

**R. v. Minister of Agriculture, Fisheries and Food Ex
parte Compassion
In World Farming Limited
(Case C-1/96)**

**Before the Court of Justice of the European
Communities**

ECJ

**(Presiding, Rodríguez Iglesias P.; Gulmann, Ragnemalm
and Wathelet PCC.;**
**Mancini (Rapporteur), Moitinho de Almeida, Kapteyn,
Murray, Edward,
Puissochet, Hirsch, Jann and Sevón JJ.) Mr Philippe
Léger, Advocate General.**

19 March 1998

Reference from England and Wales by the High Court of Justice under Article
177 E.C.

Agriculture--Directive 805/68 on common organisation of the market in beef and veal--harmonising welfare requirements for calves--precluding recourse to Article 36 E.C. to justify national bans on intra-Community export of live calves on welfare grounds--precluding bans on grounds of public policy or morality where such grounds relate to animal welfare--Directive compatible with European Convention on Protection of Animals Kept for Farming Purposes.

All Member States of the European Community had become parties to the European Convention for the Protection of Animals kept for Farming Purposes, 1976 ("the Convention") and the Convention had been approved by the Community by Decision 78/923. The Standing Committee established under the Convention had, in 1988, adopted a Recommendation concerning Cattle ("the Recommendation"). The Community itself had however adopted Directive 91/629 laying down obligatory minimum standards for the protection of calves which, in certain respects were lower than those required by the Convention and Recommendation. Compassion in World Farming Ltd ("CIWF") asked the Minister of Agriculture to prohibit or restrict the export of calves for rearing in veal crates, arguing that the United Kingdom had power to restrict such exports to

other Member States where the veal crate system likely to be used in the importing state, would infringe the standards laid down by the Convention and Recommendation. The Minister declined to restrict veal calf exports partly because, in his view, the United Kingdom had no power to introduce such a restriction. CIWF then applied to the High Court for judicial review of that decision. The High Court referred two questions for preliminary ruling, asking the Court of Justice, on the basis that the export of calves for rearing contrary to the Convention was considered cruel and immoral by animal welfare groups and a considerable body of public opinion supported by authoritative scientific opinion, (i) whether the export of veal calves to a Member State which complied with the Directive but not the Convention could be prohibited pursuant to Article 36 E.C. on grounds of public morality or policy or the protection of the life and health of animals; and (ii) if the provisions of the Directive would preclude such action, whether the Directive was valid. Relying upon the judgment in *Holdijk and Others*, CIWF argued that Article 36 E.C. did indeed permit a Member State unilaterally to adopt non-discriminatory welfare standards and so restrict the export of live calves.

Held:

(1) Validity of Directive 91/629 laying down minimum standards for the protection of calves.

Although the Convention was part of the Community legal order, it left considerable discretion to the Contracting Parties as to methods of implementation. It did not define standards of treatment the non-observance of which could affect the validity of the Directive. Furthermore Article 20 of the Recommendation expressly provided that the Recommendation was not directly applicable in the national law of the Contracting Parties. No factors had therefore been disclosed that could affect the validity of the Directive. [30]-[37]

(2) Reliance on Article 36 E.C. to protect the life and health of animals.

(a) A ban or restriction on the export of live calves from one Member State to another was a quantitative restriction on exports contrary to Article 34 E.C. [39]

(b) The common organisation of the market in beef and veal established by Regulation 805/68 precluded a national ban on the export of calves since such a ban would affect the structure of the market, especially the formation of market prices, and would interfere with the proper functioning of the common organisation of the market. *Hokdijk and Others* was distinguishable since it was decided before adoption of the Directive and was expressly based upon the absence of animal welfare provision in the then existing Community legislation. [41]-[46]

[Direction Generale des Impôts v. Forest \(148/85\): \[1986\] E.C.R. 3449; \[1988\] 2 C.M.L.R. 577](#); *Cerafel v. Le Campion*(218/85): [1986] E.C.R. 3513; [1988] 1 C.M.L.R. 83; and *Danisco Sugar v. Allmänna Ombudet*(C-27/96): not yet reported; [Pigs Marketing Board v. Redmond\(83/78\): \[1978\] E.C.R. 2347; \[1979\] 1](#)

[C.M.L.R. 177](#) and [Holdijk and Others\(141-143/81\)](#): [1982] E.C.R. 1299; [1988] 2 C.M.L.R. 3819, distinguished *663 .

(c) Notwithstanding Article 3(4) (which permitted certain derogations) and Article 11(2) (which authorised Member States to adopt stricter standards for the protection of calves within their own territory) the wording, context and objectives of the Directive did not indeed indicate that it harmonised the measures necessary to protect the health of calves. In particular, Article 3(1) laid down standards for the minimum housing space for calves. A Member State could not therefore rely upon Article 36 to justify a national prohibition of the intra-Community export of live calves on grounds of animal welfare since the Directive had provided harmonised measures to achieve that specific objective. [47]-[63] [R. v. Ministry of Agriculture Fisheries and Food Ex parte Hedley Lomas \(C-5/94\)](#): [1996] E.C.R. I-2553; [1996] 2 C.M.L.R. 391; [Centre D'Insemination Dela Crespelle v. Cooperative de la Mayenne \(C-323/93\)](#): [1994] E.C.R. I-5077; and [Hönig v. Stadt Stockach\(C-128/94\)](#): [1995] E.C.R. I-3389; and [Van den Burg\(C-169/89\)](#): [1990] E.C.R. I-2143, followed.

(3) Reliance on Article 36 E.C. on grounds of public policy or morality.

Although the protection of the public policy or morality were not subject to the Directive, a Member State could not rely upon those grounds to justify prohibiting intra-Community export of live calves where they were merely invoked as an aspect of the justification relating to protection of animal health, which was subject to the Directive. Nor could a Member State rely on the views or behaviour of a section of national public opinion unilaterally to challenge a Community harmonising measure. [64]-[68]

Representation

G. Barling Q.C. and P. Duffy, instructed by M. Rose, Solicitor, for Compassion in World Farming.

J. E. Collins, Assistant Treasury Solicitor, acting as Agent, R. Plender Q.C. and S. Masters, Barrister, for the United Kingdom Government.

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, for the French Government.

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

R. Wainwright, Principal Legal Adviser, and H. Stovlboek, of the Legal Service of the E.C. Commission, acting as Agents, for the Commission.

Cases referred to in the judgment:

1. [Direction Generale des Impôts v. Forest \(148/85\)](#), 25 November 1986: [1986] E.C.R. 3449; [1988] 2 C.M.L.R. 577.

2. [Cerafel v. Le Champion \(218/85\)](#), 25 November 1986: [1986] E.C.R. 3515; [1988] 1 C.M.L.R. 83 *664 .

3. Danisco Sugar v. Allmänna Ombudet (C-27/96), 27 November 1997: Not yet reported.
4. [Pigs Marketing Board v. Redmond \(83/78\)](#), 29 November 1978: [1978] E.C.R. 2347; [1979] 1 C.M.L.R. 177.
5. [Hokdijk and Others \(141-143/81\)](#), 1 April 1982: [1982] E.C.R. 1229; [1983] 2 C.M.L.R. 3819.
6. [R. v. MAFF, Ex parte Hedley Lomas \(C-5/94\)](#), 23 May 1996: [1996] E.C.R. I-2553; [1996] 2 C.M.L.R. 391.
7. Centre d'Insemination de la Crespelle v. Cooperative de la Mayenne (C-323/93), 4 May 1994: [1994] E.C.R. I-5077.
8. Hönig v. Stadt Stockach (C-128/94), 19 October 1995: [1995] E.C.R. I-3389.
9. Van den Burg (C-169/89), 23 May 1990: [1990] E.C.R. I-2143.

Further cases referred to by the Advocate General:

10. [Kontogeorgas v. Kartonpak \(C-104/95\)](#), 12 December 1996: [1996] E.C.R. I-6643; [1997] 1 C.M.L.R. 1093.
11. [Union Royale Belge des Societes de Football Association and Others v. Bosman and Others \(C-415/93\)](#), 15 December 1995: [1995] E.C.R. I-4921; [1996] 1 C.M.L.R. 645.
12. Ussl No. 47 di Biella (C-134/95), 16 January 1997: [1997] E.C.R. I-195.
13. Campus Oil and Others (72/83), 10 July 1984: [1984] E.C.R. 2727; [1984] 3 C.M.L.R. 544.
14. [Tedeschi v. Denkavit Commerciale \(5/77\)](#), 5 October 1977: [1977] E.C.R. 1555; [1978] 1 C.M.L.R. 544.
15. [Simmenthal v. Ministero della Finanze \(35/76\)](#), 15 December 1976: [1976] E.C.R. 1871; [1977] 2 C.M.L.R. 1.
16. [Denkavit v. Minister für Ernährung, Landwirtschaft und Forsten des Landes Nordrhein-Westfalen \(251/78\)](#), 8 November 1979: [1979] E.C.R. 3369; [1980] 3 C.M.L.R. 513.
17. [Procureur du Roi v. Dassonville \(8/74\)](#), 11 July 1974: [1974] E.C.R. 837; [1974] 2 C.M.L.R. 436.
18. [Cullet v. Centre Leclerc Toulouse \(231/83\)](#), 29 January 1985: [1985] E.C.R. 305; [1985] 2 C.M.L.R. 524.
19. Procureur de la République v. Leclerc (34/84), 25 September 1985: [1985] E.C.R. 2915.
20. R. v. Henn and Darby (34/79), 14 December 1979: [1979] E.C.R. 3795; [1980] 1 C.M.L.R. 246.
21. R. v. Conegate (121/85), 11 March 1986: [1986] E.C.R. 1007; [1986] 1 C.M.L.R. 739.
22. H.M. Customs and Excise v. Schindler (C-275/92), 24 March 1994: [1994] E.C.R. I-1039; [1995] 1 C.M.L.R. 4.
23. [Spain v. E.U. Council \(C-350/92\)](#), 13 July 1995: [1995] E.C.R. I-1985 *665 .
24. [E.C. Commission v. Germany \(153/78\)](#), 12 July 1979: [1979] E.C.R. 2555; [1980] 1 C.M.L.R. 198.
25. Richardt and "Les Accessoires Scientifiques" (C-367/89), 4 October 1991:

- [1991] E.C.R. I-4621; [1992] 1 C.M.L.R. 61.
26. Torfaen Borough Council v. B & Q (C-145/88), 23 November 1989: [1989] E.C.R. 3851; [1990] 1 C.M.L.R. 337.
27. Debus (C-13 & 113/91), 4 June 1992: [1992] E.C.R. I-3617.
28. R. v. Bouchereau (30/77), 27 October 1977: [1977] E.C.R. 1999; [\[1977\] 2 C.M.L.R. 800](#).
29. Germany v. E.U. Council (C-280/93), 5 October 1994: [1994] E.C.R. I-4973.
30. Kramer and Others (3, 4 & 6/76), 14 July 1976: [1976] E.C.R. 1279; [1976] 2 C.M.L.R. 440.
31. Commission v. E.U. Council (22/70), 31 March 1971: [1971] E.C.R. 263; [1971] C.M.L.R. 335.
32. [Opinion 1/76, 26 April 1977: \[1977\] E.C.R. 741](#).
33. Greece v. E.C. Commission (30/88), 14 November 1989: [1989] E.C.R. 3711.
34. [Sevince v. Staatssecretaris Van Justitie \(C-192/89\), 20 September 1990: \[1990\] E.C.R. I-3461](#).
35. Deutsche Shell (C-188/91), 21 January 1993: [1993] E.C.R. I-363.

Opinion of Mr Advocate General Léger

1. The "veal crate system", which is criticised for affecting the health and life of veal calves and for being contrary to public morality and public policy, within the meaning of Article 36 E.C., has brought about this reference by the Queen's Bench Division of the High Court of Justice.
2. This Court is asked to determine the extent of the right thus afforded to Member States to oppose, on those grounds, the export of animals to other Member States and thereby derogate from the principle of the free movement of goods.
3. The High Court of Justice also refers to the existence of international agreements and a Community directive laying down different standards for the protection of veal calves. It therefore also asks this Court to determine the validity of Council Directive 91/629 laying down minimum standards for the protection of calves, [FN1] with reference to the European Convention on the Protection of Animals kept for Farming Purposes and the 1988 Recommendation concerning Cattle.

FN1 [1991] O.J. L340/28 (hereinafter "the Directive" or "Directive 91/629").

***666 I. Legal background to the dispute**

A. The provisions of international law

The European Convention on the Protection of Animals kept for Farming Purposes

4. The European Convention for the Protection of Animals kept for Farming Purposes (hereinafter "the Convention") was drawn up within the Council of

Europe "with the aim of protecting animals kept for farming purposes, particularly in modern intensive production systems". [FN2] Adopted in that context on 17 March 1976, the Convention was approved in the name of the European Economic Community by Council Decision 78/923. [FN3]

FN2 First recital in the preamble to Council Decision 78/923.

FN3 [1978] O.J. L323/12.

5. According to Article 1 of the Convention, it applies to the "keeping, care and housing of animals and in particular to animals in modern intensive stock-farming systems".

6. Chapter I lays down the general principles by which the Convention is to ensure protection of animals in stock-farming systems. Chapter II sets up a Standing Committee and lays down its rules of organisation and functioning and defines its powers, whilst Chapter III lays down how the Convention is to enter into force.

7. The provisions of the Convention more particularly devoted to stock-farming systems, to housing space for animals and to provision of water, food and care for them are set out in Articles 3, 3a, 4 and 6.

8. Under Article 9(1), recommendations to the contracting parties are to be elaborated and adopted by the standing committee for the implementation of the principles set out in the Convention.

9. A Protocol of Amendment to the Convention was approved by Article 1 of Council Decision 92/583 on the conclusion of the Protocol of Amendment to the European Convention for the Protection of Animals kept for Farming Purposes. [FN4]

FN4 [1992] O.J. L395/21.

The Recommendation concerning Cattle

10. The Recommendation concerning Cattle, dated 21 October 1988 (hereinafter "the Recommendation"), sets out the general requirements relating to the rearing of cattle. [FN5]

FN5 Recommendation adopted by the Standing Committee of the Council of Europe at its 17th meeting, in accordance with the rules of the Convention.

11. Article 20 of the Recommendation provides that it 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 such party considers appropriate, that is to say through legislation or through administrative practice.

**667 Appendix C: special provisions for veal calves*

12. Appendix C to the Recommendation (hereinafter "the Appendix"), more particularly devoted to veal calves, was adopted on 8 June 1993.

B. Provisions of Community law

Regulation 805/68

13. Regulation 805/68 on the common organisation of the market in beef and veal, [FN6] provides for a pricing and trading system and, according to Article 1 thereof, covers, *inter alia*, live animals of the domestic bovine species.

FN6 [1968] O.J. English Spec. Ed. (II), p. 187.

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

Directive 91/629

15. Directive 91/629 lays down minimum standards for the protection of calves both in order to eliminate differences which may distort conditions of competition within the organisation of the Common Market in calves [FN7] and in order to ensure the well-being of calves. [FN8]

FN7 Fifth and sixth recitals.

FN8 Seventh recital.

16. The first recital states that all the Member States have ratified the Convention and this has been approved by Decision 78/923.

17. The seventh recital in the preamble to the Directive states that the Commission should, on the basis of a report from the Scientific Veterinary Committee, pursue actively scientific research into the most efficient stock-farming system or systems from the point of view of the well-being of calves and that provision should accordingly be made for an interim period to enable the Commission to complete this task successfully.

18. Article 3(1) lays down a transitional period of four years during which all new holdings are to comply with minimum requirements regarding the housing of calves in individual boxes or by tethering in stalls.

19. Article 4(1) requires the Member States to ensure that the conditions for rearing calves comply with the general provisions laid down in the Annex to the Directive. That Annex lays down rules concerning, *inter alia*, accommodation, feeding and watering of calves.

20. Article 11(2) allows the Member States, in compliance with the general rules of the Treaty, to maintain or apply within the territories *668 stricter provisions for the protection of calves than those laid down in the Directive.

II. Facts and national procedure

21. The facts, as described in the order for reference, are as follows:

22. In recent years, between 500,000 and 600,000 veal calves have been exported each year from the United Kingdom to other Member States of the Community, some of which allow a substantial proportion of these animals to be reared in the "veal crate system".

23. A "veal crate" is a box-like structure used to house a single veal calf. According to the national court, the term "veal crate system" refers to "a veal production system in which calves are reared in conditions which do not fulfil the requirements as to the minimum width of veal crates and the composition of veal calves' diet laid down in the Convention and the Recommendation ...". [FN9]

FN9 Paragraph 3(b) of the order for reference.

24. This method of rearing calves has been prohibited in the United Kingdom since 1 January 1990, the date of entry into force of the 1987 Welfare of Calves Regulations.

25. The Royal Society for the Prevention of Cruelty to Animals (hereinafter "the RSPCA") and Compassion in World Farming Limited (hereinafter "CIWF"), the applicants in the main proceedings, whose object is the protection of animals, "consider [the veal crate system] to be inconsistent with the health and well-being of the calves and the cause of unnecessary suffering". [FN10]

FN10 *ibid.*

26. Consequently, the RSPCA and CIWF asked the Minister of Agriculture, Fisheries and Food (hereinafter "the Minister") to have resort to Article 36 of the Treaty and adopt measures restricting exportation of veal calves to Member States in which the veal crate system was likely to be used, "contrary to the standards enforced in the United Kingdom and to the international standards of the Convention, to which all the Member States and the E.C. have agreed to adhere". [FN11]

FN11 *ibid.*, paragraph 3(1).

27. In reply, the Minister stated that the United Kingdom did not have the power to restrict exports of veal calves and that, even in the event that he had such a power, he would not be minded, for policy reasons, to impose a ban.

28. The RSPCA and CIWF then brought proceedings before the High Court of Justice, [FN12] which submitted the following questions to this Court.

FN12 The RSPCA ceased to be a party to the proceedings before the High Court of Justice pursuant to an order made by that court on 8 May 1997, after the reference had been made to this Court.

*669 III. The questions referred for a preliminary ruling

29. 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 E.C. Decision 78/923 [FN13];
- (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 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.

FN13 [1978] O.J. L323/12.

(1) In the circumstances set out above, may Member State A rely on Article 36 E.C. 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 in Question (1), are those provisions valid?

30. Before I go on to consider those questions, it is necessary to *670 examine first the factors which, as discussed during the proceedings, could prompt the Court to decline jurisdiction.

IV. Admissibility of the questions referred

31. At the hearing, the French Government, without raising any objection as to admissibility, stated however that the first question was "theoretical, even hypothetical" in the absence of "a measure restricting intra-Community trade". It

considers that the national court cannot judge the necessity or proportionality of a decision which has not been adopted.

32. According to the Court's settled case law, it is for the national courts alone, before which the proceedings are pending and which must assume responsibility for the judgment to be given, to determine, having regard to the particular features of each case, both the need for a preliminary ruling to enable them to give judgment and the relevance of the questions which they refer to the Court. [FN14]

FN14 See, for example, the judgment in [Case C-104/95, Kontogeorgas: \[1996\] E.C.R. I-6643; \[1997\] 1 C.M.L.R. 1093](#), para. [11].

The Court later drew the conclusion that where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling. [FN15]

FN15 Judgment in [Case C-415/93, Bosman: \[1995\] E.C.R. I-4921; \[1996\] 1 C.M.L.R. 645](#), para. [59].

33. It is clear that the questions submitted directly concern Community law since they relate to the interpretation of Article 36 of the Treaty and the assessment of the validity of Directive 91/629.

34. However, the Court has held that, in order to determine its jurisdiction, it has to examine the circumstances in which the Court was called upon by the national court to give a ruling. In this regard, it considers that it cannot give a ruling on a preliminary question submitted by a national court where it is quite obvious that the interpretation or assessment of validity of a Community rule sought by the national court *bears no relation to the actual facts of the main action or its purpose or where the problem is hypothetical* and the Court *does not have before it the factual or legal material* necessary to give a useful answer to the questions submitted to it [FN16]

FN16 *ibid.*, paras [60] & [61] and, more recently, the judgment in Case C-134/95, Ussl No. 47 di Biella: [1997] E.C.R. I-195, para. [12].

35. My first observation is that the link between the questions submitted and the proceedings cannot be seriously contested. The issue in the main proceedings, centred on the adoption of measures restricting exports based on requirements of animal protection, is indissociable from the plea based on Article 36 of the Treaty, which is the subject-matter of the first question. Similarly, the right of a Member State to use Article 36 depends, at least in part, as we will see, [FN17] on the existence of a directive harmonising the field concerned, *671 so that the question of the validity of Directive 91/629, which lays down minimum standards for the protection of veal calves, is determinative.

FN17 Paras 51 *et seq.* of this Opinion.

36. Nor is the problem hypothetical. From the explanation of the factual and legal background of the case given by the national court in its order for reference it is clear that the main action concerns the discretion of the Minister to refuse to adopt measures based on Article 36. [FN18] Examination of the national file reveals that the action, which has been brought by bodies having the protection of animals as their object, seeks precisely to have the Minister's decision set aside. [FN19]

FN18 Paragraph 3(n) of the order for reference.

FN19 The affidavit of the representative of the RSPCA and CIWF, dated 5 July 1995, is entitled: "In the matter of an application for leave to apply for judicial review against the Minister of Agriculture, Fisheries and Food by the Royal Society for the Prevention of Cruelty to Animals and Compassion in World Farming Limited."

37. It is true that the proceedings before the national court present the particularity of having arisen not from any positive action taken by the United Kingdom but from a refusal to take any such action. It is therefore the absence of any ministerial decision prohibiting or restricting exports of veal calves to the other Member States which is challenged before the High Court of Justice and which has led to the referral of the questions.

38. Consequently, the interpretation which the Court will give of Article 36 of the Treaty will not necessarily enable the High Court to give an assessment of the lawfulness of the government decision.

39. If that interpretation upholds the right to apply quantitative restrictions on exports, or measures having equivalent effect, on the grounds indicated by the High Court, this Court's ruling could not be of any use in resolving the dispute since Article 36 only lays down a mere right to adopt similar measures and in this case the Minister has stated that he does not consider it expedient to have recourse to them. [FN20]

FN20 Para. 3(m) of the order for reference.

40. Those objections do not suffice, however, to call the Court's jurisdiction into question. If, on the other hand, the Court interprets Article 36 as not allowing restrictive measures to be taken in the circumstances of the present case, that would support the lawfulness of the contested decision.

41. Moreover, by the questions which it submits, the High Court of Justice does not expect this Court to enable it to determine the proportionality of a specific measure adopted by the United Kingdom minister. It is only a question of ruling to what extent Article 36 may apply in the circumstances of this case.

42. In those circumstances, and on any view, the questions submitted must be declared admissible.

V. Application of Article 36 of the Treaty

43. By its first question the national court asks in effect whether Article 36 of the Treaty allows a Member State to restrict or prevent *672 the exportation of live animals to another Member State on the ground that public morality, public policy or the health or life of those animals are threatened by the rearing methods used in the Member States of exportation.

44. It should be pointed out first of all that, as the applicant in the main proceedings accepts, "a ban or restriction on exports of live calves from the United Kingdom would constitute a quantitative restriction on exports, or measure of equivalent effect within the meaning of Article 34 E.C.". [FN21]

FN21 Paragraph 3 of the written observations.

45. However, in the [Hedley Lomas](#) case, the Court reiterated that "Article 36 of the Treaty allows the maintenance of restrictions on the free movement of goods, justified on grounds of the protection of the health and life of animals ...". [FN22] Nothing prevents that reasoning from being transposed to the case where the reasons relied on justify, not the maintenance, but the introduction of restrictions.

FN22 Judgment in [Case C-5/94, R. v. MAFF, Ex parte Hedley Lomas: \[1996\] E.C.R. I-2553; \[1996\] 2 C.M.L.R. 391](#), para. [18].

46. Whilst the free movement of goods is indisputedly one of the pillars of the Community edifice, it is significant that recently the Court referred to the protection of life and health of animals as being a "fundamental requirement recognised by Community law". [FN23]

FN23 *ibid.* In its judgment in Joined [Cases 141, 142 & 143/81, Holdijk and Others: \[1982\] E.C.R. 1299; \[1983\] 2 C.M.L.R. 3819](#), at para. [13], the Court had already referred to the "Community's concern for the health and protection of animals, as evinced, *inter alia*, by Article 36 of the Treaty and by Council Decision No. 78/923 ...".

47. The grounds of public morality or public policy, also referred to in Article 36 and to which the national court refers, constitute other reasons capable of justifying a departure, allowed by the Treaty, from the principle of free movement of goods.

48. However, recourse to Article 36 is no longer justified if Community rules provide for the measures necessary to guarantee protection of the interests listed in that Article. [FN24] In particular, the Member States are bound, where there is a regulation establishing a common organisation of the markets in a particular field, to refrain from taking any measures which might undermine or create exceptions to it. [FN25]

FN24 See, for example, the judgment in Case 72/83, *Campus Oil and Others*:

[1984] E.C.R. 2727; [1984] 3 C.M.L.R. 544, para. [27].

FN25 See the judgment in [Case 83/78, Pigs Marketing Board: \[1978\] E.C.R. 2347; \[1979\] 1 C.M.L.R. 177](#), paras [56]-[58], or, more recently, the judgment in [Case 148/85, Direction Generale des Impôts v. Forest: \[1986\] E.C.R. 3449; \[1988\] 2 C.M.L.R. 577](#), para. [14].

49. In the present case, the beef and veal sector is the subject of a common organisation of the markets but, as the Court has held, ... the establishment of such an organisation pursuant to Article 40 of the Treaty does not have the effect of exempting agricultural producers from any national provisions intended to attain objectives other than those covered by the common organisation, even though such provisions may, by affecting the conditions or production, have an impact on the volume *673 or the cost of national production and therefore on the operation of the Common Market in the sector concerned [FN26]

FN26 Judgment in Joined Cases 141, 142 & 143/81, Holdijk and Others, para. [12].

50. However, Regulation 805/68, cited above, does not pursue any aim of protecting animals.

51. On the other hand, that concern is at the centre of Directive 91/629, adopted, for harmonisation purposes, within the framework of the common agricultural policy. In this regard, the Court has reiterated that recourse to Article 36 is 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". [FN27]

FN27 Judgment in [Case C-5/94, Hedley Lomas](#), cited above, para. [18]. See also the judgment in [Case 5/77, Tedeschi: \[1977\] E.C.R. 1555](#), para. [35], and in Case C-169/89, Van den Burg: [1990] E.C.R. I-2143, para. [8].

52. It is therefore necessary to examine the terms of Directive 91/69 in order to determine the latitude left to a Member State which wishes to ensure observance of the aims referred to in **Article 36**.

A. The degree of harmonisation carried out by Directive 91/629

53. Harmonisation undertaken by a directive precludes application of Article 36 by a Member State if the protective measures which it lays down specifically concern the field which the authorities having recourse to it wish to protect.

54. In the present case, as I have said, the Directive is entirely devoted to the protection of veal calves, as its title indicates. Above all, some of the rules which it lays down concern the actual system of "veal crates". Article 3 provides for a minimum standard for the accommodation of veal calves, characterised by strict space measurements. Similarly, paragraphs 11 to 14 of the annex to the

Directive lay down minimum rules applicable to the feeding and watering of veal calves. [FN28]

FN28 Article 4 of the Directive refers to the Annex, thus rendering its content binding, to the same extent as the Directive itself.

55. However one assesses, with particular reference to the values laid down by the Convention and the Recommendation, the degree of protection thus laid down, which is the issue raised by the second question, it appears that the fields in which the applicant parties wish Article 36 to be used are in fact dealt with by the Directive.

56. The fact that the applicants claim that the level of protection is insufficient must not be taken as evidence of incomplete harmonisation. The criterion based on harmonisation of a particular field, designed to allow the competence left to the Member States to be identified, is assessed with regard to the scale of the area covered by Community rules, the main purpose of harmonisation being above all to harmonise national laws in a given sector, even if this results in a level which is considered too weak.

*674 57. From this point of view, the Directive fully harmonised the powers of the Member States in the area under consideration.

58. The Member States are certainly authorised to enact more protective measures for the life and health of animals. This could point to the existence of some leeway left by the Directive to Article 36 since, under the first sentence of Article 11(2),

... From the date set up in paragraph 1, [FN29] 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 this Directive.

FN29 Article 11(1) provides: "Member States shall bring into force the laws, regulations and administrative provisions, including any sanctions, necessary to comply with this Directive not later than 1 January 1994. They shall forthwith inform the Commission thereof."

59. However, whilst the Directive allows the Member States some latitude in the field which it deals, where their competence in the matter of the protection of animals may still be exercised to a stricter standard, the terms used show that the adoption by a Member State of measures comparable to those provided for by the Directive is allowed only within the boundaries of its own territory and only in accordance with the principles laid down by the Treaty.

60. The measures authorised under Article 11 are therefore confined, by the principle of the free movement of goods, to strictly territorial boundaries; there can be no effect on intra-Community trade. The United Kingdom Government has in fact made use of this power when it prohibited the rearing of veal calves according to the system in question.

61. It would therefore be possible to conclude, like the United Kingdom, [FN30]

that owing to the exhaustiveness of Directive 91/629 recourse to Article 36 is impossible.

FN30 Para. 1.7 of its written observations.

62. However, it must be pointed out, as the Commission does, [FN31] that under Article 3(1) of the Directive, some of the requirements laid down by it for the accommodation of veal calves [FN32] apply ... from 1 January 1994 and for a transitional period of four years, [to] all holdings newly built or rebuilt and/or brought into use for the first time after that date

FN31 Para. 9 of its written observations.

FN32 Those requirements, contained in para. 1, are as follows: "where calves are housed in groups, they must have sufficient unobstructed floor space to be able to turn around and lie down without hindrance of at least 1.5m² for each calf of 150 kg live weight, 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 per cent, or 0.80 times the height at the withers."

63. Furthermore, Article 3(4) states:

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; *675 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.

64. For reasons related to the progressive adaptation of agricultural holdings to the new standards, the Community legislature has therefore accepted that the new standards are not to apply immediately to all installations. Until the end of 2003, holdings built before 1 January 1994 can escape the standards applicable to those built after that date and for a transitional period of four years. Similarly, holdings built during the transitional period are to be brought into full conformity with the standards before 31 December 2007. [FN33]

FN33 The amendments made by Council Directive 97/2, amending Directive 91/629 ([1997] O.J. L25/24), in particular Article 3(3) and (4), do not change the argument nor the conclusions which I think must be drawn. Standards which are stricter and more precise than those laid down by the original Directive 91/629 as regards accommodation and floor space for veal calves are now to apply to new or rebuilt holdings and to those brought into operation after the end of the transitional period. But, although the date for bringing installations built before 1 January 1994 into conformity with the standards of the transitional period remains 31 December 2003, the date for bringing installations of the transitional period into conformity with the new standards is put back to 31 December 2006.

Only the level of harmonisation chosen by the legislature and the schedule for achieving it have therefore been changed, but not the principle of achieving it in stages. As long as the final stage, to be completed at the end of 2006, has still not been reached, harmonisation cannot be regarded as having been fully and effectively achieved.

65. Many categories of agricultural holdings, having different levels of protection for veal calves, may therefore co-exist, so that harmonisation of the conditions for housing animals will not be truly achieved until that last date. It is only then that all agricultural holdings covered by the Directive will have to comply with the same rules.

66. Consequently, for a number of years yet, the Member States may be obliged to allow the rearing, export or import of veal calves whose method of rearing departs from the protective rules of the Directive, even as amended.

67. In those circumstances, I think it is logical to this case the case law of the Court which holds that a directive does not have the effect of removing the competence which Article 36 allows Member States when the period it gives them for adopting the provisions necessary to comply with it has not expired. [FN34]

FN34 Judgment in [Case 35/76, Simmenthal: \[1976\] E.C.R. 1871; \[1977\] 2 C.M.L.R. 1](#), para. [19], and judgment in [Case 251/78, Denkavit Futtermittel: \[1979\] E.C.R. 3369; \[1980\] 3 C.M.L.R. 513](#), paras [18]-[20].

68. In the present case, Article 3 of the Directive lays down no period for the transposition of the Community standard into national law. It determines the immediate or deferred applicability to the operators concerned of the obligations provided for by the Directive according to the date on which the agricultural holding was built or brought into service.

*676 69. However, the two cases are comparable in that actual implementation of the protective rules laid down by the Directive may be deferred in time.

70. Until the periods for the implementation of the animal housing conditions laid down by the Directive have expired, as at the end of a transposition period, it remains without the power of the Member States to apply Article 36 and this article may serve as a basis for action justified on grounds of the protection of the life and health of animals.

71. I would add that the Directive, which does not have this purpose, is not designed to take into account considerations of public morality and public policy, as referred to in the first preliminary question, as a possible justification for recourse to Article 36.

72. Moreover, a directive might exhaustively harmonise a field concerning the protection of animals but still not pacify pressure groups which, judging the level of protection adopted to be insufficient, would still be likely to disturb public order.

73. For those different reasons, Directive 91/629 does not suffice to prohibit the use of Article 36 in the case submitted to the Court, so that it appears necessary for the Court to rule on the scope of that article.

B. Scope of Article 36

1. The judgment in HEDLEY LOMAS

74. This case may be compared in many respects to the [Hedley Lomas](#) case.

75. The two cases specifically concern the fields covered by Article 34 and Article 36 in so far as the latter article is relied on to advocate quantitative restrictions based on grounds of the protection of the life and health of animals.

76. Above all, the most characteristic point in common between them is that the restrictive measure adopted, or sought, has its cause outside the territory of the Member State which adopted it, or which is asked to adopt such a measure, and within the territory of the Community.

77. The circumstance places the Member State concerned in a situation-- delicate from the point of view of Community principles and in particular from the point of view of the free movement of goods in which it is has to judge the necessity or expediency of restricting exports of its goods to another Member State for reasons based on a practice which is largely unknown to it.

78. However, in the [Hedley Lomas](#) case, the question was whether Article 36 could be invoked by a Member State to justify a restriction on exports of animals to another Member State on the ground that the latter State was not complying with the requirements of a Community directive providing for harmonisation of the measures necessary for achieving the aim in view. In the present case, on the other hand, farmers in some Member States rear veal calves using the "veal crate" method but without contravening the provisions of the directive harmonising the protection standards.

*677 79. In spite of those differences, the aspects of the problem posed in each of the two cases have prompted the same approach.

80. The directive in question in [Hedley Lomas](#) brought about full harmonisation of the measures necessary to achieve the aim covered by recourse to Article 36 but the Minister contended that it was not always respected in the Member State of destination.

81. In the case now before the Court, the directive is applied but it does not bring about full harmonisation.

82. In both cases, failure to implement measures enabling the aim stated by Article 36 to be achieved can make recourse to that provision legitimate.

83. However, the factual context of [Hedley Lomas](#), characterised by uncertainty as to the breach of the Community legislation by the Member State of importation, did not allow the Court to rule on this point nor on the fact that the acts in question were going on outside the territory of the State of exportation.

[FN35]

FN35 I stated in paras 24 & 25 of my Opinion in [Hedley Lomas](#) that breach of the Directive was not certain, or at any rate was not demonstrated, which was sufficient for the Court to rule out, in such circumstances, any recourse to Article 36 by the Member State of exportation.

84. The Court made a point of explaining more than once that the decision was given in that context. [FN36] As a result, the effect of the judgment is relative. [FN37] The answer given by the Court is confined to the case where non-observance of the provisions of a harmonising directive would be hypothetical. [FN38] It is easy to see why, in such a case, a Member State cannot be entitled to take unilateral measures to restrict exports.

FN36 *ibid.*, paras 16, 20 & 21.

FN37 Para. [16] of the judgment is worded as follows: "It is against that factual background that the first question asked by the national court must be answered."

FN38 The Court does not consider that a Member State has a right to have recourse to Article 36 in order to "obviate *any* breach by a Member State of rules of Community law" (judgment in [Hedley Lomas](#), *cited above*, para. [20], *my emphasis*).

85. In view of those particular aspects, I consider that the present case lends itself better to the interpretation of Article 36 invoked to oppose extra-territorial practices.

2. Use of Article 36 to uphold certain of its aims against extraterritorial practices

86. The national court inquires whether a Member State has a right to justify, by reference to considerations relating to public morality, public policy or the protection of the health and life of animals, restrictions on the export of veal calves to Member States in which the "veal crate" system is used.

87. As I explained in my Opinion in [Hedley Lomas](#), [FN39] I consider that a Member State can rely on Article 36 of the Treaty only in order to *678 ensure protection, within its own national territory, of an interest safeguarded by that article.

FN39 At para. 31.

88. In that same Opinion, I cite Advocate General Trabucchi who, in his Opinion in the [Dassonville](#) case, concluded:

... States can derogate in the said manner [under Article 36] only for the purpose of the protection of their own interests and not for the protection of the interests of other States ... Article 36 allows every State the right to protect exclusively its own national interests. Consequently, for the purpose of protecting industrial and commercial property, each State can restrict the freedom of movement of goods only with reference to the protection of individual rights and economic interests falling under its own sphere of [responsibility]. [FN40]

FN40 [Case 8/74, Procureur du Roi v. Dassonville: \[1974\] E.C.R. 837; \[1974\] 2](#)

[C.M.L.R. 436](#), at p. 860, cited in my Opinion in [Hedley Lomas](#) at para. 32.

89. I simply refer to that part of my Opinion explaining the reasons justifying, in my view, a strict limitation of the scope of Article 36. [FN41]

FN41 *ibid.*, paras 33-39.

90. It follows that export restrictions can be justified only if the acts or practices in question offend against public morality or public policy in the State of exportation.

91. At this stage of development of the European Community, it would not be acceptable for a Member State to be allowed to use that provision to oppose the export of goods on the ground that there might be an infringement, according to its own criteria, to public policy or public morality of the Member State of importation.

92. In the present case, it is common ground that the rearing of animals under the system criticised by CIWF, although practised outside the United Kingdom, produces effects on British territory in which public opinion, like specialised veterinary circles, opposes its maintenance in certain Member States.

93. The situation is not comparable as far as the aim of protecting animals is concerned. In this case, the adverse effect on the health and life of animals resulting from the rearing system in question is produced outside British borders and outside the sphere of responsibility of the United Kingdom of Great Britain and Northern Ireland.

94. I will examine in turn each of the aims of Article 36 of the Treaty to which the preliminary question makes reference.

Public morality

95. Whilst the Court has held that it has competence to assess concepts such as public policy [FN42] or public security, [FN43] the strictly national *679 character of which is comparable to that of public morality, it considers nevertheless that: In principle, it is for each Member State to determine in accordance with its own scale of values and in the form selected by it the requirements of public morality in its territory. [FN44]

FN42 See, in particular, the judgment in [Case 231/83, Cullet: \[1985\] 2 C.M.L.R. 524](#), paras [32] & [33], and the judgment in Case 34/84, Procureur de la Republique v. Leclerc: [1985] E.C.R. 2915, para. [9].

FN43 See, in particular, the judgment in *Campus Oil and Others*, cited above, in which the Court held that "it must be decided whether the concept of public security ... covers reasons such as those referred to in the question raised by the national court" (para. [33]).

FN44 Judgment in Case 34/79, *R. v. Henn and Darby*: [1979] E.C.R. 3795; [1980] 1 C.M.L.R. 246, para. [15]. See also the judgment in Case 121/85, *R. v. Conegate*: [1986] E.C.R. 1007; [1986] 1 C.M.L.R. 739, para. [14].

96. However, on the rare occasions when the Court has had to rule on the protection of public morality, within the meaning of Article 36 of the Treaty, the cases concerned involved national rules in areas about which it may be said that, generally, they are by tradition at the heart of the debate held on this subject in most European societies. [FN45]

FN45 The judgments in *Henn and Darby* and *Conegate*, cited above, involved pornography and the judgment in *Case C-275/92, Schindler*: [1994] E.C.R. I-1039; [1995] 1 C.M.L.R. 4, relating, however, to legislation governing a "services" activity, involved lotteries.

97. Even in these cases, the Court did not, however, fail to point out that the competence of the Member States was recognised "in principle", which leaves the Court with the power to derogate from the rule, if the facts of the case justify this.

98. The formulations used, which contain substantive assessments by the Court of the rules in question, seem to evince the Court's intention to ensure that the meaning of the concept does not shift. In *Henn and Darby*, the Court stated *that it could not be disputed* that the statutory provisions in question came within the powers reserved to the Member States by Article 36. [FN46] In *Conegate*, in holding that domestic rules banning the importation of certain indecent or obscene goods could not be based on grounds of public morality, the Court held that the fact that goods caused offence could not be regarded as *sufficiently serious* when the legislation of the Member State concerned did not lay down any prohibition on the manufacture or marketing of those goods on its territory. [FN47]

FN46 Para. [15].

FN47 Para. [15].

99. In the words of the Court's settled case law, ... Article 36 is not designed to reserve certain matters to the exclusive jurisdiction of Member States but permits national laws to derogate from the principle of the freedom of goods to the extent to which such derogation is and continues to be justified for the attainment of the objectives referred to in that article. [FN48]

FN48 Judgment in [Case C-350/92, Spain v. E.U. Council](#): [1995] E.C.R. I-1985, para. [21]. See also the judgment in [Simmenthal](#), cited above, para. [24]; [Tedeschi](#), cited above, para. [34]; [Case 153/78, E.C. Commission v. Germany](#): [1979] E.C.R. 2555; [1980] 1 C.M.L.R. 198, para. [5]; [Denkavit Futtermittel](#), cited above, para. [14]; and *Campus Oil*, cited above, para. [32].

As a derogation from that principle, Article 36 must be interpreted strictly. [FN49]

FN49 Judgment in Case C-367/89, Richardt and "Les Accessoires Scientifiques"; [1991] E.C.R. I-4621; [1992] 1 C.M.L.R. 61 *680 , para. [20].

100. Despite its specific character, public morality cannot totally escape the rule. Reasons based on this concept may not be invoked at every turn, or else there would be a risk of multiplying obstacles to intra-Community trade.

101. In this regard, I consider it necessary for the Court to assume the right to carry out a minimal review of the content of the concept of public morality, particularly in areas less generally condemned than those with which it has had to deal in the past. The advantage of this approach will be to prevent the concept from being given a broad meaning for the sole purpose of justifying unreasonably restrictive measures. [FN50]

FN50 See, to this effect, para. 29 of the Opinion of Van Gerven A.G. in Case C-145/88, Torfaen Borough Council: [1989] E.C.R. 3851; [1990] 1 C.M.L.R. 337. A broad interpretation is incidentally, facilitated by the actual meaning of the expression. Since morality is defined as "Attitude, moral conduct, principles", reference must be made to the term "morals", which means: "All the rules of conduct and values which operate as standards in a society", *Le Petit Larousse*.

102. However, the fact remains that public morality varies from one Member State to another, in time and according to the Member States' socio-cultural particularities. Moreover, it is no part of the Court's task to judge values characterising the public morality of a Member State and which are therefore quite specific to it. Consequently, it would appear to be necessary to allow national authorities sufficient discretion to determine the requirements which ensue from public morality, within the bounds imposed by the Treaty. [FN51]

FN51 See the comparable reasoning followed by the Court in the "services" field in Schindler, cited above, paras [60]-[63].

103. The complementary task for the Court is to give an interpretation of Article 36 which removes from its scope domestic practices or domestic rules pursuing aims which clearly cannot be a matter of public morality.

104. As far as the present case is concerned, the fact that a Member State should consider that harm unjustifiably caused to the life or health of domestic animals, even for economic purposes, through the use of a particular rearing method is a matter of public morality in that State does not appear to be manifestly contrary to Article 36.

105. According to the national court, the export of calves to face rearing contrary to the Convention is considered to be cruel and immoral by animal welfare organisations and a considerate body of public opinion, supported by authoritative scientific veterinary opinion, in the Member State from which exports occur. [FN52]

FN52 Para. 4(g) of the order for reference.

106. It must be added, however, that it must be proved by objective scientific evidence that the rearing system in question causes unreasonable harm to the health or life of animals and that the measures adopted must be proportionate to the aim in view, [FN53] which is for the national court to judge.

FN53 See, for example, the judgment in *Campus Oil* *681, cited above, para. [37], and the judgment in *Joined Cases C-13 & C-113/91, Debus*: [1992] E.C.R. I-3617, para. [16].

107. The national court refers, secondly, to public policy.

Public policy

108. In its judgment in *Bouchereau*, employing reasoning which can be transposed to the field of free movement of goods, the Court held that: In so far as it may justify certain restrictions to the free movement of persons subject to Community law, recourse by a national authority to the concept of public policy presupposes, in any event, the existence ... of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society. [FN54]

FN54 Judgment in *Case 30/77, R. v. Bouchereau*: [1977] E.C.R. 1999; [\[1977\] 2 C.M.L.R. 800](#), para. [35].

109. In the present case, the applicant in the main proceedings does not claim that public policy has been contravened. The most that is asserted, in the applicant's observations and, to a lesser extent, in the order for reference, is: "The inhumanity of the veal crate system has produced a strong public response in the United Kingdom." [FN55]

FN55 Para. 11 of the applicant's written observations. See also para. 13 of those observations and paras 3(b), (j), (i) and 4(g) of the order for reference.

110. The description thus given of the protest movement which has arisen in the United Kingdom against the use of the rearing system in question does not reveal anything to establish a real threat to public policy. In such a context, this ground provided for by Article 36 cannot be relied on in support of an export restriction.

111. Moreover, it would seem to me to be dangerous for a Community principle--in this case, freedom of movement for goods--to be called in question on the ground that its application provokes a social reaction, if there are no other reasons for limiting its application. [FN56]

FN56 See, on this point, para. 5.3 of the Opinion of VerLoren van Themaat A.G. in the [Cullet](#) case, cited above.

112. Consequently, I conclude that measures restricting exports of animals based on the risk that they may provoke a reaction in national public opinion against the maintenance of a method of rearing animals which is considered to be cruel towards them cannot constitute measures for meeting a public policy objective within the meaning of Article 36.

Protection of the health and life of animals

113. **Article 36** does not allow a Member State to restrict its exports on account of extra-territorial circumstances which, even though they produce effects within its population, do not affect on its own national territory the interest protected by this provision.

114. The principle must, in my view, apply to the aim of protecting the health and life of animals.

115. To allow a Member State to prohibit or restrict the export of *682 animals located on its territory in order to protect them against practices affecting their health or life beyond its own borders would in practice mean giving Member States the right to monitor, and even to influence, the practices or rules applied by the other Member States.

116. The Community legislature certainly did not intend Article 36 to be interpreted so broadly. The function conferred on the provision, which is meant to be an instrument at the service of the Member States against unreasonable effects which the free movement of goods has on their fundamental national interests, precludes such an interpretation.

117. In paragraph [20] of its judgment in *Richardt and "Les Accessoires Scientifiques"*, [FN57] the Court reaffirmed this principle of strict interpretation of Article 36 thus:

The Court has stated on several occasions (see the judgment in *Campus Oil*, cited above, paragraph [37], concerning restriction on imports) that Article 36, as an exception to a fundamental principle of the Treaty, must be interpreted in such a way that its scope is not extended any further than is necessary for the protection of the interests which it is intended to secure. Measures adopted on the basis of Article 36 can therefore be justified only if they are such as to serve the interest which that article protects *and if they do not restrict intra-Community trade more than is absolutely necessary*. [FN58]

FN57 Cited above.

FN58 My emphasis.

118. I am not arguing that the protection of the life and health of animals must give way to the economic requirements of the free movement of goods but, more simply, that, given its function in the Treaty, which largely determines its territorial scope of application, Article 36 is not the appropriate instrument for resolving a case such as that before the national court.

119. Title XVI of the Treaty, on the environment, sets aims and lays down

procedures enabling the Community to adopt measures exceeding the strict territorial boundaries of the Member States.

120. The territorial limitation of the scope of Article 36 does not in any way call in question its usefulness in the field of the protection of the health and life of animals. It allows a Member State to combine provisions taken to preserve an animal species threatened on its national territory with measures restricting or prohibiting export by individuals of the species concerned.

121. If, as I propose, the Court holds that recourse cannot be had to Article 36 of the Treaty for reasons other than the incompleteness of the harmonisation carried out by the Directive, the second preliminary question, on the validity of Directive 91/629, will not require any reply.

122. If, on the contrary, the Court holds that the Directive, being exhaustive, precludes application of Article 36, I must, in the alternative, examine its validity.

***683 VI. Validity of the Directive**

123. The applicant in the main proceedings proposes, likewise in the alternative, that the reply to the second preliminary question should be that the Directive is contrary to the Contravention and to the Recommendation, the clear and unconditional provisions of which are, in its view, binding on the Community. [FN59]

FN59 Paras 65 to 68 of its written observations.

124. The United Kingdom Government and the French Government, as well as the Council and Commission, on the other hand, consider that examination of the Directive discloses no factor such as to affect its validity.

125. The assessment of the validity of a rule of secondary Community law with reference to international instruments concluded by the Community must follow the criteria which the Court has laid down in connection with procedures relating to the application of the General Agreement on Tariffs and Trade (GATT). In its judgment in Case C-280/93, *Germany v. Eu Council*, the Court held that: In deciding whether the applicant can rely on certain provisions of GATT to challenge the lawfulness of the Regulation, it should be noted that the Court has held that the provisions of GATT have the effect of binding the Community. However, it has also held that in assessing the scope of GATT in the Community legal system, the spirit, the general scheme and the terms of GATT must be considered. [FN60]

FN60 Case C-280/93, *Germany v. E.U. Council*: [1994] E.C.R. I-4973, para. [105].

A. Integration of the Convention and the Recommendation in Community law

126. No party disputes the Community's competence to conclude the Convention nor the validity of Decision 78/923 which approved its terms. [FN61]

FN61 I would point out, for the sake of precision, that this competence flows from the power which the Community has, on the internal level, in the matter of common agricultural policy and harmonisation of laws. In its judgment in Joined Cases 3, 4 & 6/76, Kramer and Others: [1976] E.C.R. 1279; [1976] 2 C.M.L.R. 440 *684, paras [15]-[20], the Court held that, in the absence of specific provisions of the Treaty authorising the Community to enter into international commitments in certain fields, reference had to be made "to the general system of Community law in the sphere of the external relations of the Community". The Court stated that Article 210 of the Treaty, under which the Community has legal personality, "means that in its external relations the Community enjoys the capacity to enter into international commitments over the whole field of objectives defined in Part One of the Treaty ...". In those circumstances, the Court concluded that "such authority arises not only from an express conferment by the Treaty, but may equally flow implicitly from other provisions of the Treaty ...". Now, whilst the Treaty does not contain any specific provisions authorising the Community to enter into international commitments in the field of protection of animals during rearing, Decision 78/923 is based on Articles 43 and 100 of the Treaty, relating to the aforementioned fields of common agricultural policy and harmonisation of laws. Moreover, the fourth and fifth recitals in its preamble refer to, respectively, "disparities ... which may give rise to unequal conditions of competition and which may consequently have an indirect effect on the proper functioning of the Common Market" and to the common agricultural policy. It would therefore appear that the Community concluded the Convention pursuant to powers conferred on it by those instruments, in the corresponding fields and in order to attain the Community aims referred to in Article 3(d), (f) and (h) of the Treaty, as in force on the date of adoption of Decision 78/923. See also the judgment of the Court in Case 22/70, E.C. Commission v. E.U. Council: [1971] E.C.R. 263; [1971] C.M.L.R. 335, paras [12]-[19], and Opinion 1/76: [\[1977\] E.C.R. 741](#), paras 3 & 4.

127. The Community is therefore bound by the Convention, which since its entry into force has formed an integral part of the Community legal order.

128. According to the Court's established case law, since they are directly linked to the agreement which they implement, measures emanating from a body established by the agreement and entrusted with responsibility for its implementation form part of the Community legal order. [FN62] In the present case, the Recommendation and Appendix C thereto were adopted by the Standing Committee formed under Article 8 of the Convention. This body "is to be responsible for the elaboration and adoption of recommendations to the Contracting Parties containing detailed provisions for the implementation of the principles set out in Chapter I of this Convention." [FN63]

FN62 Judgments in Case 30/88, Greece v. E.C. Commission: [1989] E.C.R. 3711, para. [13], [Case C-192/89, Sevince: \[1990\] E.C.R. I-3461](#), para. [9], and Case C-188/91, Deutsche Shell: [1993] E.C.R. I-363, para. [17].

FN63 Article 9(1) appearing in Chapter II "Detailed implementation".

B. The effect of the standards laid down by the Convention and the Recommendation

129. Although the imperative form is used in the provisions of the Convention, with the word "shall" being systematically used to lay down the principles contained in Chapter I, [FN64] those provisions are for the most part characterised by imprecision.

FN64 Only Chapter I lays down substantive rules applicable to the field dealt with by the Convention.

130. Thus, the housing of animals, their feeding, and the care given to them must, in particular, according to the Convention, be "appropriate to their physiological and ethological needs in accordance with established practice and scientific knowledge". [FN65] Similarly, the appropriateness of the housing, feeding, watering and care is to be determined "having regard to their species and to their degree of development, adaptation and domestication". [FN66] The freedom of movement for the animals and the food and liquid given to them must not cause the animals "unnecessary suffering or injury". [FN67] The same aim is given for the obligation to "thoroughly inspect" the state of health of animals at intervals which are "sufficient" for this purpose. [FN68] When an animal is killed on the farm, this must "be done competently and ... without causing unnecessary pain or distress to the animals ...". [FN69] Finally, natural or artificial breeding or breeding procedures *685 which cause, or are likely to cause, "suffering or injury" are prohibited. [FN70]

FN65 Arts 3a, 4(2) & 5.

FN66 Arts 3a, 4(1) & 5.

FN67 Arts 4(1) & 6, first para.

FN68 Arts 4(1), 6(1) & 7(1).

FN69 New Art. 7(2).

FN70 New Art. 3 of the Convention, amended by the Protocol of Amendment cited above.

131. The only really precise provisions concern the minimum frequency of inspections of "the condition and state of health" of animals and of technical equipment which must be inspected at least once a day in the case of animals kept in intensive stock farming systems. [FN71]

FN71 New Art. 7(1) & (3).

132. No precise rule can be found in the Convention which could call in question the "veal-crate" system as regards its main characteristics, namely the minimal width of the crates and the composition of the calves' food. Consequently, the concern expressed in the Convention to make the Contracting Parties aware about maintaining rearing conditions which respect the well-being of animals in vital areas is not reflected in the definition of standards whose non-observance by the Directive could affect its validity.

133. According to Article 20 of the Recommendation, this text "shall have no direct application within Parties and shall be implemented according to the method that each Party considers adequate, that is through legislation or through administrative practice".

134. Appendix C which, according to Article 1(3) of the Recommendation, constitutes an integral part of the Recommendation, is subject to the same conditions regarding its entry into force.

135. The provisions of the Recommendation cannot therefore enter into force without implementing measures being taken by the signatories, each one for itself. Any binding force of the Recommendation is suspended upon adoption of such measures, so that the Directive is not subordinate to it. The procedure applicable in the event of failure to implement a recommendation is set out in Article 9(3) and (4) of the Convention. Significantly, this provision allows the Community to bring the effects of the Recommendation to an end simply by giving notice.

136. Irrespective of the conditions for its implementation, the actual content of the Recommendation precludes the calling in question of the validity of the Directive, which, here again, was not bound to observe its provisions. The rules laid down by the Recommendation, being more precise than those laid down by the Convention, are, however, characterised by the use of the conditional tense, at least in relation to the fields concerning the rearing system in question.

137. For example, as regards the space available for animals and their feed-- the elements which characterise the rearing system in question the first and third paragraphs of Article 6(3) of the Recommendation provide that:

The construction of accommodation for cattle ..., whether tethered or in *686 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 rise.

The animals ... *should* be able to see and touch other cattle. [FN72]

FN72 My emphasis.

138. Article 8 provides:

The space allowance for cattle housed in groups *should* be calculated in relation to the whole environment, the age, sex, live weight and behavioural needs of the stock, taking account of the presence or absence of horns and the size of the group. Lack of space or overstocking leading to trampling, behavioural or other

disorders shall be avoided. [FN73]

FN73 My emphasis.

139. The point is that the conditional nature of those rules precludes them from being recognised as having the slightest binding force and that where, on the other hand, a standard is laid down in mandatory terms, its imprecision renders it unenforceable.

140. Article 10, dealing with feeding, partly falls into this last category. It provides: All animals shall 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 in accordance with the age and the physiological needs of the animal. [FN74]

FN74 My emphasis.

141. Finally, a reading of Appendix C leads to the same conclusion.

142. As regards the space allowance for calves, point 4, for example, states "The dimensions of the individual pen or stall shall be *appropriate* to the size of the animal" and "The width of the pen *should* be not less than ... the height of the calf at the withers ...". [FN75]

FN75 My emphasis.

143. Similarly, point 5 states: "Where possible, the keeping of calves in groups should be advised ...".

144. The second paragraph of point 8 states:

Calves older than two weeks shall 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 [FN76]

FN76 My emphasis.

145. Point 14 states:

Since some systems at present in use are not designed, constructed or operated in such a way as to fulfil all the biological needs of calves, efforts must be made to develop and apply husbandry systems which minimise the risk of injuries and disease and allow for all their biological needs to be met, in particular by providing appropriate feeding regimes and by avoiding barren environments, too restricted areas, and lack of social contact.

146. It follows that neither the Convention nor the *687 Recommendation create obligations which compel adoption by the Directive.

147. However, the Court does not go by the spirit, scheme or terms of the international agreement of which the Community measure is alleged to be in

breach. In its case law on GATT, it had held that it must also review the legality of the measure in question in the event that "the Community intended to implement a particular obligation entered into within the framework of GATT, or if the Community act expressly refers to specific provisions of GATT ...". [FN77]

FN77 Judgment in Case C-280/93, Germany v. E.U. Council, cited above, para. [111].

148. The first recital in the preamble to the Directive explains that all the Member States have ratified the Convention and that the Community has also approved it. 149. Although that reference to the Convention marks the Community's intention to promote improvements in rearing conditions for veal calves, which is already evinced by the title and content of the Directive, the wording of the recital, which merely mentions the stage which the Member States and the Community have reached in the procedure for the adoption of the Convention, and the general nature of the reference, do not support the conclusion that the Community wished to confer binding force on any particular provision of the Convention or of the Recommendation, or that it was its intention to make the Directive serve the purpose of implementing them.

150. Consequently, I do not consider the validity of the Directive to be affected by the provisions of the Convention or of the Recommendation.

VII. Conclusion

151. I therefore propose that the Court should rule as follows in reply to the questions submitted to it.

(1) Article 36 E.C. must be interpreted as not allowing a Member State, even where no directive provides for full harmonisation of the measures necessary to achieve the specific objective which recourse to Article 36 is meant to protect, to invoke grounds of public policy and/or the protection of the health and life of animals in order to justify measures restricting the export of live calves with a view to preventing those calves from being reared in the veal crate system used in another Member State.

Article 36 of the Treaty must be interpreted as allowing a Member State, in the same circumstances, to justify such measures on the grounds of public morality where protection of the health and life of animals is regarded in that Member State as falling within that field, the harm to the health or life of animals resulting from the rearing method in question is *688 established by objective scientific evidence and the measures adopted are proportionate to the objective pursued.

(2) Consideration of Council Directive 91/629 laying down minimum standards for the protection of calves has disclosed no factor of such a kind as to affect its validity.

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 E.C. two questions on the interpretation of Articles 34 and 36 E.C. and on the validity of the Council Directive 91/629 laying down minimum standards for the protection of calves [FN78] (hereinafter "the Directive").

FN78 [1991] O.J. L340/28.

[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. [FN79]

FN79 [1978] O.J. L323/12.

[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 *689 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 sub-paragraph 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 *690 the first four weeks and, in any case, until they are eating adequate quantities of suitable solid food.

Community law

Regulation 805/68

[13] Under Article 1 of Regulation 805/68 on the common organisation of the market in beef and veal, [FN80] that Common Market organisation is to comprise a price and trading system and cover, *inter alia*, live animals of the domestic bovine species.

FN80 [1968] O.J. English Spec. Ed. (I), p. 187.

[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 per cent, 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 *691 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. [FN81]

FN81 S.I. 1987 No. 2021.

[21] The prohibition now in force is laid down in the Welfare of Livestock

Regulations [FN82] and the Welfare of Livestock Regulations (Northern Ireland). [FN83]

FN82 S.I. 1994 No. 2126.

FN83 S.R. 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 *692 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 E.C. Decision 78/923 [FN84];
- (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 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 *693 animal welfare organisations and a considerable body of public opinion, supported by authoritative scientific veterinary opinion, in the Member State from which exports occur.

FN84 [1978] O.J. L323/12.

(1) In the circumstances set out above, may Member State A, rely on Article 36 E.C. 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 paragraph [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 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.

*694 [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 Generale des](#)

[Impôts v. Forest](#) [FN85]). 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* [FN86] and Case C-27/96, *Danisco Sugar v. Allmänna Ombudet* [FN87]).

FN85 [\[1986\] E.C.R. 3449; \[1998\] 2 C.M.L.R. 577](#), para. [14].

FN86 [1986] E.C.R. 3513; [1988] 1 C.M.L.R. 83, para. [13].

FN87 Not yet reported.

[42] Under Article 1 of Regulation 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](#) [FN88]).

FN88 [\[1978\] E.C.R. 2347; \[1979\] 1 C.M.L.R. 177](#) *695 , para. [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, 142 and 143/81, [Holdijk and Others](#) [FN89] 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 fattening 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.

FN89 [\[1982\] E.C.R. 1299; \[1983\] 2 C.M.L.R. 3819](#).

[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. [FN90]

FN90 *Holdijk and Others*, para. [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, R. v. MAFF, Ex parte Hedley Lomas](#) [FN91]). 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'Insemination de la Crespelle v. Cooperative de la Mayenne* [FN92]). In that regard, the Member States must rely on mutual trust to carry out checks on their respective territories (see, most recently, [R. v. MAFF, Ex parte Hedley Lomas](#) [FN93]).

FN91 [\[1996\] E.C.R. I-2553; \[1996\] 2 C.M.L.R. 391](#), para. [18].

FN92 [1994] E.C.R. I-5077, para. [31].

FN93 Para. [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 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* [FN94]).

FN94 [1995] E.C.R. I-3389 *696 , para. [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 [FN95] and of Decision 78/923.

FN95 [1987] O.J. C76/185.

[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 *697 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 [FN96]).

FN96 [1990] E.C.R. I-2143, paras [9] & [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.

*698 [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.

Order

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 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 E.C. 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.

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