treaty, the only obligations of consultation incumbent on the Community legislature are those laid down in the article in question (Case C-104/97 P *Atlanta* v *European Community* [1999] ECR I-6983, paragraph 38). Article 95 EC did not impose on the legislature a particular obligation to consult the applicants.

114 In any event, the Commission, supported by the Parliament and the Council, maintains that Inuit communities were broadly and repeatedly consulted in preparation for both the basic regulation and its implementing measures. The applicants dispute the relevance and usefulness of certain of the meetings mentioned. However, it is not disputed that the Inuit exemption was introduced after the meeting of 21 January 2009 at which Inuit communities were represented.

115 Finally, it is apparent from recital 14 in the preamble to the basic regulation that the Union legislature did take account of the particular situation of Inuit communities as referred to in the United Nations Declaration on the Rights of Indigenous Peoples and it is for that reason that it took the view that an exemption for products which result from hunts traditionally conducted by them for the purposes of subsistence should be authorised.

116 Third, according to the applicants, in adopting the basic regulation, the legislature did not strike a fair balance between the interests of the Inuit and those pursued by the regulation, which seriously impacts the living conditions of the applicants and, more broadly, the living conditions of the Inuit people.

117 That argument must be rejected. The applicants put forward no arguments or evidence to substantiate the alleged infringement of Article 8 ECHR. As was pointed out in paragraphs 98 and 108 above, the explanations given in the paragraphs of the application to which the applicants refer in that regard do not provide any more evidence to that effect. As for Articles 9 ECHR and 10 ECHR, and Articles 10 and 11 of the Charter of Fundamental Rights of the European Union, the applicants recognise that they were not directly infringed by the basic regulation.

118 For the sake of completeness, it should be pointed out that it is apparent from recital 15 in the preamble to the basic regulation that the regulation is without prejudice to other Union or national rules regulating the hunting of seals and that, by virtue of its Article 3(1), the regulation authorises 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.

119 Accordingly, the third part of this plea and, as a result, the plea in its entirety, must be rejected.

The second plea, alleging misuse of powers

120 By this plea, raised in the alternative, the applicants maintain that the Commission used its powers for a purpose other than that for which they were conferred on it. Instead of establishing an effective exemption for the Inuit, the Commission acted to block any placing on the Union market of seal products, including seal products originating from hunts conducted by Inuit.

121 As the Court has repeatedly held, a measure is only vitiated by misuse of powers if it appears, on the basis of objective, relevant and consistent evidence to have been taken with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case (see Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 24, and Case C-110/97 *Netherlands* v *Council* [2001] ECR I-8763, paragraph 137).

122 The relevant recitals in the preamble to the contested regulation read as follows :

‘(1) [The basic regulation] allows for 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 …

(2) It is therefore necessary to specify detailed requirements for the import and the placing on the Union market of those seal products in order to ensure a uniform application of [the basic regulation].

(3) 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 where such hunts are part of the cultural heritage of the community and where the seal products are at least partly used, consumed or processed within the communities according to their traditions.

…

(5) Within this exceptional framework, an effective mechanism to ensure an adequate verification of compliance with those requirements should be introduced. That mechanism should not be more trade-restrictive than necessary.

…

(12) Since this Regulation lays down detailed rules for the implementation of Article 3 of [the basic regulation] which applies on 20 August 2010, it should enter into force as a matter of urgency.’

123 Thus, according to Article 3 of the contested regulation:

‘1. Seal products resulting from hunts by Inuit or other indigenous communities may only be placed on the market where it can be established that they originate from seal hunts which satisfy all of the following conditions:

(a) seal hunts conducted by Inuit or other indigenous communities which have a tradition of seal hunting in the community and in the geographical region;

(b) seal hunts the products of which are at least partly used, consumed or processed within the communities according to their traditions;

(c) seal hunts which contribute to the subsistence of the community.

2. At the time of the placing on the market, the seal product shall be accompanied by the attesting document referred to in Article 7(1).’

124 According to Articles 6 and 7 of the contested regulation, documents attesting that seal products meet the conditions laid down are issued by ‘recognised bodies’.

125 Finally, Article 12 of the regulation provides that it is to enter into force on the third day following its publication in the *Official Journal of the European Union*.

126 The applicants rely on two sets of arguments. First, the contested regulation was not adopted within a reasonable time before prohibition on placing on the market began to apply. The Commission delayed in preparing the implementation of the 'Inuit exemption'.

127 Second, the contested regulation, as adopted and interpreted by the Commission, deprived the 'Inuit exemption' of any useful effect. In particular, in breach of that article, the contested regulation prohibits the placing on the market of the Union of seal products which result from hunts traditionally conducted by Inuit communities but which are subsequently processed or sold by non-Inuit communities.

128 Clearly, none of those assertions, which are for the most part not substantiated, is capable of demonstrating that, in the present case, the Commission used its power for purposes other than that set out in recital 2 in the preamble to the contested regulation.

129 First, as regards the time at which the contested regulation was adopted, it must be observed that it was adopted on 10 August 2010, published on 17 August 2010 and, pursuant to its Article 12, entered into force on 20 August 2010, that is to say on the day when Article 3(1) of the basic regulation began to apply. That fact on its own does not support the view that the Commission acted in order to prevent the achievement of the objective set. Moreover, the Commission cannot be criticised for having consulted the various parties concerned, including animal rights organisations. The considerations set out by the applicants fall within the category of criticism of the consultation procedure conducted by the Commission but cannot constitute evidence of misuse of powers. On the contrary, the fact that the Commission consulted those different parties, including representatives of the Inuit communities, can indicate only that it actually wished to take account of all the relevant evidence relating to the problem to be solved. Moreover, without being contradicted by the applicants, the Commission states that several of the applicants were present at the meeting of 18 November 2009, at which an information note on the proposed text was distributed and discussed, then immediately placed on the internet. In addition, the Commission published the draft of the contested regulation on the internet on 2 June 2010.

130 Second, as regards the argument that the Commission interpreted the prohibition too widely and the derogations from it too strictly, it must be observed that, by that argument, the applicants are in fact criticising the content and effects of the measures laid down by the contested regulation which, in their view, were not consistent with the objective of that regulation as pre-defined by the basic regulation. The applicants maintain that the content of the contested regulation, as interpreted by the Commission, demonstrates that the real objective pursued by the Commission was different from that for which the basic regulation conferred powers on it. In support of those allegations, they produce statements containing interpretations by the Commission and the national authorities concerning the implementation, in practice, of the rules provided for. Nothing in that argument or in the file demonstrates that the achievement of such effects, which are allegedly negative for trade in the products concerned, was the objective pursued by the Commission in adopting the contested regulation. The applicants' argument calls rather for a verification of the consistency of the statements mentioned with the basic regulation.

131 Accordingly, this plea should be rejected.

132 Having regard to all the foregoing arguments, the application for annulment and, as a result, the action in its entirety must be dismissed.

Costs

133 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicants have been unsuccessful, they must be ordered to pay their own costs and those incurred by the Commission, in accordance with the form of order sought by the Commission.

134 The Council and the Parliament are to bear their own costs, pursuant to the first subparagraph of Article 87(4) of those rules.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. **Dismisses the action.**

2. **Orders Inuit Tapiriit Kanatami, Nattivak Hunters and Trappers Association, Pangnirtung Hunters' and Trappers' Association, Mr Jaypootie Moesesie, Mr Allen Kooneeliusie, Mr Toomasie Newkingnak, Mr David Kuptana, Ms Karliin Aariak, the Canadian Seal Marketing Group, Ta Ma Su Seal Products, Inc., Fur Institute of Canada, NuTan Furs, Inc., GC Rieber Skinn AS, Inuit Circumpolar Conference Greenland (ICC), Mr Johannes Egede, Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK), William E. Scott & Son, Association des chasseurs de phoques des Îles-de-la-Madeleine, Hatem Yavuz Deri Sanayi iç Ve Diş Ticaret Ltd Şirketi and Northeast Coast Sealers' Co-Operative Society, Ltd to bear their own costs and to pay those incurred by the European Commission.**

3. **Orders the European Parliament and the Council of the European Union to bear their own costs.**

Dittrich Wiszniewska-Białecka Prek

Delivered in open court in Luxembourg on 25 April 2013.

[Signatures]