JUDGMENT OF THE COURT
19 March 1998 *

In Case C-1/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice (England and Wales), Queen's Bench Division, for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Minister of Agriculture, Fisheries and Food,

ex parte **Compassion in World Farming Limited,**

on the interpretation of Articles 34 and 36 of the EC Treaty and the validity of Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves (OJ 1991 L 340, p. 28),

* Language of the case: English.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm, M. Wathelet (Presidents of Chambers), G. F. Mancini (Rapporteur), J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann and L. Sevón, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Compassion in World Farming Limited, by G. Barling QC and P. Duffy, instructed by M. Rose, Solicitor,

— the United Kingdom Government, by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, R. Plender QC and S. Masters, Barrister,

— the French Government, by C. de Salins, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and F. Pascal, Central Administrative Attaché in the same Directorate, acting as Agents,

— the Council of the European Union, by M. Sims-Robertson, Legal Adviser, acting as Agent,

— the Commission of the European Communities, by R. Wainwright, Principal Legal Adviser, and H. Støvlbæk, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Compassion in World Farming Limited, the United Kingdom Government, the French Government, the Council and the Commission at the hearing on 27 May 1997,

after hearing the Opinion of the Advocate General at the sitting on 15 July 1997,

gives the following

Judgment

1 By order of 12 December 1995, received at the Court on 2 January 1996, the High Court of Justice (England and Wales), Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 34 and 36 of the EC Treaty and on the validity of Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves (OJ 1991 L 340, p. 28, hereinafter 'the Directive').

2 Those questions have been raised in proceedings brought by the Royal Society for the Prevention of Cruelty to Animals (hereinafter 'the RSPCA') and Compassion in World Farming Limited (hereinafter 'CIWF') against the Minister of Agriculture, Fisheries and Food (hereinafter 'the Minister') challenging the Minister's refusal to restrict, on the basis of Article 36 of the Treaty, the export of veal calves to other Member States.

International law

European Convention on the Protection of Animals Kept for Farming Purposes

3 The European Convention on the Protection of Animals kept for Farming Purposes (hereinafter 'the Convention') was adopted on 10 March 1976 within the framework of the Council of Europe. It was approved on behalf of the European Economic Community by virtue of Article 1 of Council Decision 78/923/EEC of 19 June 1978 (OJ 1978 L 323, p. 12).

4 Article 3 of the Convention provides: 'Animals shall be housed and provided with food, water and care in a manner which — having regard to their species and to their degree of development, adaptation and domestication — is appropriate to their physiological and ethological needs in accordance with established experience and scientific knowledge'.

5 Article 4(1) provides that the freedom of movement appropriate to an animal, having regard to its species and in accordance with established experience and scientific knowledge, is not to be restricted in such a manner as to cause it unnecessary suffering or injury. Under Article 4(2), where an animal is continuously or regularly tethered or confined, it is to be given the space appropriate to its physiological and ethological needs in accordance with established experience and scientific knowledge.

6 Pursuant to Article 9(1), the Standing Committee is to be responsible for the elaboration and adoption of recommendations to the Contracting Parties for the implementation of the principles set out in the Convention.

Recommendation concerning Cattle

7 The 1988 Recommendation concerning Cattle (hereinafter 'the Recommendation') was adopted by the Standing Committee on 21 October 1988 and, by virtue of Article 1(1) thereof, applies to all cattle kept for farming purposes.

8 The first subparagraph of Article 6(3) of the Recommendation states that the construction of accommodation for tethered cattle and cattle in pens should at all times allow them sufficient freedom of movement to be able to groom themselves without difficulty and sufficient room to lie down, to rest, to adopt sleeping postures and freely to stretch their limbs and to rise.

9 Article 10 provides that all animals are to have appropriate access to adequate, nutritious, hygienic and balanced feed or wholesome liquid each day, and to adequate supplies of water of suitable quality, so as to maintain their full health and vigour and to meet their behavioural and physiological needs. Sufficient roughage should be provided daily.

10 Article 20 provides that the Recommendation is not to be directly applicable within the national law of the Contracting Parties and is to be implemented according to the method that each party considers adequate, that is to say through legislation or through administrative practice.

Appendix C to the Recommendation

11 Appendix C to the Recommendation, which lays down special provisions for calves, was adopted by the Standing Committee on 8 June 1993. Under paragraph 4 thereof, the dimensions of an individual pen or stall are to be appropriate to the size of the animal at the end of its stay in that pen or stall.

12 Paragraph 8 of Appendix C provides that the stockkeeper should ensure that the newborn calf receives sufficient colostrum from its dam or another suitable source. Calves older than two weeks are to have access to a palatable, digestible and nutritious diet containing a sufficient quantity of iron and roughage appropriate to their age, weight and biological needs in order to maintain good health and vigour and allow for normal behaviour and normal development of the rumen. All calves are to receive liquid food at least twice daily during the first four weeks and, in any case, until they are eating adequate quantities of suitable solid food.

Community law

Regulation No 805/68

13 Under Article 1 of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), that common market organisation is to comprise a price and trading system and cover, *inter alia*, live animals of the domestic bovine species.

14 The second indent of Article 22(1) of the regulation prohibits any quantitative restriction or measure having equivalent effect in the internal trade of the Community.

The Directive

15 The second indent of Article 3(1) and Article 3(4) of the Directive provide as follows:

'1. Member States shall ensure that from 1 January 1994 and for a transitional period of four years, all holdings newly built or rebuilt and/or brought into use for the first time after that date shall comply with at least the following requirements:

...

— where calves are housed in individual boxes or by tethering in stalls, the boxes or stalls shall have perforated walls and their width must be no less than 90 cm plus or minus 10%, or 0.80 times the height at the withers.

...

4. The duration of use of installations built:

— before 1 January 1994 which do not meet the requirements of paragraph 1 ... shall under no circumstances extend beyond 31 December 2003;

— during the transitional period, in accordance with paragraph 1, shall under no circumstances extend beyond 31 December 2007, unless on that date they comply with the requirements of this Directive.'

16 Article 4(1) of the Directive provides that the Member States are to ensure that the conditions for rearing calves comply with the general provisions laid down in the Annex to the Directive.

17 Under Article 11(2), from the date set in Article 11(1), namely 1 January 1994, the Member States may, in compliance with the general rules of the Treaty, maintain or apply within their territories stricter provisions for the protection of calves than those laid down in the Directive.

18 Paragraph 7 of the Annex to the Directive provides that accommodation for calves must be constructed in such a way as to allow each calf to lie down, rest, stand up and groom itself without difficulty and to see other calves.

19 Under paragraph 11 of the Annex, all calves must be provided with an appropriate diet adapted to their age, weight and behavioural and physiological needs, to promote a positive state of health and well-being. In particular, in order to ensure a positive state of health and well-being as well as a healthy growth rate and to

meet their behavioural needs, their food must include sufficient iron and, as a rule, a minimum of dried feed containing a digestible fibre.

National law

20 The veal crate system has been prohibited in the United Kingdom since 1 January 1990 under the Welfare of Calves Regulations 1987 (SI 1987 No 2021).

21 The prohibition now in force is laid down in the Welfare of Livestock Regulations (SI 1994 No 2126) and the Welfare of Livestock Regulations (Northern Ireland) (SR 1995 No 172).

Background to the main proceedings

22 According to the order for reference, in the years prior to 1995 between 500 000 and 600 000 veal calves were exported annually from the United Kingdom to other Member States. A substantial proportion of those calves were then reared in a production system called the 'veal crate system'. A veal crate is a box-like structure used to house a single veal calf.

23 The national court states that the rearing conditions under that system do not meet the requirements relating to the minimum width of veal crates and the composition of veal calves' diets set out in the Convention and the Recommendation. When the calves are one or two weeks old, they are placed in individual box-like structures, where they remain until they are removed for slaughter approximately five months later.

24 However, it is not disputed that the rearing conditions meet the requirements of the Directive, having regard to the temporary derogations authorised by it.

25 It is also apparent from the order for reference that the export of live calves to other Member States using the veal crate system is a topic of considerable public concern in the United Kingdom.

26 The RSPCA and CIWF are animal welfare bodies with a particular interest in the prevention of cruelty to farm animals. They asked the Minister to prohibit or restrict the export of calves for rearing in veal crates. They contended that the United Kingdom Government had power under Community law to restrict the export of veal calves to other Member States where the system described above was likely to be used, contrary to the standards in force in the United Kingdom and the international standards laid down by the Convention to which all the Member States and the Community had agreed to adhere.

27 On 22 May 1995 the Minister replied to the RSPCA and CIWF that the United Kingdom had no power to restrict the export of veal calves and that in any event, for policy reasons, he was not minded to impose a ban even if he had the power to do so.

28 The RSPCA and CIWF therefore applied to the High Court for judicial review. The RSPCA subsequently ceased to be a party to those proceedings pursuant to an order made by the High Court on 8 May 1997 which was notified to the Court of Justice on 21 May 1997.

Questions referred for a preliminary ruling

29 In those judicial review proceedings the High Court decided that, in order to resolve the dispute between the parties, it was necessary to stay the proceedings and to refer the following two questions to the Court of Justice for a preliminary ruling:

'Where: -

(a) all of the Member States have become parties to the European Convention for the Protection of Animals kept for Farming Purposes 1976 ("the Convention") and the Convention has been approved by EC Decision 78/923/EEC of 19 June 1978 (OJ 1978 L 323, p. 12);

(b) the 1988 Recommendation concerning Cattle ("the Recommendation") has been adopted by the Standing Committee established pursuant to the Convention and has become effective under the terms of the Convention;

(c) the standards laid down by and pursuant to the Convention contain stipulations as to the minimum width of veal crates and the composition of veal calves' diets;

(d) Council Directive 91/629/EEC lays down obligatory minimum standards for the protection of calves which are lower than the standards laid down by and pursuant to the Convention in certain respects, including the width of veal crates and the composition of calves' diets;

(e) the Directive permits Member States to maintain or apply within their territories stricter provisions for the protection of calves than those laid down in this Directive;

(f) veal calves are exported from a Member State ("Member State A") to certain other Member States ("Member States B") which have implemented and/or complied with the Directive but have not implemented and/or complied with the standards indicated at paragraph (c) above although Member State A has implemented and complied with those standards;

(g) the export of calves to face rearing contrary to the Convention is considered to be cruel and immoral by animal welfare organisations and a considerable body of public opinion, supported by authoritative scientific veterinary opinion, in the Member State from which exports occur.

(1) In the circumstances set out above, may Member State A rely on Article 36 of the EC Treaty and, in particular, the grounds of public morality and/or public policy and/or the protection of the health or life of animals contained therein, to justify any restriction in relation to the export of live calves from Member State A with a view to avoiding the rearing of those calves in the veal crate systems in Member States B?

(2) If the effect of provisions of the Directive, if valid, would be to require the answer "no" to be given to Question (1), are those provisions valid?'

The validity of the Directive

30 By its second question, which it is appropriate to consider first, the national court asks in effect whether the Directive is invalid in so far as it is inconsistent with the Convention and the Recommendation.

31 As far as the Convention is concerned, it should first be observed that it became an integral part of the Community legal order upon its entry into force.

32 However, it is clear from the actual wording of the provisions cited in paragraphs 3 to 6 of this judgment that the Contracting Parties have considerable discretion in the choice of the appropriate methods for implementing the Convention.

33 As the Advocate General observes in point 132 of his Opinion, the concern expressed in the Convention to make the Contracting Parties aware of the need to maintain rearing conditions which respect the well-being of animals in vital areas is not followed up by the definition of standards non-observance of which could affect the validity of the Directive.

34 It is clear from the very wording of those provisions that they are indicative only and are limited to providing for the elaboration of recommendations to the Contracting Parties with a view to application of the principles which they set out.

35 As far as the Recommendation is concerned, Article 20 thereof expressly provides that the Recommendation is not directly applicable in the national law of the Contracting Parties and that it is to be implemented according to the method that each party considers adequate, that is to say through legislation or through administrative practice.

36 Secondly, even if the provisions of the Recommendation and of its appendix relating to housing for cattle and their diet may be more precise than those of the Convention, a document of that kind nevertheless does not contain legally binding obligations for the Contracting Parties and therefore for the Community.

37 The answer to the second question must therefore be that consideration of the Directive has disclosed no factor of such a kind as to affect its validity.

The possibility of relying on Article 36 of the Treaty

38 By its first question, the national court asks whether a Member State which has implemented the Recommendation, drawn up to apply the principles of the Convention, may rely on Article 36 of the Treaty and, in particular, on the grounds of public morality, public policy or the protection of the health or life of animals referred to in that provision in order to justify restrictions on the export of live calves with a view to preventing them from being reared in the veal crate systems used in other Member States which have implemented the Directive but which do not apply the Recommendation.

39 First of all, a ban or restriction on the export of live calves from one Member State to other Member States constitutes a quantitative restriction on exports contrary to Article 34 of the Treaty.

40 CIWF does not dispute this but maintains that such a restriction would be justified having regard to Article 36 of the Treaty and thus compatible with Community law.

41 It should be noted at the outset that, where there is a regulation on the common organisation of the market in a given sector, the Member States are under an obligation to refrain from taking any measures which might undermine or create exceptions to it (see, in particular, Case 148/85 *Direction Générale des Impôts* v *Forest* [1986] ECR 3449, paragraph 14). Rules which interfere with the proper functioning of a common organisation of the market are also incompatible with such common organisation, even if the matter in question has not been exhaustively regulated by it (see, to that effect, Case 218/85 *Cerafel* v *Le Campion* [1986] ECR 3513, paragraph 13, and Case C-27/96 *Danisco Sugar* v *Allmänna Ombudet* [1997] ECR I-6653, paragraph 24).

42 Under Article 1 of Regulation No 805/68, live animals of the domestic bovine species are covered by a common organisation of the market and, in accordance with the second indent of Article 22(1) thereof, they must be able to move freely between the Member States since quantitative restrictions and measures having equivalent effect are prohibited in the internal trade of the Community.

43 Furthermore, the Court has held that, in particular, any provisions or national practices which might alter the pattern of imports or exports by preventing producers from buying and selling freely within the State in which they are

established, or in any other Member State, on the conditions laid down by Community rules are incompatible with the principles of a common organisation of the market (Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347, paragraph 58).

44 In this case, a ban on the export of calves would, as the United Kingdom Government has pointed out, affect the structure of the market and, in particular, would have a considerable impact on the formation of market prices, which would interfere with the proper functioning of the common organisation of the market.

45 It is true that the Court ruled in Joined Cases 141/81, 142/81 and 143/81 *Holdijk and Others* [1982] ECR 1299 that Community law, as it then stood, did not prevent a Member State from maintaining or introducing unilateral rules concerning the standards which had to be observed in the installation of enclosures for fatting calves with a view to protecting the animals and which applied without distinction to calves intended for the national market and to calves intended for export.

46 However, that judgment related to measures which a Member State applied only within its own territory. Furthermore, it was delivered before the Community legislature had adopted the Directive and was expressly founded on the absence, in the provisions governing the common organisation of the market, of any provision for the protection of animals kept for farming purposes (*Holdijk and Others*, paragraph 13).

47 Next, while Article 36 of the Treaty allows the maintenance of restrictions on the free movement of goods, justified on grounds of public morality, public policy or the protection of the health and life of animals, which constitute fundamental requirements recognised by Community law, recourse to Article 36 is nevertheless no longer possible where Community directives provide for harmonisation of the measures necessary to achieve the specific objective which would be furthered by

reliance upon this provision (see, in particular, Case C-5/94 *The Queen* v *MAFF* ex parte *Hedley Lomas* [1996] ECR I-2553, paragraph 18). In such a case, the appropriate checks must be carried out and protective measures adopted within the framework outlined by the harmonising directive (see Case C-323/93 *Centre d'Insémination de la Crespelle* v *Coopérative de la Mayenne* [1994] ECR I-5077, paragraph 31). In that regard, the Member States must rely on mutual trust to carry out checks on their respective territories (see, most recently, *The Queen* v *MAFF* ex parte *Hedley Lomas*, paragraph 19).

48 It must therefore be established whether the Directive provides for the harmonisation of the measures necessary for the protection of the health of calves, which would be the primary objective of reliance upon Article 36.

49 As the Court has held in previous cases, in interpreting provisions of Community law it is necessary to consider not only their wording but also the context in which they occur and the objectives of the rules of which they are part (see, in particular, Case C-128/94 *Hönig* v *Stadt Stockach* [1995] ECR I-3389, paragraph 9).

50 As regards, first, the wording of the Directive, Article 3(1) lays down standards relating to the minimum housing space for calves. In addition, under Article 4, the Member States are to ensure that the conditions for rearing calves comply with the general provisions laid down in the Annex to the Directive, including the minimum standards regarding their housing and diet laid down in paragraphs 7 and 11.

51 Next, as regards the context of the Directive, it is apparent from the first two recitals in its preamble that the provisions containing minimum requirements for the protection of calves were adopted on account of a resolution of the European Parliament of 20 February 1987 on animal welfare policy (OJ 1987 C 76, p. 185) and of Decision 78/923.

52 Finally, as regards the objective of the Directive, it is apparent from the fifth and sixth recitals in its preamble that it is guided by the need, first, to eliminate the differences which, by distorting conditions of competition, 'interfere with the smooth running of the organisation of the common market in calves and calf products' and, second, 'to establish common minimum standards for the protection of rearing calves or calves for fattening in order to ensure rational development of production'. In addition, the seventh recital indicates that the purpose of the interim period is simply to enable the Commission actively to pursue scientific research into the most efficient stock-farming system or systems from the perspective of the well-being of calves.

53 The Community legislature thus sought to reconcile the interests of animal protection and of the smooth functioning of the organisation of the common market in calves and derived products.

54 Thus, it follows from the wording of the Directive, its context and the objectives which it pursues that it lays down minimum common standards for the protection of calves that are confined for the purposes of rearing and fattening.

55 CIWF asserts, however, that the broad discretion accorded to the Member States to grant derogations for very long periods, in accordance with Article 3(4) of the Directive, shows that the Directive is not a full harmonisation measure excluding recourse to Article 36.

56 As to that, the Court holds that in adopting the Directive the Community legislature laid down exhaustively common minimum standards as described above.

57 Furthermore, the Member States are required to implement those standards within their territory, in accordance with a precise timetable, in order to ensure the well-being of veal calves. The temporary derogations allowed are themselves laid down exhaustively in the Directive.

58 It cannot be argued that, under Article 11(2) of the Directive, the Member States may, in compliance with the general rules of the Treaty, maintain or apply within their territories stricter provisions for the protection of calves than those laid down in the Directive.

59 It is indeed clear from the wording of Article 11(2) of the Directive, first, that the measures permitted on that basis, which are limited to strictly territorial boundaries, may relate only to cattle-farms falling within the jurisdiction of the Member State in question and, second, that such measures may be adopted only in compliance with the general rules of the Treaty.

60 As the United Kingdom Government has correctly observed, it follows from the express terms of that provision that the Member States are not entitled to adopt stricter measures for the protection of calves other than provisions applying within their own territory.

61 In adopting the Welfare of Livestock Regulations 1994 and the Welfare of Livestock Regulations (Northern Ireland) 1995, the United Kingdom has, in accordance with Article 11(2) of the Directive, applied within its territory stricter provisions than those laid down in the Directive.

62 However, a ban on exports imposed on account of conditions prevailing in other Member States which have in fact implemented the Directive would fall outside the derogation allowed by Article 11(2). A ban on exports such as that called for by CIWF would strike at the harmonisation achieved by the Directive.

63 In those circumstances, the fact that the Member States are authorised to adopt within their own territory protective measures stricter than those laid down in a directive does not mean that the Directive has not exhaustively regulated the powers of the Member States in the area of the protection of veal calves (see, to that effect, Case C-169/89 *Van den Burg* [1990] ECR I-2143, paragraphs 9 and 12).

64 It follows that a Member State cannot rely on Article 36 of the Treaty in order to restrict the export of calves to other Member States for reasons relating to the protection of the health of animals, which constitutes the specific objective of the harmonisation undertaken by the Directive.

65 It remains to be examined whether a Member State may rely on Article 36 in order to restrict the export of calves to other Member States for reasons relating to the protection of public policy or public morality, which are not the subject of the Directive.

66 CIWF supports recourse to those justifications simply by drawing attention to the views and reactions of a section of national public opinion which believes that the system put in place by the Directive does not adequately protect animal health. So, in reality, public policy and public morality are not being invoked as a separate justification but are an aspect of the justification relating to the protection of animal health, which is the subject of the harmonising directive.

67 In any event, a Member State cannot rely on the views or the behaviour of a section of national public opinion, as CIWF maintains, in order unilaterally to challenge a harmonising measure adopted by the Community institutions.

68 Therefore, reliance on Article 36 for the protection of public order or public morality in circumstances such as those involved in the instant case is also ruled out.

69 It follows that a Member State which has implemented the Recommendation drawn up to apply the principles of the Convention cannot rely on Article 36 of the Treaty and, in particular, on the grounds of public morality, public policy or the protection of the health or life of animals laid down in that article, in order to justify restrictions on the export of live calves with a view to preventing those calves from being reared in the veal crate systems used in other Member States which have implemented the Directive but which do not apply that recommendation.

Costs

70 The costs incurred by the French and United Kingdom Governments, by the Council of the European Union and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the High Court of Justice (England and Wales), Queen's Bench Division, by order of 12 December 1995, hereby rules:

1. **Consideration of Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves has disclosed no factor of such a kind as to affect its validity.**

2. **A Member State which has implemented the 1988 Recommendation concerning Cattle, drawn up to apply the principles of the European Convention on the Protection of Animals kept for Farming Purposes, cannot rely on Article 36 of the EC Treaty and, in particular, on the grounds of public morality, public policy or the protection of the health or life of animals laid down in that article, in order to justify restrictions on the export of live calves with a view to preventing those calves from being reared in the veal crate systems used in other Member States which have implemented Directive 91/629 but which do not apply that recommendation.**

Rodríguez Iglesias Gulmann Ragnemalm

Wathelet Mancini Moitinho de Almeida

Kapteyn Murray Edward Puissochet

Hirsch Jann Sevón

Delivered in open court in Luxembourg on 19 March 1998.

R. Grass G. C. Rodríguez Iglesias

Registrar President