

20.03.2006 D/000692

Ms Caroline Lucas MEP
Member of the European Parliament
European Parliament
Rue Wiertz
B-1047 Bruxelles

Dear Ms Lucas,

Thank you very much for your letter of 17 January 2006, concerning the Austrian ban on wild animals in circuses.

First of all, please let me assure you that the Commission attaches the utmost importance to all questions concerning the welfare of animals insofar as they fall within its responsibilities. In particular, I wish to underline the respect for the principles set out by the Protocol on the Protection and Welfare of Animals annexed to the EC Treaty by the Amsterdam Treaty. The Commission's commitment on this subject has recently been reflected in its Communication of 23 January 2006 to the European Parliament on a Community Action Plan on the Protection and Welfare of Animals.

However, it should be noted that the Protocol on the Protection and Welfare of Animals indicates that "in formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall 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."

A total ban on the use of animals in circuses constitutes a restriction to the freedom to provide services as set out in Article 49 of the Treaty. According to the case law of the European Court of Justice, restrictions to the fundamental freedoms of the Treaty can be justified by overriding reasons of general interest. Animal welfare and animal protection are among those reasons that can justify a restriction. However, any measure taken has to be necessary and proportionate in relation to the aim pursued, i.e. the protection and the well-being of animals. A total ban is, in general, a very restrictive means and it therefore has to be demonstrated that there are no other less restrictive means to achieve the aim pursued.

The letter I have sent to the Austrian government, which you mention in your correspondence, follows complaints that were received by the Commission. It constitutes the first step of the procedure under Article 226 of the Treaty and aims at giving the Member State concerned the possibility to reply to the Commission's questions, and give its view, in particular on the justifications for this restriction on a fundamental freedom of the Treaty.

The answer of the Austrian government is currently being analysed by the services responsible in order for me to present to the College of Commissioners a proposal as to how to proceed. Allow me to assure you that the Commission will of course take into account all interests at stake when taking its decision.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Charlie McCreevy', with a long horizontal flourish extending to the right.

Charlie MCCREEVY