



From the Minister

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD  
WHITEHALL PLACE, LONDON SW1A 2HH

*NB PM*

The Rt Hon Sir Geoffrey Howe QC MP  
Secretary of State for Foreign and  
Commonwealth Affairs  
Foreign & Commonwealth Office  
Downing Street  
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2 May 1986

WELFARE OF BATTERY HENS - PROPOSED CHALLENGE TO COUNCIL DIRECTIVE  
86/113/EEC

1. I am writing to seek colleagues' formal agreement to our challenging the recent directive on the welfare of battery hens in the European Court of Justice.
2. This directive, which was published in the Official Journal on 10 April and notified on 15 April, lays down minimum space allowances and other welfare standards for hens kept in battery cages. It also authorises national aids for adaptation of buildings to meet these requirements. It was adopted on the basis of Articles 42 and 43 despite repeated requests - notably from the United Kingdom and Denmark - that Article 100 should also be mentioned. Accordingly at the Council on 25 March we and the Danes voted against the proposal. As regards the substance of the directive, we support the objectives and indeed were disappointed that it did not go further to protect the welfare of hens. We, Germany, Netherlands and Denmark entered a statement in the minutes to this effect.
3. I believe we should challenge this directive in order to maintain the protection included in Article 100 which requires unanimity for measures demanding harmonisation of national laws. The reason for challenging the directive is therefore of legal and constitutional importance. We need to check the recent trend of the Council to adopt by qualified majority under Article 43 directives which demand a significant measure of harmonisation of national laws outside the objectives of Article 39; in such cases the Council has, until recently, amended the Commission's proposal to add a reference to Article 100 to the powers relied on. This is the more important because, after the entry into force of the Single European Act, Article 100 will be superseded by the new Article 100A. While this substitutes adoption by qualified majority for unanimity, it also contains important safeguards which you and the Prime Minister devoted much effort to negotiating

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at last December's European Council. If the precedent is set of adopting all harmonisation measures concerning agriculture under Article 43 alone, those safeguards, which were designed to protect our high animal and plant health standards, will be shown to be useless.

4. You will recall that we have already taken action against the hormones directive because of the same question of Article 43 and Article 100, and because of various procedural irregularities in its adoption. There is a risk that the Court might decide the case on other grounds than that of the basis of the directive in the Treaty; there is also a danger that our well known opposition to the ban on hormones might tell against us in the Court. A further challenge on the Article 43/Article 100 issue in a case where we supported the policy would show the Court and the rest of the Community that we are serious about it. The directive on the welfare of battery hens does not suffer from comparable procedural complications so there should be a good chance of getting a ruling on this important legal point in one or both cases.

5. Although the battery hens directive contains some provisions which are correctly based on Articles 42 and 43, eg the authorisation of national aids, there is little doubt that its main thrust concerns animal welfare, a subject which falls out with the scope of those Articles.

6. I have also considered the arguments against mounting a challenge. There is bound to be criticism from the animal welfare lobby, who take a very close interest in battery hens, that we have obstructed even the limited progress made in this area. In the absence of Community rules they may press for national standards supported by import restrictions which would contravene the Treaty. The egg industry may also complain that no sooner had the uncertainty of several years' negotiation been resolved than the issue was thrown open again. We shall have to be ready to respond to such points and I am giving thought as to how the news of our challenge should be announced. But I do not consider that these arguments outweigh the legal and political reasons for going ahead.

7. My proposed course of action has already been agreed at official level. The Solicitor General has also approved it, taking the view that the arguments in favour of a challenge clearly outweigh those against.

8. I should mention that further measures are already under discussion at working level on which we shall similarly need to argue for the addition of Article 100 to the legal base. If these are nevertheless adopted under Article 43 alone, it may be appropriate to consider bringing further legal challenges.

/9. I am copying ...

9. I am copying this letter to the Prime Minister, members of OD(E), the Secretaries of State for Wales, Northern Ireland, Scotland and the Environment, the Solicitor General and to Sir Robert Armstrong. In view of the shortness of time for making our application, I should be grateful to receive any comments by 9 May.

*John Evans*  
*Michael*

MICHAEL JOPLING

