



EUROPEAN COMMISSION
HEALTH AND CONSUMERS DIRECTORATE-GENERAL

General Affairs
Legal affairs

Brussels,
SANCO A2/GG/CP/kva(2012)1799080

Dr Joanna Swaybe
EU Office,
5 Underwood Street
N1 7LY London
UNITED KINGDOM
E-mail: jswabe@hsi.org

Dear Dr Swaybe,

Subject: Council Directive 98/58/EC of 20 July 1998 *concerning the protection of animals kept for farming purposes* and Recommendation concerning *Muscovy ducks (Cairina moschata) and hybrids of Muscovy and domestic ducks (Anas platyrhynchos)* of the Standing Committee of the European Convention for the protection of animals kept for farming purposes

Reference: Your letter of 17 October 2012, our letters of 25 October 2012 (CHAP(2012)02977 and CHAP(2012)02978)

Thank you for your letter to former Commissioner Dalli of 17 October 2012 which I have been asked to reply to. In your letter you pursue a case for the five organisations Compassion in World Farming (CIWF), Four Paws International, Humane Society International (HSI), L214, and World Society for the Protection of Animals (WSPA). You complain that France and Hungary do not comply with Council Directive 98/58 EC *concerning the protection of animals kept for farming purposes* (in the following: the Directive)¹ and the Recommendation concerning *Muscovy ducks (Cairina moschata) and hybrids of Muscovy and domestic ducks (Anas platyrhynchos)* (in the following: the Recommendation)² adopted on 22 June 1999 by the Standing Committee of the European Convention for the protection of animals kept for farming purposes. As a result you ask us to start infringement proceedings against both Member States according to Article 258 of the Treaty on the Functioning of the European Union (TFEU).

We have examined your complaint and categorise them as follows:

1. In your letter you allege specifically that individual cages used in the production of foie gras in both France and Hungary fail to comply with the minimum standards required by the Directive. You also allege that these individual cages do not meet the requirements laid down in Article 10, Paragraph 7 of the Recommendation.

¹ The legislation of the European Union is available for free in 23 official languages at <http://eur-lex.europa.eu/de/index.htm>

² Council of Europe documents concerning farming, biological safety and use of animals are available for free in English and French at http://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/Farming/

You point out that the prohibition of individual cages for force-feeding of ducks is effective and binding as of 1 January 2011 in the EU, including in France and Hungary. In this context you refer to a letter you have received in which you suggest that the French Minister of Agriculture doubts the binding character of the Recommendation.

Furthermore, you refer to newly established foie gras producing farms set up in France and Hungary after 2004 and where ducks are kept in individual cages.

You have also alleged that France and the French foie gras industry announced publicly a wrong deadline for prohibiting individual cages (2016 instead of 2011).

In addition, you criticize France for continuing to give state aid to this sector despite its failure to ensure that foie gras producers comply with current EU animal welfare standards.

2. You allege further that force-feeding contravenes both sentences of paragraph 14 of the Annex to Council Directive 98/58/EC and is "*detrimental to the welfare of the birds*"³. Paragraph 14 reads:

"Animals must be fed a wholesome diet which is appropriate to their age and species and which is fed to them in sufficient quantity to maintain them in good health and satisfy their nutritional needs. No animal shall be provided with food or liquid in a manner, nor shall such food or liquid contain any substance, which may cause unnecessary suffering or injury."

With respect to Article 13 TFEU, you further suggest that the Commission should favour an interpretation of the aforementioned legislation "*that is supportive of good animal welfare rather than one that will lead to an adverse impact on animal welfare*".

With regard to France, we reiterate what we have indicated to the animal welfare organisation "L214" in our closure letter of 3 June 2010 on case 2009/4427 that French authorities have not contested that individual cages are not compliant with the relevant legislation.

Please note that we have in 2010 agreed with French authorities that they would ensure transition to a new cage system till 2015. In the spirit of sincere co-operation enshrined in the Treaties we cannot change our stance unless the agreed actions are not implemented, i.e. no provisions are made in France to implement and enforce the ban on individual cages.

Please be assured that the Commission is aware of the impact of force feeding may have on the welfare of animals and is encouraging actively Member States to comply with EU requirements.

As indicated in Article 13 TFEU⁴ animal welfare is not as such an objective of the Treaties but a legitimate consideration that has to be balanced with other particular policy objectives. The aspects of customs and cultural traditions of Member States are explicitly named as assessment criteria in Article 13 TFEU. In addition, we also have to consider the objective of common agricultural policies and in particular "*the need to effect the*

³ quote from the conclusion of the Report of the Scientific Committee on Animal Health and Animal Welfare (SCAHAW), adopted 16 December 1998.

⁴ Article 13 TFEU reads (emphasis added): "*In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements 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.*"

appropriate adjustments by degrees", as stated in Article 39 Paragraph 2 lit. b) TFEU. Article 39 Paragraph 2 TFEU reads (emphasis added):

"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."

Regarding your complaint, we will enquire with France on the actual status of French foie gras production in individual cages and examine the practice of force-feeding. We will also continue to liaise with the responsible unit in the Directorate General for Agriculture on the issue of state aids.

We will contact Hungary on information about the Hungarian foie gras production.

We will keep you informed once we have received statements from France and Hungary on the issues mentioned above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Demetris Vryonides', is written over a horizontal line.

Demetris Vryonides
Head of Unit