

## **Manual of European Environmental Policy**

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# Historical legislation: whales

<b>Formal references</b> Regulation (EC) No <a href="#">348/81</a> (OJ L39 12.2.81)	Council Regulation on common rules for imports of whales or other cetacean products
Proposed 25.4.80 – COM(80)150	
<b>Implementing Regulation</b>	
Regulation (EC) No <a href="#">3786/81</a> (OJ L 377 31.12.81)	Commission Regulation laying down provisions for the implementation of the common rules for imports of whales or other cetacean products.
<b>Legal base</b>	Article 352 TFEU (originally Article 235 EEC Treaty)
<b>Binding dates</b>	
Commission to be informed of competent authorities	1 July 1981
Ban takes effect	1 January 1982

## Purpose of the Regulation

The objective of conserving whales was advanced by a control on the import into the Community of certain cetacean products from 1 January 1982 by Council Regulation (EC) No 348/81. This was subsumed, and the extent of the controls extended, by Council Regulation (EC) No 3626/82 on the implementation in the Community of the [Convention on International Trade in Endangered Species of Wild Fauna and Flora \(CITES\)](#), which came into force on 31 December 1982.

## Summary of the Regulation

From 1 January 1982 the products listed in an Annex can be imported into the Community only upon production of an import licence. Licences may be issued only for purposes such as scientific research and no licence is to be issued for commercial purposes.

The Annex lists a number of cetacean products such as meat, bones, fats, oil and spermaceti, but not ambergris (ambergris used commercially is generally not obtained from killed whales but is gathered from beaches); leather treated with oil from cetaceans; and also articles of leather or furskins treated with oil from cetaceans (e.g. handbags and shoes). The Annex in fact includes about 95 per cent of all secondary whale products, but excludes for instance cosmetics and lubricating oils containing small quantities of whale products.

Member States must notify the Commission of the competent authorities which are to issue licences and the Commission is to inform the other Member States.

A Committee on cetacean products is set up with a Commission representative as chair and is to give opinions on the application of the Regulation. The Commission has power to make implementing Regulations if the Committee, acting on a qualified majority, agrees. The Commission also has power to make implementing Regulations on its own, despite an adverse opinion of the Committee, after having submitted the proposal to the Council and in the event of the Council failing to agree within three months. One implementing Commission Regulation (EC) No 3786/81 has been issued prescribing the form of the import licence and making minor exceptions from the need for a licence (e.g. personal luggage of travellers).

At the earliest opportunity, the Commission is to submit a report to the Council on whether the list of products in the Annex should be extended. The Council can extend the list acting on a qualified majority. Pending such a decision, Member States may themselves ban products not in the Annex. In reply to a European Parliamentary question (OJ C218 23.8.82), the Commission stated that a study had been carried out but that the Committee on cetacean products had advised that extension of the Annex should be considered at a later stage after the Regulation had been in operation for longer.

## **Development of the Regulation**

The action programmes made no reference to an import ban on whale products and the origin of the Regulation is to be found in a British initiative of October 1979. The Regulation shows that the Community can, on occasion, move very quickly: the Regulation was formally proposed in April 1980, agreed in principle in June, formally agreed in December and the ban came into effect one year later.

A United Kingdom ban on the import of products from baleen whales had been in existence since 1973, but the ban did not extend to sperm whale oil which was used for treating leather and for certain other purposes. As a result of a national campaign in Britain against the killing of whales whether threatened with extinction or not, the Conservative party, during the election campaign of May 1979, promised to press for a moratorium on commercial whaling for a limited period if it were to be elected. In July 1979 the International Whaling Commission narrowly failed to ban all commercial whaling, but agreed to ban commercial whaling by factory ships, except for minke whales. Although this decision reduced the number of sperm whales killed it would not have completely cut the supply of sperm whale oil and because of its election pledge the UK government was pressed to take unilateral action. In the event it decided not to act unilaterally, but to press for a ban at Community level for three reasons: there was doubt whether a unilateral ban would be consistent with the provisions of the Treaty of Rome on the free movement of goods (EEC Regulation (EC) No [1917/80](#)); a unilateral ban would have put British leather manufacturers at a commercial disadvantage in comparison with their European competitors; and a Community ban would be more effective in the objective of protecting whales.

In October 1979 the UK Secretary of State for the Environment, Michael Heseltine, accordingly wrote to the President of the Commission, Roy Jenkins, asking for a Community ban on the primary products of all whales and, as a result, the Commission proposed a Regulation embodying a ban in April 1980. This proposed ban went further than the British request by including leather treated with oil from cetaceans, though it did not include leather products.

The European Parliament in November 1980 adopted a lengthy resolution which welcomed the proposal to limit imports of whale products, but wanted the limit extended to cover all products that could be shown to derive from cetaceans. Consideration was given to the inclusion of leather products treated with whale oil in the list of restricted products, and this inclusion formally made in a proposal from the Commission (COM(80)788) in November 1980. The Parliament's resolution also ranged much more widely than an import ban and requested the Commission among other matters to put forward a ban on commercial whaling in European waters.

On 8 December 1980 the UK House of Commons debated the Commission's proposal. In the debate the Minister, Marcus Fox, explained that agreement in principle had been secured for the Regulation at the Council meeting on 30 June, but that there had been prolonged debate on three issues: the legal basis for the ban; whether Member States could go beyond the Regulation; and the list of products to be covered by the ban. Two of these issues had been resolved and the only outstanding point was the legal basis: should the Regulation be based on Article 113 of the EEC Treaty (now Article 207 TFEU) concerned with commercial policy or Article 235 (now Article 352 TFEU) giving the Council general powers. Pressed in the debate the Minister named Denmark and Germany as the two Member States holding out for Article 235 while all other Member States supported the use of Article 113. In the event, Danish and German arguments prevailed.

## **Implementation**

Although the Regulation covers most primary and secondary whale products, import of these into some Member States (as noted above for the United Kingdom) had already been largely banned with the exception of sperm whale oil. However, the use of sperm whale oil had in fact already been falling in some Member States as a result of the cuts in the allowable catch by the International Whaling Commission and the leather industry was also under considerable pressure from environmentalists not to use sperm whale oil. As a result the leather industry had developed alternatives to sperm whale oil and no great difficulty was encountered in finally phasing out its use by the date specified in the Regulation. The Regulation therefore effectively came at the end of a process of change that had been going on for several years.

## **Enforcement and court cases**

No cases have been concluded in the European Court of Justice concerning these Regulations.

## **Further developments**

These two Regulations have not been repealed, but have since been subsumed into Regulation (EC) No 3626/82 on the implementation of the [CITES Convention](#).