

(The original complaint was submitted in French – this is a non-official translation)



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Eingetragen im Vereinsregister
beim Amtsgericht Hamburg, VR 1392.

Mr Markos KYPRIANOU
European Commissioner responsible
for health and consumer protection
Rue de la Loi 200
B – 1049 BRUXELLES

Metz, 18 april 2007

Subject: Complaint against the governments of France, Hungary, Bulgaria, Spain and Belgium for not enforcing Directive 98/58/EC, as regards the production of foie gras

Dear Mr Commissioner,



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As NGOs, *People for the Ethical Treatment of Animals* (PETA) and *Stop Gavage* are hereby making a formal complaint to the European Commission, directed specifically towards France, Hungary, Bulgaria, Spain and Belgium, for not enforcing Council Directive 98/58/EC concerning the protection of animals kept for farming purposes.

Our complaint is aimed at the breeding procedures employed for the production of foie gras which requires the forceful overfeeding of the animals concerned. Force-feeding is incompatible with the enforcement of the above Directive and must not be tolerated by France, Hungary, Bulgaria, Spain and Belgium.

Furthermore, Article of French Agricultural Orientation Law No 2006-11 of 5 January 2006, "Foie gras is part of the cultural and gastronomical French heritage. Foie gras is defined as the liver of a duck or a goose that has been specially fattened through force-feeding", codified in the legislative part L.654-27-1 of the French Rural Code, should be reformed.

In reference to Article 226 of the Treaty instituting the European Commission, we wish to urge the Commission to take all appropriate action.

Yours sincerely,

Dr Tanja Breining
Campaign Coordinator
PETA Deutschland e.V.

Sébastien Arsac
President
Stop Gavage

Copy: DG Agriculture

Attached: complaint (4 pages)

Formal complaint to the European Commission, directed specifically towards France, Hungary, Bulgaria, Spain and Belgium, for not enforcing Council Directive 98/58/EC concerning the protection of animals kept for farming purposes.

On 16 December 1998, the Scientific Committee on Animal Health and Animal Welfare of the European Commission adopted a report (referred to from here onwards as “the report”) entitled “Welfare Aspects of the Production of Foie Gras in Ducks and Geese”.

To our knowledge, this report is the only piece of independent expert work that has been carried out relating to the welfare of the animals used in the production of foie gras. The working group that established this report of synthesis consisted of 12 European scientific experts. Our complaint is entirely based on the scientific knowledge mentioned in this report.

Article 4 of Directive 98/58/EC stipulates:

“Members States shall ensure that the conditions under which animals (other than fish, reptiles or amphibians) are bred or kept, having regard to their species and to their degree of development, adaptation and domestication, and to their physiological and ethological needs in accordance with established experience and scientific knowledge, comply with the provisions set out in the Annex.”

The scientific knowledge exposed in the report shows that the production of foie gras does not comply with the provisions of the Annex of the Directive:

A – “The level of steatosis must be considered as pathological.”

In section 5.4 “Force feeding and pathology”, the report states:

“These various data show that the liver steatosis obtained by force feeding induced an impairment of hepatic function, as demonstrated from morphometric, biochemical, histological and pharmacological points of view, but that this was completely reversible in the studies carried out. The reversibility of steatosis which is reported above for many birds which have been force fed does not mean that the changes in the liver are not pathological. Another indication of how pathological the liver changes are is to consider whether the birds would die if the steatosis which exists at the end of the force feeding period were to continue. All producers are careful to keep good technical results and not to continue the force feeding some extra days because if they do, very high mortality can occur. The livers of these birds would show slightly further advanced steatosis before they died. The experimental study in which the level of steatosis which exists at the end of force feeding is maintained for some days has not been carried out. However, if force feeding is continued after three to four days, the level of cell damage rises significantly. This is consistent with reports from farmers that indicate that mortality increases if feeding continues for longer than usual. Hence it appears that the level of steatosis normally found at the end of force feeding would not be sustainable for many of the birds. **For this reason, and because normal liver function is seriously impaired in birds with the hypertrophied liver which occurs at the end of force feeding this level of steatosis should be considered pathological.**

A further source of information concerning whether the liver is in a pathological condition at the end of gavage is to ask qualified pathologists for their opinion on the histology of such liver. In non-statistical surveys the opinions of 25 pathologists from various countries were sought on this point. **Most of these considered that the liver condition was pathological.**

Several of them pointed out that some degree of steatosis can occur in healthy animals at certain times of life but they considered that the degree of steatosis at the end of force feeding was much more severe than any naturally occurring steatosis.” *(highlighted by us)*

In section 5.5, the report indicates that mortality rate is multiplied by 10 to 20 during force-feeding:

“The mortality rate in force fed birds varies from 2% to 4% in the two week force feeding period compared with around 0.2% in comparable ducks.”



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The production of foie gras implies a hepatic steatosis which is described as pathological. **The animals used in the production of foie gras are therefore ill during the period of force-feeding.** Furthermore, many birds die in abnormal proportions during the period of force-feeding.

Point 4 of the Annex of Directive 98/58/EC stipulates:

“Any animal which appears to be ill or injured must be cared for appropriately without delay and, where an animal does not respond to such care, veterinary advice must be obtained as soon as possible. Where necessary, sick or injured animals shall be isolated in suitable accommodation with, where appropriate, dry comfortable bedding.” *(highlighted by us)*

Therefore, the Directive demands that all birds used in the production of foie gras be cared without delay and, where an animal does not respond to such care, veterinary advice must be obtained as soon as possible... It is impossible to carry out force-feeding whilst respecting this clause, which renders the production of foie gras illegal.

The illegal nature of force-feeding also comes about in point 14 of the Annex:

“Animals must be fed a wholesome diet which is appropriate to their age and species and which is fed to them in sufficient quantity to maintain them in good health and satisfy their nutritional needs. No animal shall be provided with food or liquid in a manner, nor shall such food or liquid contain any substance, which may cause unnecessary suffering or injury.”

Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations also states in Point 2 of Chapter 1 of Annex 1 that:

“Injured animals or animals that show physiological weaknesses or a pathological state must not be considered as apt for transport.”

Therefore, birds that have been force-fed must not be transported.

B – “Force feeding, as currently practised, is detrimental to the welfare of the birds.”

The Scientific Committee on Animal Health and Animal Welfare concludes:

“[...] force feeding, as currently practised, is detrimental to the welfare of the birds.”

In Section 8 “Summary, conclusion and recommendations”, the report states:

“I. Foie gras and the ingestion of large quantities of food

[...]

11. Surveys on mortality rates or losses during the two weeks of the force feeding period were carried out in France, Belgium and Spain. **The mortality rate in force fed birds varies from 2% to 4% in the two week force feeding period compared with around 0.2% in non force fed ducks.** There is considerable variation of the figures between farms, batches in the farms and seasons. The precise causes of this mortality have not been documented but are likely to include physical injury, heat stress and liver failure.

[...]

II. The Force feeding Procedure

1. The force feeding procedure deprives the bird of an important behaviour which is normal feeding.

2. The problems of the force feeding procedure itself are : (1) handling by humans which, in the commercial force feeding situation, can cause aversion and discomfort for ducks and geese, (2) **the potentially damaging and distressing effects of the tube which is inserted into the oesophagus,** (3) the rapid intubation of a large volume of food.

[...]

The procedure of force feeding has been said to result in the presence of accumulated scar tissue in the oesophagus of ducks. If this organ has sensory innervation, this might indicate that there is pain during the force feeding procedure. However, it is not known how often injury or pain occurs and those conducting force feeding endeavour to avoid injury to the ducks and geese since injury to the birds at this time can cause mortality.

7. Geese and ducks do not have a crop. The increasing amount of food given prior to force feeding and the force feeding itself cause expansion of the lower part of the oesophagus. The risk of damage to stretched tissue is greater than that to normal tissue but it is not known how great this risk is in force fed ducks or geese.” *(highlighted by us)*



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Article 20 of the Annex of Directive 98/58/EC relating to breeding procedures requires:

“20. Natural or artificial breeding or breeding procedures which cause or are **likely** to cause suffering or **injury** to any of the animals concerned must not be practised.

This provision shall not preclude the use of certain procedures likely to cause **minimal or momentary** suffering or injury, or which might necessitate interventions which would not cause lasting injury, where these are allowed by national provisions.” *(highlighted by us)*

This article therefore not only forbids breeding procedures that cause systematic suffering or injury to animals, but also **procedures that are likely to cause suffering or injury.**

The report states undeniably that **force-feeding is likely to cause injury to the animals concerned.** Although the reasons are not established, the report also reveals an increase in mortality rates during force-feeding. It is therefore also undeniable that **the method of production of foie gras is likely to cause suffering and non-minimal or non-temporary injury due to the fact that it leads many animals to death.**

In view of the scientific knowledge exposed in the report, the enforcement of Article 20 of the Annex of Directive 98/58/EC leads to forbidding the practice of force-feeding used in the production of foie gras.

Force-feeding practiced in France, Hungary, Bulgaria, Spain and Belgium for the production of foie gras must not be authorized.

Furthermore, Article of French Agricultural Orientation Law No 2006-11 of 5 January 2006, “Foie gras is part of the cultural and gastronomical French heritage. Foie gras is defined as the liver of a duck or a goose that has been specially fattened through force-feeding” codified in the legislative part L.654-27-1 of the French Rural Code, should be reformed.

C – Further considerations

1 – Recommendations from the report

A section of the report examines the socio-economic consequences of improving the welfare of the animals used in the production of foie gras. It particularly expresses concern for the social difficulties that a ban on force-feeding could imply.

The ban on force-feeding, derived from Directive 98/58/EC and the scientific knowledge exposed in the report, is not explicitly recommended in this report, leaving this delicate decision to the initiative of the Commission...

The description of the processes used in the methods of production of foie gras and its consequences on the animals are nonetheless clearly incompatible with the report’s following specific recommendations:

“a. No process should be used that results in an increase in liver size such that its function is significantly modified or that it directly or indirectly causes increased mortality, pain, or distress to the animal.

b. No feeding procedure should be used that results in substantial discomfort to the animals, shown by aversion to the feeding procedure or any other indicator of poor welfare in the birds. Automatic feeding devices should not be used unless proved to be safe for the birds.”

The final position of Dr D.J. Alexander, member of the group that worked on the report, is an interesting illustration of the political difficulties the scientists were faced with after having enlightened the conflict of interest between the protection of the welfare and health of the animals and the socio-economic interests of the foie gras industry:

“8.4 Minority Opinion – Dr D.J. Alexander

Although he endorsed the Report as a well-balanced factual account of the animal welfare aspects of the production of foie gras, Dr Alexander was unable to agree fully to the Recommendations made. In his opinion, based on the animal health and welfare data presented in the Report, the only recommendation that the Committee can properly make is that force feeding of ducks and geese should stop and that this could best be achieved by the prohibition of the production, importation, distribution and sale of foie gras. He agrees that should the Commission decide that foie gras production



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should continue, for example due to the socio-economic impacts discussed in Chapter 6 of the Report, then the recommendations in section 8.3.4 a-g should be enforced.”

II – Convention and recommendations of the Council of Europe

The European Union ratified the European Convention for the protection of animals kept for farming purposes.

There are two Recommendations derived from this Convention that concern the production of foie gras. These Recommendations were adopted in 1999. In the preamble of these recommendations, it is explicitly written that the production of foie gras does not meet the requirements of the Convention:

“(8) Aware of the welfare problems connected to **certain practices in the production of foie gras which do not meet the requirements of the Convention**, and anxious to encourage research on welfare aspects and alternative methods with a view to ensuring a further examination of this question; mindful of the need, in the meantime, to solve the welfare problems by modifying these practices [...]” *(highlighted by us)*

Considering the report’s conclusions on the impact of force-feeding on the health of birds, Point 2 of Article 16 of the Recommendation on ducks clearly and directly leads to forbidding force-feeding:

“2. Methods of feeding and feed additives which cause distress, injury or disease to the ducks or may result in development of physical or physiological conditions detrimental to their health and welfare shall not be permitted.”
(highlighted by us)

A delay is given to the production of foie gras which must only be practised where it currently exists. This delay is subordinated to research into alternative methods that do not involve force-feeding:

“Article 24

1. Countries allowing foie gras production shall encourage research on its welfare aspects and on alternative methods which do not include gavage.

2. Until new scientific evidence on alternative methods and their welfare aspects is available, the production of foie gras shall be carried out only where it is current practice and then only in accordance with standards laid down in domestic law.

In any case, the competent authorities shall monitor this type of production to ensure the implementation of the provisions of the Recommendation.”

Therefore, it must be noted that the spirit of these recommendations is based on banning force-feeding, effective immediately for countries that do not produce foie gras, and on its replacement by alternative methods in countries that do produce foie gras.

It would be contrary to the spirit of these recommendations to invoke them in order to argue against a community-wide ban on force-feeding. On the contrary, the continuation of force-feeding does not meet the requirements of the Convention.

Moreover, the recommendations must be applied by the countries that have ratified the Convention, which involves countries beyond the European Union which can implement more constraining dispositions on its territory in accordance with the requirements of its own regulation, therefore in the first place of Directive 98/58/EC concerning the protection of animals kept for farming purposes.



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