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Member of the European Commission

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REGERINGSKANSLIET	
Miljödepartementet	
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Dear Andreas,

Subject: The wolf policy in Sweden

There have been many exchanges recently on this issue between the Commission and Sweden, and I think that it would be useful to take stock of where we are, and what is necessary to ensure compliance with EU law.

I believe we both agree on the need for conservation of the fragile Swedish wolf population. From my side, I need to make sure that measures taken to achieve this objective comply with the EU law.

The Swedish wolf population is a small population affected by both geographic isolation and inbreeding depression. As such it may be difficult to prevent further deterioration of its genetic composition and the population remains subject to the dangers typical to small populations, such as extinction due to random occurrences. This is the reason for the strictly protected status of the wolf under Directive 92/43/EEC. All measures taken which affect the Swedish wolf must therefore be carefully considered and duly prepared before they are carried out, in order to avoid detrimental impact on this population. Directive 92/43/EEC therefore strictly prohibits hunting of the wolf, with very narrowly defined derogations. It is in this light that my services have examined the different elements of the new wolf policy and their combined consequences.

Although, based on the information exchanges between my services and the Swedish Ministry of the Environment, there are doubts as regards the Swedish wolf policy's compliance with Articles 12 and 16 of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive), I agreed not to move forward with the letter of formal notice, in order to assess the new information that the Swedish authorities provided before the Commission meeting of 23 November 2010.

This has now been done, and I must tell you that several aspects of the Swedish wolf policy still raise serious questions. The details of each point are set out in the annex to this letter. In short, the issues that are being questioned relate to:

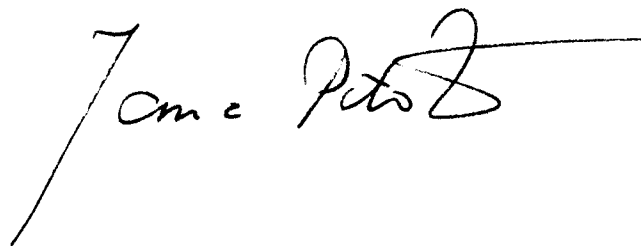
- the unfavourable conservation status for the Swedish wolf population;
- the set ceiling for the number of wolves in Sweden;
- the license hunt on a strictly protected species without fulfilling the specific conditions relevant to Article 16(1)(e) of the Habitats Directive;
- the reduced distribution area for wolves due to their allowed presence in principle only in areas outside the reindeer herding areas in the north part of Sweden (the surface of which seems to be likely to grow);
- the announced introduction of wolves to improve the genetic status which has actually not taken place and whose success furthermore is not guaranteed;
- the erroneous multi-annual practice that a repeated license hunt may lead to.

All the above issues related to the Swedish wolf policy contain elements that appear not to be compatible with the management of strictly protected species in the European Union, especially the issue of hunting of wolves under Article 16)(1)(e) when the species is not in favourable conservation status.

I would like to continue our cooperation in a constructive spirit on this issue and would appreciate a satisfactory response to the issues raised in the annex to this letter. In case licence hunting is allowed by the Swedish authorities before we receive the required additional information, accompanied by the appropriate supporting scientific material and references, I will have to propose to the Commission that a letter of formal notice is sent to the Swedish authorities, thereby launching an infringement proceeding for failure to comply with EU environmental legislation.

I am looking forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read "James Peto". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

ANNEX

Article 12.1 a) of the Habitats Directive states:

"1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting

(a) all forms of deliberate capture or killing of specimens of these species in the wild;"

Article 16.1 states

1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15 (a) and (b):

(a) in the interest of protecting wild fauna and flora and conserving natural habitats;

(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

(d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants;

(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

- *the unfavourable conservation status for the Swedish wolf population*

The basis for the concerns mentioned in the letter is that the Swedish wolf population is not in favourable conservation status in Sweden. In the report submitted under Article 17 of the Habitats Directive, Sweden has limited itself to stating that the "report is not the place to present any conclusions regarding whether or not the wolf [...] should attain a favourable conservation status in Sweden, and no figures defining the concept on the national level need to be stated." However, the Swedish authorities have in the information exchanges linked to the examination of the complaint admitted that the Swedish wolf population is not in favourable conservation status. There is therefore agreement between Sweden and the Commission on this point.

- *the set ceiling for the number of wolves in Sweden*

Sweden has set a (temporary) ceiling for the wolf population, *de facto* limiting the population to between 200 and 210 individuals. By setting a population ceiling, the development towards favourable conservation status as defined in Article 1 (i) would be effectively stopped, although the positive development towards favourable conservation status should be continuous.

- *the license hunt on a species which shall be strictly protected without fulfilling the specific conditions relevant to Article 16(1)(e) of the Habitats Directive*

Sweden has carried out a license hunt of a strictly protected species on the basis of Article 16.1 e) of the Habitats Directive.

Sweden has invoked the case-law by the Court of Justice according to which a derogation to the strict protection remains possible by way of exception provided that it is *duly established* that the derogations are not such as to worsen the unfavourable conservation status of the populations or to prevent their restoration at a favourable conservation status.¹ In addition, the derogation must fulfil the strict conditions listed in the introduction to Article 16 of the Habitats Directive as well as in its indent (e).

In the case of the Swedish license hunt the Commission is concerned that the hunting does not fulfil the strict requirements set out in the mentioned case-law and in Article 16 of the Directive.

Pursuant to Article 16(1) of the Directive, derogation from the relevant protective regimes set out by the Directive can be adopted provided that there is not other satisfactory alternative and that the derogation is not detrimental to the conservations status in the natural range of the protected species.

In addition, the requirements under Article 16.1 e) require that the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities takes place under strictly supervised conditions, on a selective basis and to a limited extent. The Swedish authorities' attention is drawn to the following conditions which appear not to be fulfilled.

No other satisfactory alternative: Basing itself on the document Guidelines for Population Level Management Plans for Large Carnivores² Sweden has stated that the aim for the hunting was to increase local acceptance for the wolf presence in the local population and that this is allowed according to the Guidelines.

¹ Judgment in case C-342/05, Commission/Finland, paragraph 29. Italics added.

² Guidelines for Population Level Management Plans for Large Carnivores, page 22. Available on the following link:
http://ec.europa.eu/environment/nature/conservation/species/carnivores/docs/guidelines_final2008.pdf

While respecting the subsidiarity principle on this issue, the Commission considers that there are a number of other means of reaching public acceptance than license hunting of a strictly protected species, such as investments in awareness raising and technical assistance and support to specific stakeholders (e.g. livestock breeders). The local and regional communities can be further involved in the management of the species, through strengthened communication, better compensation schemes and preventive measures. The hunting and other decisions related to the wolf could be opened for appeal to environmental NGOs and other parties interested in wildlife management. The acceptance for the wolf by local people could have been increased also by targeting the hunting further (for instance to areas with a denser wolf population or with particular controversy linked to the species). In addition, (potentially) damage-causing wolves can be eliminated on the basis of the derogation possibility in Article 16.1 b). The Commission would also like to draw attention to a disproportionate number of wolves killed under the derogation based on Art. 16.1 e) as compared to the derogation based on Article 16.1 b), 28 wolves against 6. This puts in question the reasoning of your authorities that the hunt is organised in order to get public acceptance. It therefore appears that there were other satisfactory alternatives to license hunting for increasing local acceptance of the wolf.

Not detrimental to the conservations status in the natural range of the protected species:
As stated above, Sweden and the Commission agree that the Swedish wolf population is not in favourable conservation status.

Sweden has presented scientific material which allegedly shows that the hunt has not negatively affected the wolf population since the number of individuals is on the same level before and after the hunt. However, that material does not appear to take into consideration the genetic differences between inbred wolves and (first generation) offspring from wolves of eastern origin which need particular protection from a possible future hunting. Also the figures presented by Sweden according to which the inbreeding coefficient has been lowered due to the hunt (i.e. showing that the hunting has improved the genetic status) is neither accompanied by information on the calculation method that was used to reach the presented numbers nor by the data that served as a basis for the calculation. The Commission was therefore not put in a position to verify the data submitted by Sweden. It has thus not been "duly established", as required in the case-law by the Court of Justice, that that the derogations are not such as to worsen the unfavourable conservation status of the populations or to prevent their restoration at a favourable conservation status.

Natural range: Sweden has limited the distribution area to the parts of the country which are not so-called all year-round areas in the reindeer herding area. Such limitations are, as a management measure, allowed under the Habitats Directive provided that this is indicated in Annex V of the Directive. For Sweden, there are no such indications in Annex V. Also, on the basis of information submitted by Sweden, the reindeer herding area covers up to 54% of the Swedish territory and its borders have not yet been definitely set (they depend on the reindeer herders' customary right to herd there and some areas are still subject to dispute). It can therefore not be excluded that the wolves' range can still decrease following the outcome of the disputes.

Also, in so far as the intention is to limit the presence of wolves in this area, it seems inconsistent with the part of the wolf policy that foresees genetic improvement by means of natural migration of wolves of eastern origin (from the Finnish-Russian population) since the area of restricted presence is an area across which natural migration would have to occur.

Selective basis: Sweden considers that the hunt was carried out on a "selective basis" since the hunt was limited to five counties and the territories of genetically valuable individuals (i.e. wolves that have immigrated from Finland to Sweden) and their first generation descendants were exempted from the hunt. Sweden has presented scientific material according to which all wolves, except the first generation descendants to the immigrated wolves, have the similar (low) genetic value.³ Sweden has stated it was therefore not necessary to further target the wolf hunt.

The Commission considers that the hunt was not "selective" as required in the Directive. It was allowed to hunt all the packs, except the expressly exempted ones. Accordingly, the hunt was not, for instance, targeted at certain packs or groups of packs in areas where the wolf presence is particularly controversial. In addition, all the first generation descendants from immigrated wolves were not exempted from the hunt, in particular those who had left the territories of the immigrant parent.

Limited extent and limited numbers: It would appear that the Swedish wolf population, before the license hunting, amounted to approximately 182-217 individuals. A hunting bag of 28 individuals thus constitutes up to 15, 3% of the population. Furthermore, wolves are the victims of other mortality as well, such as protective and illegal hunting, traffic accidents and natural mortality.

Sweden has stated that license hunt was carried out "to a limited extent" and in "limited numbers" since the number of wolves to be taken during the hunt was set in advance in advance by Naturvårdsverket to 27 wolves. The Commission disagrees with this assessment. Killing up to 15% of the population of a strictly protected species in a license hunt cannot fulfil the requirements of taking "to a limited extent", in particular since statistics provided by Sweden in its reply to the EU Pilot request for the first half of 2010 as well as the recently submitted data show that the wolf mortality due to the license hunt is by far the major cause of mortality for wolves in Sweden during that period.⁴

³ Liberg O., Sand H., Chapron G., Forslund P., Ahlqvist A. & Ängsteg I. Reglerande beskattning av den svenska vargstammen samt flyttning av varg inom landet för att förstärka vargstammens genetiska situation. Page 13. En rapport till Naturvårdsverket från SKANDULV. Annex 11 to Sweden's reply to the EU Pilot request.

⁴ It follows from the statistics provided by Sweden in the reply to the EU Pilot request that, during the period 1 January 2010 and 30 June 2010 in all 45 wolves have been confirmed killed. 28 of these were killed during the license hunt. In comparison, for instance, during the same period 6 wolves were killed due to protective hunting, compared to 9 wolves shot on the same ground during the whole of 2009. The corresponding numbers for 2008 and 2007 are 12 and 6.

The derogation ground in Article 16.1(e) is the last of the derogation grounds listed in Article 16.1 and it is the only one which is limited as to the numbers that should be taken. This shows that the ground is intended to be used for the taking of a restrictive number of specimens and is also thus interpreted in the Large carnivores guidelines.

By way of comparison, “small numbers” in Article 9 of the Birds Directive has been interpreted by the Court of Justice as meaning 1% of the total annual mortality rate.⁵

Moreover, the Commission would like to underline that the Large carnivore guidelines state that the derogation ground in Article 16.1(e) "could be used to justify a carefully regulated harvest of some animals" but it needs to respect the strict conditions laid down in Article 16.1(e).

- *the introduction of wolves to improve the genetic status which have not yet taken place and whose success is not guaranteed*

In order to improve the genetic status of the Swedish wolf population, Sweden has decided to introduce wolves with diversified genetics to the Swedish wolf population. The currently most likely alternatives on how to do this appear to introduce either wolf pups from Nordic zoos to litters in the wild or wolves (pups of adults) from Finland. The introduction was, according to the adopted policy, to take place in 2010. The introductions have not yet taken place and it is currently unknown when exactly they will take place, although Sweden indicates that it will be possible to start and carry out the introductions in 2011.

- *the erroneous multi-annual practice that a repeated license hunt may lead to*

Finally, it can be deduced from the adopted wolf policy that license hunting is likely to take place in the coming year(s), at least in 2011. This conclusion can be drawn from the decision by the Parliament to limit the wolf population to 210 individuals and also from publicly available information on the website of the Swedish Nature Protection Agency.⁶ The Commission is concerned that, at the time when the hunting for 2011 will have to be decided, it will be based on insufficient information as to how the license hunting in 2010 has affected the wolf population, not only in numbers but also as regards its genetic status.

Sweden has presented scientific material according to which, in its view, the hunt has not negatively affected the wolf population since the number of individuals is on the same level before and after the hunt. However, that material does not appear to take into consideration the genetic differences between inbred wolves and (first generation) offspring from wolves of eastern origin which need particular protection from a possible future hunting. Also the figures presented by Sweden according to which the inbreeding coefficient has been lowered due to the hunt (i.e. allegedly showing that the hunting has

⁵ See case C-344/03, Commission/Finland, paragraph 53.

⁶ <http://www.naturvardsverket.se/sv/Arbete-med-naturvard/Nyheter/Nya-beslut-om-jakt-pa-rovdjur/>

improved the genetic status) is neither accompanied by information on the calculation method that was used to reach the presented numbers nor by the data that served as a basis for the calculation. The Commission was therefore not put in a position to verify the data submitted by Sweden.