

CONV 842/03

CONTRIB 378

COVER NOTE

from Secretariat

to The Convention

Subject : Contribution of Ms Hanja Maij-Weggen, member of the Convention :
- “Animal Protection in part III of the European Constitution”

The Secretary-General of the Convention has received the contribution annexed hereto from Ms Hanja Maij-Weggen, member of the Convention.

"Animal Protection in part III of the European Constitution" Contribution of Hanja Maij-Weggen - Member of the European Parliament, EPP-ED representative to the Convention

I. INTRODUCTION

Animal welfare: an accepted concern of EU citizens

Over the years EU citizens have shown a growing concern about the way animals are treated whether they are kept in captivity, on farms, in laboratories or in their natural habitat. This public concern is reflected in the large number of letters on animal issues received by the Commission and Members of the European Parliament and by the many debates in the EU institutions.

Legal protection of animals in EU Treaty

Animal welfare has not had a high priority in EU policy-making, as it is not expressly referred to as an objective in the EC Treaty. At present animals are still categorised as "agriculture products" (Annex I – Article 2, of the Treaty). Community rules dealing with animal welfare have been generated by the need for common trade rules to ensure the proper functioning of the internal market.

Amsterdam Treaty: Protocol on the Protection and welfare of animals (N°33)

After a long European-wide campaign, Member States agreed in 1997 to include a Protocol on Animal Welfare to the Amsterdam Treaty.

The Treaty of Amsterdam, in force since 1st May 1999, lays out new ground rules for the actions of the European Union (EU) on animal welfare. With this Protocol the Member States wished to ensure improved protection of animals and recognition of animals as sentient beings. It also requires that "In formulating and implementing the Community's policies on agriculture, transport, the internal market and research, the Community and the Member States shall pay full regard to the welfare of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage."

This Protocol is an important first step in imposing an obligation on Community institutions and Member States to take account of animal welfare considerations. Nevertheless, it cannot be regarded as a sufficient or permanent solution to the need to establish the protection of animals as a legitimate subject for Community law or to prevent destructive effects on animal welfare resulting from other measures.

As there does not seem to be system to assess whether the provisions of the Protocol are respected the correct application of the Protocol remains uncertain. A clear example was the Commission proposal and the Council adoption of Directive 2001/88/EC laying down

minimum standards for the protection of pigs. Whereas it included a ban on the use of individual stalls for pregnant sows, it included no improvement in the stocking densities for fattening pigs although this was recommended by the Commission Scientific Veterinary Committee in its 1997 report.

Directive 86/609/EEC on the protection of animals used for scientific purposes only covers animals used in the development and testing of products. There is no legal basis in the Treaty to allow the scope of the Directive to include animals used for basic medical research.

The problem of the legal basis for animal welfare was already discussed in the Forum of the Convention. Here it was demanded that the concept of animal welfare should be taken up in the Treaty. Furthermore individual members have mentioned this demand in several debates.

The link between food safety and animal welfare should also be taken into account. Now that food safety has become an ever more important policy field and an EU authority that deals with matters of food safety has been set up, animal welfare has to become a priority to help guarantee food safety. It is the first link in the chain of food production: animal welfare clearly benefits the food safety. As the attention to food safety has increased recently, the Convention cannot stay behind and has to look at animal welfare as the start of safe food production.

Seen in the light of legal security it clear that any proposal of the Convention should not be weaker than the current Treaties. This means that whatever is already realised should at least be taken over, and preferably also improved. In this way the European Union will also be able to set the example in third countries where the health and welfare of animals are so weakly protected.

It is clear that animal protection should be given a higher priority in Community legislation and policy making. Therefore, apart from the reference to animal protection in Article 3 and adding animal protection to the list of shared competences in Article 13, animal protection should be included in the horizontal policy principles of Part III- Article 2 as well as clearly defined in each relevant policy area such as agriculture, environment, consumer protection and research.

II . THE CONVENTION AND THE DRAFT CONSTITUTION

If the EU wants to maintain the integration of animal welfare in policies and programmes as laid down under the Protocol it is essential that there needs to be a clear reference to animal protection in the objectives and a coherent integration in the policy areas of which the implementation may affect the welfare of animals such as agriculture, environment, consumer protection and research. Such reference does not give the EU new competences but rather clarifies matters and does not conflict with any cultural subsidiarity agreements in the field of animal welfare.

There is much confusion in the citizens' mind about which areas of animal welfare the EU can regulate. Therefore apart from the reference to animal protection in Article 3, and adding animal protection to the list of shared competences in Article 12, animal protection provisions should be clearly described in the policy areas.

III. PROPOSED AMENDMENTS ON PART III: THE POLICIES AND FUNCTIONING OF THE UNION

The amendments are based on the Draft Constitution of 13 June 2003 such as it was presented to the Greek summit. (CONV 802/03)

TITLE 1 - Clauses of general application

Article III – 2 (Treaty Article 6)

“Environmental protection requirements, including the protection of animals must be integrated into the definition and implementation of Union policies and activities referred to in this part, in particular with a view to promoting sustainable development.”

Explanatory note:

This amendment creates a horizontal principle which would ensure a coherent integration of animal welfare into all EU policies

CHAPTER I - Internal Market

Section 3 - Free Movement of goods

2. Prohibition of quantitative restrictions

Article III- 40 (Treaty Article 30)

The provisions of (ex Article 28) shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans or plants; the protection of the health and welfare of animals; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Explanatory note:

This amendment will confirm and put beyond doubt that the welfare of animals is integral to the ‘health and life’ of animals and public interest requires that this cannot be disregarded in efforts to attain the goals of the common market.

Section 5 – Rules on Competition

Prohibition of trusts

Article III - 47 (Treaty Article 81)

(1) The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which

- (a) directly or indirectly fix purchase or selling prices or any other trading condition
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Any agreements or decisions prohibited pursuant to this article shall be automatically void.

(3) The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution and quality of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

Explanatory note:

This amendment will serve to allow (as a public interest exception to the prohibition of trusts) the promotion of good standards of animal protection, which is an important aspect of quality in food production, e.g. higher welfare standard assurance schemes set up by a group of producers or retailers.

Article III - 62 (Treaty Article 95)

“(3) The Commission, in its proposals submitted under paragraph 1 concerning health, safety, environmental protection, **animal protection** and consumer protection, will take as a base a high level of protection, taking into account in particular any new development based on scientific facts

(4) If, after the adoption by the European or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in (ex Article 30), or relating to the protection of animals, protection of the environment, or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

(5) Moreover, without prejudice to paragraph 4, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to **the protection of animals**, the protection of the environment, or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

Explanatory note:

These amendments to the Treaty articles providing for approximation of laws will confirm that the Community must respect national provisions to protect animals in implementing harmonisation measures.

CHAPTER III - Policies in other specific areas

Section 4 - Agriculture and fisheries

Article III – 118 (Treaty Article 33)

1. The objectives of the common agricultural policy shall be:

- (a) to ~~increase agricultural productivity by promoting~~ technical progress and ensure ~~ing~~ the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
- (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- (c) to stabilise markets;
- (d) to assure the availability of **quality food products and supplies produced to high standards including high standards of animal welfare;**
- (e) to ensure that supplies reach consumers at reasonable prices.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:

- (a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;
- (b) the need to effect the appropriate adjustments by degrees;
- (c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole;

(d) requirements relating to the quality of products and the protection of animals

Explanatory note:

The objectives of the Common Agricultural Policy as set out in Article 33 of the Treaty were formulated over 45 years ago in very different economic and social conditions from those of today, and are widely regarded as outdated. In particular, the requirement to increase agricultural production is no longer a Community priority and should be omitted from the Convention. This objective has tended to undermine animal protection by encouraging more intensive – and therefore with poorer welfare – food production¹. Since the Protocol provides that the Community must pay full regard to the welfare requirements of animals in formulating the Community's policy on agriculture, it is essential that animal protection, which is also an important aspect of quality in food production, should be integrated in the modern aims of the CAP.

The CAP Midterm review has strengthened the position of animal welfare in EU agricultural policy focusing on "quality rather than quantity".

¹ For example, the milk quota system links subsidies to the amount of milk produced and the resulting drive to increase production can lead to the following welfare problems in dairy cows: increased incidence of mastitis, lameness, infertility and premature culling.

Section 5 - Environment

Article III – 124 (Treaty Article 174)

1. Community policy on the environment shall contribute to pursuit of the following objectives:
 - preserving, protecting and improving the quality of the environment,
 - protecting human health,
 - prudent and rational utilisation of natural resources,
 - promoting measures at international level to deal with regional or worldwide environmental problems,
 - **protecting animals and their habitats**

3. In preparing its policy on the environment, the Community shall take account of:
 - available scientific and technical data,
 - environmental conditions in the various regions of the Community,
 - **the health and welfare requirements of animals**
 - the potential benefits and costs of action or lack of action,
 - the economic and social development of the Community as a whole and the balanced development of its regions.

Explanatory note:

Whilst the environment is not included in the policy areas mentioned by the Protocol, the protection of the environment under the Treaty has often served as a legal basis for animal protection measures by the Community¹. It is important that the objectives of the Community's policy on the environment formally recognise that the protection of wild animals and their welfare is an accepted and necessary component of environmental protection.

Section 6 - Consumer protection

Article III – 127 (Treaty Article 153)

In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as promoting their right to information, education **and ethical choice** and to organize themselves in order to safeguard their interests.

Explanatory note:

¹ For example, Council Directive 1999/22/EC relating to the keeping of wild animals in zoos, Council Regulation 338/97 on the protection of species of wild fauna and flora by regulating the trade therein and Council Regulation 3254/91 prohibiting the use of leghold traps etc.,

This amendment is intended to confirm and respect European citizens' right to make informed choices about products or services based upon their ethical principles. Ethical concerns, such as over the environment, the third world or the use of animals, are becoming an increasingly important factor in the choices made by consumers.

Section 9 – Research and technological development and space

Article 163

1. The Community shall have the objective of strengthening the scientific and technological bases of Community industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other chapters of this Treaty.

2. For this purpose the Community shall, throughout the Community, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation. **It shall encourage comprehensive ethical review of all proposed projects and research programmes to ensure that humans, other animals and the environment are not exploited.**

3. All Community activities under this Treaty in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with the provisions of this title.

Article 164

In pursuing these objectives, the Community shall carry out the following activities, complementing the activities carried out in the Member States:

- (a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;
- (b) promotion of cooperation in the field of Community research, technological development and demonstration with third countries and international organisations;
- (c) dissemination and optimisation of the results of activities in Community research, technological development and demonstration;
- (d) stimulation of the training and mobility of researchers in the Community;
- (f) implementation of effective and appropriate ethical review processes for all projects, with representation from a range of stakeholders;**
- (e) development of alternative techniques and approaches to replace animals in research and testing, reduce animal use and suffering and improve welfare.**

Explanatory note:

This amendment integrates animal welfare requirements in the Research Policy as foreseen under the Protocol. Furthermore, there appears to be a lacuna in the Treaty in terms of a legal basis to enact and implement animal protection measures for areas (such as basic medical research) which are not trade related and therefore fall outside the ambit of Article 95 (harmonisation).

Annex a. List of EU animal protection legislation

General

- **Protocol (No 33) to the Treaty establishing the European Community on the protection and welfare of animals (1997)**

Farm Animals

Keeping of animals

- Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes
- Council Directive 88/166/EEC of 7 March 1988 laying down minimum standards for the protection of laying hens kept in battery cages
- Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens
- Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves
- Council Directive 97/2/EC of 2 January 1997 laying down minimum standards for the protection of calves
- Commission Decision 97/182 of 24 February 1997 amending the Annex to Directive 91/629/EEC laying down minimum standards for the protection of calves
- Council Directive 91/630/EEC of 19 November 1991 laying down minimum standards for the protection of pigs
- Council Directive 2001/88/EC of 23 October 2001 amending Directive 91/630/EEC laying down minimum standards for the protection of pigs
- Commission Directive 2001/93/EC of 9 November 2001 amending Directive 91/630/EEC laying down minimum standards for the protection of pigs

Transport of animals

- Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC
- Council Directive 95/29 of 29 June 1995 on the protection of animals during transport
- Council Regulation (EC) No 1255/97 of 25 June 1997 concerning Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC
- Council Regulation (EC) 411/98 of 16 February 1998 on additional animal protection standards applicable to road vehicles used for the carriage of livestock on journeys exceeding eight hours

- Commission Decision 2001/298/EC of 30 March 2001 amending the Annexes to Council Directives 64/432/EEC, 90/426/EEC, 91/68/EEC and 92/65/EEC and to Commission Decision 94/273/EC as regards the protection of animals during transport

Slaughter and killing of animals

- Council Directive 93/119/EEC of 22 December 1993 on the protection of animals at the time of slaughter and killing

Market Regulations

- Council Regulation (EEC) No 1907/90 of 26 June 1990 on certain marketing standards for eggs
- Commission Regulation (EEC) No 1274/91 of 15 May 1991 introducing detailed rules for implementing Regulation (EEC) 1907/90 on certain marketing standards for eggs
- Commission Regulation (EC) No 2401/95 of 12 October 1995 amending Regulation (EEC) No 1274/91 introducing detailed rules for implementing Council Regulation (EEC) No 1907/90 on certain marketing standards for eggs
- Commission Regulation (EC) 505/98 of 3 March 1998 amending (EEC) No 1274/91 introducing detailed rules for implementing Council Regulation (EEC) No 1907/90 on certain marketing standards for eggs
- Council Regulation (EC) No 5/2001 of 19 December 2000 amending Regulation (EEC) No 1907/90 on certain marketing standards for eggs
- Commission Regulation (EC) No 1651/2001 of 14 August 2001 amending Regulation (EEC) No 1274/91 introducing detailed rules for implementing Council Regulation (EEC) No 1907/90 on certain marketing standards for eggs

Wild Animals

Wild birds

- Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds
- Council Directive 94/24/EC of 8 June 1994 amending Annex II to Directive 79/409/EEC on the conservation of wild birds
- Council Directive 97/49/EC of 29 July 1997 amending Council Directive 79/409/EEC on the conservation of wild birds

Habitats

- Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora
- Council Directive 97/62/EC of 27 October 1997 adapting to technical and scientific progress Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

Exotic animals

- Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein
- Commission Regulation (EC) No 2724/2000 of 30 November 2000 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein
- Commission Regulation (EC) No 1808/2001 of 30 August 2001 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of wild fauna and flora by regulating trade therein
- Commission Regulation (EC) No 1579/2001 of 1 August 2001 amending Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein
- Commission Regulation (EC) No 2087/2001 of 24 October 2001 suspending the introduction into the Community of specimens of certain species of wild fauna and flora
- Commission Decision 2000/666/EC of 16 October 2000 laying down the animal health requirements and the veterinary certification for the import of birds, other than poultry and the conditions for quarantine
- Commission Decision 2001/383/EC of 3 May 2001 amending Decision 2000/666/EC laying down the health requirements and veterinary certification for the import of birds other than poultry and the conditions for quarantine

Zoos

- Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos

Leghold traps

- 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 methods which do not meet international trapping standards
- Commission Regulation (EC) No 35/97 of 10 January 1997 laying down provisions on the certification of pelts and goods covered by Council Regulation (EEC) No 3254/91
- Council Decision 97/602/EC of 22 July 1997 concerning the list referred to in the second subparagraph of Article 3 (1) of Regulation (EEC) No 3254/91 and in Article 1 (1) (a) of Commission Regulation (EC) No 35/97

Marine wildlife

- Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived there from
- Council Directive 85/444/EEC of 27 September 1985 amending Council Directive 83/129/EEC concerning the importation into Member States of skins of certain seal pups and products derived there from

- Council Directive 89/370/EEC of 8 June 1989 amending Council Directive 83/129/EEC concerning the importation into Member States of skins of certain seal pups and products derived there from

Fisheries

- Council Regulation (EEC) No 345/92 of 27 January 1992 amending for the eleventh time Regulation (EEC) 3094/86 laying down certain technical measures for the conservation of fishery resources
- Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources

Laboratory Animals

- Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes
- Commission Decision 90/67/EEC of 9 February 1990 setting up an Advisory Committee on the Protection of Animals Used for Experimental and Other Scientific Purposes
- Council Directive 93/35/EEC of 14 June 1993 amending for the sixth time Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products
- Commission Directive 97/18/EC of 17 April 1997 postponing the date after which animal tests are prohibited for ingredients or combinations of ingredients of cosmetic products
- Commission Directive 2000/41/EC of 19 June 2000 postponing for a second time the date after which animal tests are prohibited for ingredients or combinations of ingredients of cosmetic products
- Council Decision 1999/575/EC of 23 March 1998 concerning the conclusion by the Community of the European Convention for the protection of vertebrate animals used for experimental and other scientific purposes
- Commission Directive 1999/11/EC of 8 March 1999 adapting to technical progress the principles of good laboratory practice as specified in Council Directive 87/18/EEC on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances
- Commission Directive 1999/12/EC of 8 March 1999 adapting to technical progress for the second time the Annex to Council Directive 88/320/EEC on the inspection and verification of good laboratory practice

Annex b. Protocol No 33 on the Welfare and Protection of Animals

“THE HIGH CONTRACTING PARTIES

DESIRING to ensure improved protection of animals and respect for the welfare of animals as sentient beings,

HAVE AGREED ON the following provisions, which are attached to the Treaty establishing the European Community:

In formulating and implementing the Community’s policies on agriculture, transport, the internal market and research, the Community and the Member States shall pay full regard to the welfare of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.”
