

EUROPEAN PARLIAMENT

2004



2009

*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))¹

Dear Mr Chairman,

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

The Committee then went on to consider that question at that very 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"², such as the aim and content of the measure in question³. Furthermore, the decisive factor should be the main object of a measure.⁴

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

¹ Non yet published in JO.

² Case 45/86, *Commission v. Council* [1987] ECR 1439, para. 5.

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

⁴ Case C-377/98, *Netherlands v. European Parliament and Council* [2001] ECR I-7079, para. 27, quoting Case C-155/91, *Commission v. Council*, *supra* n. 23, pars 19-21.

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 methods which do not meet international humane trapping standards¹. 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 question².

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 and 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 vote³, to recommend that you retain Article 175(1) of the EC Treaty as the sole legal basis.

¹ OJ L 308, 9.11.1991, p. 1.

² Order of the President of the CFI of 12.2.1996 *Lehrfreund Ltd v. Council and Commission* [1996] ECR II-111.

³ The following were present for the vote Giuseppe Gargani (chairman), Antonio López-Istúriz White (draftsman), Maria Berger, Bert Doorn, Nicole Fontaine (for Piiia-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.

Yours sincerely,

Giuseppe Gargani