

# EUROPEAN PARLIAMENT

2004



2009

---

*Session document*

FINAL  
**A6-0304/2005**

13.10.2005

**\*\*\*I**

## **REPORT**

on the proposal for a directive of the European Parliament and of the Council  
introducing humane trapping standards for certain animal species  
(COM(2004)0532 – C6-0100/2004 – 2004/0183(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Karin Scheele

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

## CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	6
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE PROPOSED LEGAL BASIS .....	8
PROCEDURE.....	11



## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a directive of the European Parliament and of the Council  
introducing humane trapping standards for certain animal species  
(COM(2004)0532 – C6-0100/2004 – 2004/0183(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0532)<sup>1</sup>,
  - having regard to Article 251(2) and Article 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0100/2004),
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A6-0304/2005),
1. Rejects the Commission proposal;
  2. Asks the Council not to adopt a common position and calls on the European Commission to withdraw its proposal;
  3. Instructs its President to forward its position to the Council and Commission.

---

<sup>1</sup> Not yet published in OJ.

## EXPLANATORY STATEMENT

The efforts to establish at European level uniform trapping standards for trapping as a method of hunting are very welcome. However, overall the Commission proposal is very unsatisfactory, and it is therefore difficult to improve the proposal by means of amendments. For this reason, the rapporteur proposes rejecting the Commission proposal.

### 1. Rejection of the Commission proposal

As the Commission proposal falls under the chapter in the EU Treaty concerning environmental policy, the EU is obliged to base the proposal on the latest scientific developments. No such basis has been provided for: relevant research should have been performed before the proposal was published.

### 2. Major shortcomings of the Commission proposal

#### *The term 'humane'*

Under certain conditions, trapping methods and traps may be necessary and justified by certain circumstances, but there is no reason to call them humane on that account.

In Article 5(2) and (3), the Commission proposes that a restraining or killing trapping method should be considered humane even if one animal in five suffers such indicators as fracture, severance of a tendon or ligament, major periosteal abrasion, severe external haemorrhage or haemorrhage into an internal cavity, skeletal muscle degeneration, ocular damage, spinal cord injury, amputation or death. In the case of killing traps, the proposal considers a trapping method humane if animals of certain species undergo a death struggle of up to 300 seconds.

The use of the word 'humane' is based on Article 3(1) of Regulation No 3254/91, which was adopted further to a European Parliament resolution of 1989. The Regulation bans the use of leghold traps in the European Union from 1 January 1995 and bans imports of skins of thirteen listed species of animal from countries which do not ban these traps or which do not implement international agreements on humane trapping standards.

In 1996 a Commission committee of experts, including representatives from Canada and the United States, published a report containing a series of proposals for improving trapping methods.

However, trappers vehemently rejected the report. The negotiations between the European Union, the USA, Canada and Russia then continued at political level, without involving the experts.

The resulting agreement, which was concluded in 1996, no longer contained any of the improvements proposed by the European experts. Even traps in which animals underwent a death struggle lasting five minutes were classified as humane.

The Agreement on international humane trapping standards, on which this proposal for a directive is based, was concluded only because the Commission wished to avoid a trade

dispute with the USA and Canada.<sup>1</sup>

The trapping standards laid down in the agreement essentially comprise those methods which trappers in the USA, Canada and Russia use, and these methods are described as humane.

#### *Avoidance of experiments using animals*

The scientific testing of traps must be carried out in accordance with the provisions of Directive 86/609/EEC on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes. In view of the prescribed use of animal experiments, this proposal falls within the scope of that directive.

Under the directive, experiments using animals must not be performed if another scientifically satisfactory method of obtaining the result sought, not entailing the use of an animal, is reasonably and practicably available. At no point does the proposal mention the consideration of such alternatives. There is no provision which ensures that any alternative method which may be available must be used.

Article 22(1) and (2) of Directive 86/609/EEC contains provisions to avoid unnecessary duplication of experiments and concerning mutual recognition of findings from experiments. Such provisions are also absent from the proposal.

#### *Training of trappers*

Article 8 of the proposal deals with the specific training of trappers without providing any definition. In order to establish uniform European standards, it is essential to adopt uniform criteria. The Commission proposal also uses such terms as 'equivalent practical experience, competence and knowledge' without defining them.

#### *Derogations*

The derogations in Article 6 of the proposal must be strict and restrictive, and must not undermine the proposal.

#### *Annex I*

The list of species in Annex I lacks any scientific basis. The Commission should therefore create such a basis and, using it, submit a new Annex I.

---

<sup>1</sup> At the time, Russia was not yet a member of the WTO.

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE PROPOSED LEGAL BASIS

*Committee on Legal Affairs*  
*The Chairman*

Mr Karl-Heinz Florenz  
Chairman  
Committee on the Environment, Public Health and Food Safety  
BRUSSELS

Subject: Legal basis of the proposal for a directive of the European Parliament and of the Council introducing humane trapping standards for certain animal species (COM(2004)0532 – C6-0100/2004 – 2004/0183(COD))<sup>1</sup>

Dear Mr Chairman,

At its meeting on 6 October 2005 the Committee on Legal Affairs decided on its own initiative, pursuant to Rule 35(3) of the Rules of Procedure, to consider whether the legal basis of the above Commission proposal was valid and appropriate.

The Committee then went on to consider that question at that same meeting on the basis of an oral presentation by its rapporteur for legal bases, Mr López Istúriz White.

According to the Court of Justice the choice of legal basis is not a subjective one, but "must be based on objective factors which are amenable to judicial review"<sup>2</sup>, such as the aim and content of the measure in question<sup>3</sup>. Furthermore, the decisive factor should be the main object of a measure.<sup>4</sup>

There is no doubt that the directive is primarily - indeed virtually exclusively - concerned with the welfare of certain species of wild animals. It may be noted in this connection that it is stated in the preamble that the directive is without prejudice to Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping

---

<sup>1</sup> Not yet published in OJ.

<sup>2</sup> Case 45/86 *Commission v Council* [1987] ECR 1439, para. 11.

<sup>3</sup> Case C-300/89 *Commission v Council* [1991] ECR I-287, para. 10.

<sup>4</sup> Case C-377/98 *Netherlands v Parliament and Council* [2001] ECR I-7079, para. 27, quoting Case C-155/91 *Commission v Council* [1993] ECR I-939, paras 19-21.



methods which do not meet international humane trapping standards<sup>1</sup>. That Regulation is based on Articles 133 and 175 of the EC Treaty, which suggests that at least in 1991 the Community legislature considered that the welfare of wild animals fell within the scope of environment policy. That regulation has been litigated only once, and the legal basis was not called in question<sup>2</sup>.

Furthermore, recital 3 states that internationally agreed humane trapping standards "will have a positive effect on the welfare of the trapped animals contributing to the protection of species of wild fauna both within and outside the Community. Ensuring a sufficient level of welfare of wild animals when trapped for wildlife management purposes and for the capture of those mammals for conservation should contribute to implementing the objectives of the Community's environment policy. More in particular, by so doing, the Community will contribute to a prudent, sustainable and rational utilisation of natural resources and promote measures at international level to deal with world-wide environmental problems."

This is a clear reference to environment policy, which is mentioned in Article 3(1) of the EC Treaty as one of the activities of the Community ("a policy in the sphere of the environment").

Furthermore, Article 1 of the proposed directive refers to "wildlife management, pest control, capture of mammals for conservation" and Article 6 to "repopulation, reintroduction, breeding or ... the protection of fauna and flora", which are also aspects of a policy in the sphere of the environment.

Consequently, the centre of gravity of the proposed directive is environment policy and Article 175(1) constitutes the only appropriate legal basis, bearing in mind also that it allows Member States to adopt stricter rules on the basis of Article 176 on the condition that such rules are compatible with the Treaty, which is consistent with the purpose of the proposed directive.

At its meeting of 6 October 2005 the Committee on Legal Affairs accordingly decided, by a unanimous vote<sup>3</sup>, to recommend that you retain Article 175(1) of the EC Treaty as the sole legal basis.

Yours sincerely,

Giuseppe Gargani

---

<sup>1</sup> OJ L 308, 9.11.1991, p. 1.

<sup>2</sup> Order of the President of the CFI of 12.2.1996 in Case T-228/95 R *Lehrfreund Ltd v Council and Commission* [1996] ECR II-111.

<sup>3</sup> The following were present for the vote: Giuseppe Gargani (chairman), Antonio López-Istúriz White (draftsman), Maria Berger, Bert Doorn, Nicole Fontaine (for Piia-Noora Kauppi), Jean-Paul Gauzès (for Rainer Wieland), Kurt Lechner, Klaus-Heiner Lehne, Hans-Peter Mayer, Manuel Medina Ortega (for Antonio Masip Hidalgo), Aloyzas Sakalas and Jaroslav Zvěřina.



## PROCEDURE

<b>Title</b>	Proposal for a directive of the European Parliament and of the Council introducing humane trapping standards for certain animal species
<b>References</b>	COM(2004)0532 – C6-0100/2004 – 2004/0183(COD)
<b>Legal basis</b>	Articles 251(2) and 175 (1) EC
<b>Basis in Rules of Procedure</b>	Rule 51
<b>Date submitted to Parliament</b>	30.7.2004
<b>Committee responsible</b> Date announced in plenary	ENVI 15.9.2004
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	
<b>Not delivering opinion(s)</b> Date of decision	
<b>Enhanced cooperation</b> Date announced in plenary	
<b>Rapporteur(s)</b> Date appointed	Karin Scheele 27.9.2004
<b>Previous rapporteur(s)</b>	
<b>Simplified procedure</b> Date of decision	
<b>Legal basis disputed</b> Date of JURI opinion	JURI 6.10.2005
<b>Financial endowment amended</b> Date of BUDG opinion	
<b>European Economic and Social Committee consulted</b> Date of decision in plenary	
<b>Committee of the Regions consulted</b> Date of decision in plenary	
<b>Discussed in committee</b>	21.6.2005      13.7.2005
<b>Date adopted</b>	11.10.2005
<b>Result of final vote</b>	for: 47 against: 3 abstentions: 2
<b>Members present for the final vote</b>	Adamos Adamou, Georgs Andrejevs, Irena Belohorská, Johannes Blokland, John Bowis, Frederika Brepoels, Dorette Corbey, Avril Doyle, Mojca Drčar Murko, Edite Estrela, Jillian Evans, Anne Ferreira, Karl-Heinz Florenz, Françoise Grossetête, Satu Hassi, Gyula Hegyi, Mary Honeyball, Marie Anne Isler Béguin, Caroline Jackson, Dan Jørgensen, Urszula Krupa, Peter Liese, Jules Maaten, Roberto Musacchio, Riitta Myller, Vittorio Prodi, Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Carl Schlyter, Horst Schnellhardt, Richard Seeber, Jonas Sjöstedt, María Sornosa Martínez, Antonios Trakatellis, Thomas Ulmer, Anja Weisgerber, Åsa Westlund
<b>Substitutes present for the final vote</b>	María del Pilar Ayuso González, Bairbre de Brún, Milan Gaľa, Hélène Goudin, Ambroise Guellec, Jutta D. Haug, Erna Hennicot-Schoenges, Miroslav Mikolášik, Ria Oomen-Ruijten, Pál Schmitt,

	Robert Sturdy, Phillip Whitehead
<b>Substitutes under Rule 183.3 present for the final vote</b>	Véronique Mathieu, Eoin Ryan
<b>Date tabled – A6</b>	13.10.2005 A6-0304/2005
<b>Comments</b>	...