

17th November 2003

Commissioner David Byrne  
DG Health & Consumer Protection  
Rue de la Loi 200  
1047 Brussels

Dear Commissioner,

I write further to our exchange in Plenary on Tuesday 21st October concerning the transport of horses. Since our exchange I have studied the current legislation on the protection of animals during transport and can find no serious legal argument to support your claim that the UK lost its derogation to prohibit the export of horses for slaughter in 1995.

Article 3 (3) of the Council Directive 91/628/EEC states that the Council "shall lay down appropriate additional conditions for the transport of certain types of animal such as solipeds, wild birds and marine mammals in order to safeguard their welfare".

Crucially, Article 3 (3) goes on to state: "Pending implementation of these provisions, Member States may, subject to the general provisions of the Treaty, apply relevant national additional rules." It is the permission for Member States to "apply relevant national additional rules" that Britain relies on to keep its long-standing ban on the export of equines for slaughter.

Council Directive 95/29/EC is not a free-standing Directive; it is a series of amendments to the 1991 Directive. The 1995 Directive does not in any way amend Article 3 (3) of the 1991 Directive. In other words, the 1991 Directive, as amended by the 1995 Directive, still contains all the wording referred to above.

The 1995 Directive amending the 1991 Directive specifically refers, in its preamble, to Article 13(1) of the 1991 Directive. Article 13 (1) of the 1991 Directive requires the Commission to submit a report, possibly accompanied by proposals, on maximum journey times, feeding and watering intervals, resting periods, space allowances and standards to be met by means of transport as regards the transport of certain types of animal. As such the 1995 Directive is implementing Article 13(1) of the 1991 Directive, and crucially, not Article 3(3).

Clearly the drafter of the 1995 agrees with this. The 1995 Directive deletes much of Article 13 to show that the Council had fulfilled most of its obligations under that Article. However, crucially, the drafter made no change to Article 3 (3) given that nothing in the 1995 Directive fulfilled the Council's obligations under that Article. In particular, if the Council had thought that in the 1995 Directive they were fulfilling their obligation to lay down additional conditions for solipeds, they would, in their series of amendments, have deleted the word "solipeds" from Article 3 (3) of the 1991 Directive.

I can therefore say with certainty that if the Minimum Values Order were challenged the UK government would currently have a legal case to argue - if it indeed so wished - to retain the Order. If this challenge takes place once the new proposed Regulation is in place then the UK government would have no legal defence whatsoever.

I understand you are also arguing that Britain could perhaps justify its ban under the Public Morality exception in Article 30 of the Treaty on European Union. I find it quite surprising that the Commission feels able to make such a suggestion given that the European Court of Justice has ruled that Britain could not rely on Article 30 to ban the export of calves to veal crates.

However, if the Commission and Council were to accept the amendment I plan to table in Environment Committee Article 30 could then be used for allowing Member States to ban the export of horses for slaughter on grounds of public morality. The amendment, to Annex 1, Chapter V, paragraph 1a (new) will read:

"Member States may on grounds of public morality prohibit the export of horses ponies and

donkeys destined for slaughter to other Member States or third countries."

A clear amendment such as this would be much better than the half measures which you are currently discussing with the UK government.

I would be grateful if you could clarify your view in light of the above. I look forward to your response.

Yours sincerely

Caroline Lucas  
Green Party MEP for South East England