

Bruxelles, le 17.03.2010
D(2010)152

Dr Lucas, MEP
European Parliament
ASP 8G103
Rue Wiertz, 60
B-1047 Brussels

Dear Dr Lucas, *Dear Caroline,*

I refer to your letter of 29 October 2009 to former Commissioner Fischer Boel concerning the alleged use of indiscriminate and inhumane snares in the United Kingdom, especially in the context of the protection of the Badger *Meles meles*, which is a protected species under the Berne Convention.

Council Directive 92/43/EEC on the conservation of natural habitat and of wild fauna and flora (the 'Habitats Directive') is the main piece of EU nature legislation which gives effect to the objectives of the Berne Convention on the conservation of European wildlife and natural habitats. However, the badger has not been identified as a species of EU conservation concern under the Habitats Directive and therefore, as you have recognised, the provisions of this Directive do not apply to it.

The European Union and its Member States are contracting parties to the Bern Convention on the conservation of European wildlife and natural habitats and the badger is listed in Appendix III to this Convention as a protected fauna species. The species is therefore subject to the provisions of Article 8 of the Convention in relation to prohibition of the use of all indiscriminate means of capture and killing capable of causing local disappearance of, or serious disturbance to, populations of the species, in particular, the means listed in Appendix IV, which includes snares. There is a derogations system under Article 9 of the Convention to this provision in cases where there are no satisfactory solutions.

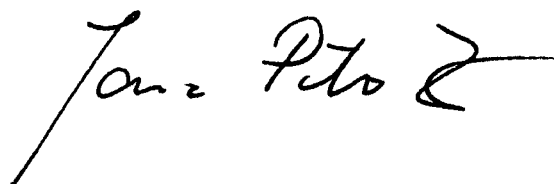
The Standing Committee of the Berne Convention meets annually to discuss the implementation of the Convention, including examining of cases of non-compliance. In the past the issue of controlling badger populations to prevent the spread of Bovine Tuberculosis has been the subject of investigations in relation to the United Kingdom and Ireland. The Commission is not aware of any continuing investigations by the Convention in relation to the protection of the badger in these countries. The Commission is also not aware of this problem in Belgium, France or Spain.

There may be relevant jurisprudence to this matter arising from a ruling of the Court of Justice concerning Spain (Case C-221/04). This related to the decision of the local authorities in Castilla y Leon to authorise snares to catch foxes. The allegation was that this was in breach of Article 12 of the Habitats Directive because of indirect effects on otters. Here the Court found that the permit in question related to fox hunting and was not intended to allow the capture of otters.

The court also found that the presence of otters in the area concerned had not been formally proven. The Court therefore concluded that the Commission had failed to establish that the resulting capture/killing of otters was a deliberate result of these permits.

I draw this judgment to your attention since it makes clear that the Commission would need to have evidence that in the areas concerned the relevant national authorities are aware of the presence of badgers and of the dangers that the snares pose, but are allowing this nevertheless. If such evidence is available and it can be demonstrated that the relevant provisions of the Berne Convention have not been implemented by a Member State the Commission would be in a position to investigate the matter further.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Janz Peto" followed by a stylized flourish.