



Brussels, May 2009

**COMMENTS OF THE EUROPEAN COMMISSION ON AN OPINION FROM
THE SENATE OF THE REPUBLIC OF FRANCE**

**COM(2008) 543 - DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL ON THE PROTECTION OF ANIMALS USED FOR SCIENTIFIC
PURPOSES REVISING DIRECTIVE 86/609/EEC TO HARMONISE THE
PRACTISES IN THE EU AND TO IMPROVE THE WELFARE OF THOSE
ANIMALS STILL USED FOR SCIENTIFIC PURPOSES**

The Commission would like to thank the French Senate for having examined the aforementioned proposal and for having provided its Opinion on the issue. In this Opinion, the French Senate raises the question of whether the principle of subsidiarity is respected in the Commission proposal.

It is important to note that the Proposal on the protection of animals used for scientific purposes¹ is revising Directive 86/609/EEC on the protection of animals used for experimental and other scientific purposes. The legal basis of this act is Article 95 (ex Article 100, harmonisation of internal market) of the Treaty. Both the current Directive as well as the Commission proposal to revise the existing Directive fall outside the Community research policy areas.

As was the case with the Directive presently in application, the proposal aiming at revising it was considered fully consistent with the subsidiarity principle. Article 95 of the EC Treaty is the legal base to adopt measures to approximate Member States' provisions laid down by law, regulation or administrative action, in order to ensure the functioning of the internal market.

As regards the specific issue at stake, a number of problems have been identified as an obstacle for the good functioning of the internal market. These include competitive disadvantages of countries with high animal welfare standards resulting primarily from price differences (due to different minimum requirements for housing), diverging regulatory and authorisation procedures in the Member States leading to delays of projects and different authorisation criteria (e.g. inclusion/exclusion of ethical evaluation)

¹ COM(2008) 543 final

across Europe, unsatisfactory (working) conditions of researchers and obstacles to horizontal mobility.

These examples of distortion of the internal market have been broadly recognised by stakeholders and they do affect users both in the field of scientific/academic research and in the private sector, leading to further disadvantages for academic and scientific research for which relocation to another Member State with lower standards is not an option.

In addition to the research community and animal users within different industry sectors, the draft Directive covers equally animal breeders and suppliers who supply animals throughout the EU, not just within the territory of the Member State where the breeder/supplier operates.

In terms of restrictions on the use of certain species, the users in the EU are today in an unequal position to carry out research. For example, the use of Great Apes is prohibited by law in some Member States, while this is not the case in the others. Similar measures are in place for e.g. other non-human primates in some Member States.

In conclusion, problems such as those resulting from diversified requirements for authorisation and ethical evaluation as well as for accommodation and care of animals cannot be sufficiently solved by the Member States themselves because action or non-action by Member States has undoubtedly led to distortions of the internal market. Without regulatory action at European level this unsatisfactory situation would inevitably persist and possibly worsen.

Finally, the Protocol on protection and welfare of animals annexed to the EC Treaty requires the European Community and the Member States to pay full regard to the welfare requirements of animals in formulating and implementing the Community's internal market policies. The Commission Proposal aims at achieving this objective by incorporating a number of measures in the Proposal to ensure that when animal experiments are needed they are carried out in the most humane way possible by taking into account the welfare requirements of the animals.