



Deutsche Juristische Gesellschaft  
für Tierschutzrecht e.V.

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## EUPAW

- Evaluation of EU Policy on Animal Welfare -

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In Addition to our electronic evaluation made on Friday, 30 July 2010.

Münster, 30.07.2010

# Evaluation of EU Policy on Animal Welfare

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## A. Coverage of All Areas Relevant to Animal Welfare: Minimum Standards

Directives stipulating minimum standards for the protection of animals are required for the following types of **livestock**:

1. dairy cattle (it is intolerable that large numbers of these animals are kept permanently tethered without any opportunity to exercise and graze),
2. beef cattle,
3. turkeys,
4. rabbits,
5. Peking- and Muscovy ducks and
6. quails.

In order to protect **laboratory animals**, the killing of animals for scientific purposes must be restricted and made conditional on evidence that the project in question pursues scientific aims of overriding importance and that all alternative

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means of achieving these aims without killing animals have been attempted without success.

## **B. Applicable Directives Do Not Ensure Adequate Standards of Animal Welfare**

### **I. Directive on the Protection of Pigs**

**Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs** (codified version) does not ensure the adequate protection and welfare of these animals. Art. 3 (1) only stipulates the absolute minimum floor areas for weaners and rearing pigs. For example, pigs weighing between 50 and 85 kg are only allocated a floor area of 0.55 m<sup>2</sup>. With so little space and such a high stock density it is not possible for the animals to properly divide up their living space into areas for excrement and rest. Moreover, their rest area is permanently soiled because remnants of excrement and urine remain caught in the perforation. The continuous solid floors, which are admitted under Art. 3 (2) b of the Directive, also force the pigs to lie with their snouts over their own faeces (and those of other pigs) and to constantly inhale the fumes. These animals are highly sensitive to smell and the exposure to ammonia places them under permanent stress. In addition, keeping the animals in such a small area means that it is impossible for them to rummage or forage or maintain an adequate distance from each other. Due to the fact that the Directive permits the pigs to be fed exclusively with pulp, meal or pellet, the innate need of pigs to consume their food by e.g. biting and chewing is not satisfied. As a result, they exhibit behavioural disorders such as the biting of tails and ears.

Art. 3 (4) of Directive 2008/120/EC also provides for sows and gilts to be kept in farrowing crates and pens for a continuous period of several weeks despite the fact that thereby these intelligent animals are completely unable to move around and exercise properly. As a result of this, the animals suffer pains in the form of inflammation of the urinary tract, teats, uterus as well as injuries to their legs and hooves. The enforced immobility also causes behavioural disorders such as biting bars and compulsive chewing. According to the findings of the Scientific Veterinary Committee keeping sows and gilts in stalls and farrowing crates inflicts serious, long-lasting pain and suffering.

### **II. Directive on the Protection of Chickens for Meat Production**

**Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production** does not meet the requirements for effective protection either. Art. 3 (4) and (5) permit a stocking

density of 39 or 42 kg/m<sup>2</sup>, despite the fact that a preparatory opinion of the EU's Scientific Veterinary Committee had already established that normal resting was not possible at a stock density of 28 kg/m<sup>2</sup> and that above 30 kg/m<sup>2</sup> "even with very good environmental control systems, there is a steep rise in the frequency of serious problems". The fact that such scientific findings have obviously been ignored in favour of economic considerations points to an infringement of the Union's professed aim of "animal protection" as enshrined in Art. 13 of the Treaty on the Functioning of the European Union (TFEU).

### III. Directive on the Protection of Calves

According to Art. 3 (3) b of the **Directive laying down minimum standards for the protection of calves (91/629/EEC and 97/2/EC)** a floor area of 1.5 m<sup>2</sup> is allocated to each calf where the live weight is less than 150 kg; 1.7 m<sup>2</sup> where live weight is between 150 to 220 kg and 1.8 m<sup>2</sup> where the live weight is over 220 kg. It is obvious that under such conditions the calves are unable to run, race and play which is particularly important for young animals. They are even deprived of the possibility to rest normally, lying outstretched on their side.

### IV. Directive on the Protection of Laying Hens

The floor area and height of enriched cages provided for in Art. 6 of **Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens** are wholly inadequate insofar as they do not allow the animals to satisfy basic behavioural characteristics such as standing at a reasonable height, dust-bathing, foraging, feeding and flapping their wings. In response to a referendum held in 2008, the US state of California recently passed an Act prohibiting hen cages from 2015 unless they offer the animal sufficient space to fully extend its wings without touching the cage walls and/or the bodies of its fellows. In EU, the cages do not allow the animals to flap their wings freely. The Union's aim of "animal protection" in Art. 13 TFEU should, at the very least, be interpreted as an obligation to follow the Californian example.

Concerning the **new Regulation on the protection of animals at the time of killing**, the preparatory opinion of the Scientific Veterinary Committee found that the method of killing birds by dipping them head-first into electrified baths seriously affected their well-being and urgently recommended its abolition in favour of non-aversive gas. Nevertheless, this method of killing is still permitted and the Regulation does not even set a transition period for its replacement.

The new Regulation has not adopted the Committee's recommendation to replace the carbon monoxide gas which is commonly used to stun pigs with argon or other inert gases or a mixture of such gases. Similarly, the Regulation

has failed to incorporate rules governing the stunning and killing of farmed fish - again, contrary to the recommendation of the Scientific Veterinary Committee. Regarding slaughter in accordance with religious rite, the Committee has recommended that "in view of the serious reservations concerning the welfare of animals slaughtered without anesthesia, an anesthetic should always be administered before slaughter".

The Council also refused to incorporate this recommendation into the new Regulation. This neglect of all scientific findings and recommendations constitutes a serious breach of the obligation set forth in Art. 13 TFEU to treat animals - even those intended for slaughter - as "sentient beings" and to "pay full regard" to their welfare requirements.

## V. Directive on the Protection of Laboratory Animals

Looking ahead to the imminent **Directive of the European Parliament and Council on the protection for animals used for scientific purposes**, it is unlikely that the many considerable improvements in animal welfare which the European Commission originally intended to introduce will be implemented. The aim of ensuring effective animal protection enshrined in Art. 13 TFEU can only be achieved by implementing the following improvements:

1. a prohibition on projects involving living vertebrate animals and cephalopods unless authorized by the competent authorities;
2. a positive ethical evaluation by the competent authority as a compulsory requirement for the issue of such authorization;
3. the compulsory involvement of independent third parties in such evaluation;
4. the prohibition of further testing on animals as soon as alternative methods become available which are scientifically viable;
5. an absolute prohibition on projects which cause animals serious and prolonged pain, suffering and distress;
6. the application of all requirements relating to accommodation and care set forth in Annex A of the European Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes (2006);

7. a compulsory admissions procedure for all persons who intend to participate in projects involving living vertebrates and cephalopods;
8. a requirement that even projects which place animals under moderate strain will be subject to a retrospective evaluation by the competent authority;
9. a requirement that, in future, at least half of all the inspections of farming, transport and application facilities shall be held without prior announcement.

## C. Financial Support of Animal Welfare

### I. Link between Direct Payments and Animal Welfare

In future, the rules governing direct payments (**EC Regulation No. 1782/2003**) should include an animal protection component which will ensure that only those persons are eligible for direct payments whose treatment of the animals they keep clearly exceeds the minimum standards as set forth in the above-mentioned Directives.

Under the present system, a landowner receives an annual premium which, in Germany, amounts to 350 - 400 euros per hectare without regard to whether he:

1. uses the subsidized area for pig farming with continuous solid floors, stalls and farrowing crates or instead adopts an appropriate method of keeping pigs with open stalls, covered lying areas and free range areas;
2. uses the subsidized land to keep chickens intended for meat production in a stall of up to 42 kg/m<sup>2</sup> live weight or instead in a stall which does not exceed a stock density of 25 kg/m<sup>2</sup>, as recommended by the Scientific Veterinary Committee;
3. maintains an intensive calf or cattle farm on continuous solid floors or instead provides an open pen with lying boxes, free range area and pasture or
4. operates a laying hen farm using cages or instead a deep litter system with an outdoor, free range area.

Especially nowadays, with public funds in short supply, it is becoming increasingly difficult to justify this situation to the public. In the 21st century,

subsidies to animal farmers can only be justified on a *quid pro quo* basis - for the expense of keeping, feeding and caring for animals to standards which satisfy their needs. Those who only adhere to the minimum standards stipulated down by the above-mentioned Directives must be systematically excluded from receiving direct payments. Those farmers who maintain clearly higher standards of animal protection must be rewarded with higher subsidies.

## II. Reduction of Direct Payments

The European Agricultural Fund (EAF) should be reinforced by accelerating the reduction of direct payments. This could be achieved by re-channelling a considerable portion of the funds currently earmarked for direct payments (first pillar of the Common Agricultural Policy; **EC Regulation No. 1698/2005**) into the EAF (second pillar of the Common Agricultural Policy; **EC Regulation No. 1698/2005**). In this connection, it must be ensured that the Member States devote a substantial part of the EAF to the promotion of methods of keeping animals which reflect their needs and the needs of the environment by making regular grants to landowners who maintain open stalls, free range areas and pastures.

Admittedly, **Art. 40 of EC Regulation No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)** already provides for such a development scheme. However, in the Federal Republic of Germany the number of such grants issued by the Federal Government and State Governments has been minimal, despite the fact that they could provide an extremely effective means of e.g. protecting dairy farmers who are currently fighting for their survival.

## III. Labelling of Animal Products

The European Parliament has addressed the issue of labelling animal food products to reflect the way animals are kept in its Resolution of the 5th of May 2010 on the Evaluation and Assessment of the European Animal Welfare Action Plan 2006 - 2010. It correctly ascertained that certain groups of consumers are prepared to pay higher prices for products which satisfy higher animal welfare standards (letter L of this Resolution).

In this connection, the Parliament understandably regretted the fact that the Commission had not developed a clear communication strategy on the value of products that comply with animal welfare standards, (no. 17 of the Resolution) and welcomed the debate concerning various possible animal welfare labelling schemes (no. 31 of the Resolution).

The following steps must be taken to ensure that the labelling of animal food products reflects the way the animals in question are kept:

1. extending the method used to label eggs which was successfully introduced and is now widely understood by consumers (0 = biological; 1 = free range; 2 = floor pen; 3 = cage) to all food products of which eggs are an ingredient;
2. introducing this labelling system to the produce of broiler chickens (0 = biological; 1 = kept in stalls with moderate stock density and outdoor, free range areas; 2 = kept in stalls with moderate stock density in accordance with the recommendation of the Scientific Veterinary Committee (i.e. no more than 25 kg/m<sup>2</sup> live weight); 3 = kept in stalls exceeding this stock density);
3. introducing similar labelling systems (i.e. based on the tried and tested scale of 0 to 3) for pork, beef, turkey and other products.

## **D. Insufficient Involvement of Animal Welfare Organizations**

In the past, animal welfare organizations were insufficiently involved in the formulation of Directive and Regulations on animal protection. As a result, many disputes were decided in favour of users who kept animals for agricultural and experimental purposes and contrary to the interests of animal welfare (cf. the example cited above of Directive 2007/43/EC of the Council of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production: setting the admissible stock density at 39 and 42 kg/m<sup>2</sup> instead of adopting a maximum limit of 25 to 30 kg/m<sup>2</sup> as recommended by the Scientific Veterinary Committee). When reviewing the above-mentioned Directive and formulating new Directives and Regulations relating to animal welfare, a way must be found to involve representatives of animal welfare in the decision-making process in recognition of the importance the public now attributes to animal protection issues.

In particular, animal welfare organizations must be involved in the European dialogue which is currently being held ahead of amendments to the Common Agricultural Policy (CAP) which are due to take effect from 2013. It would be a clear breach of Art. 13 TFEU if the Community organs and the governments of the Member States were to hold this dialogue with the representatives of the

agricultural and food production industries but exclude the associations of environmental protection and animal welfare.

## **E. No Capping of National Standards and "Cross Compliance"**

It must be emphasized that, besides laying down minimum standards for animal protection which are binding on all Member States, harmonization efforts relating to animal welfare must also grant Member States the discretion to exceed these standards. Accordingly, Member States wishing to improve animal protection within their sovereign territory will have the right to do so.

Experience has shown that only if individual Member States are able to issue regulations protecting animals which exceed the standards prescribed by European law will it be possible to collect practical evidence that higher standards of animal protection reflect the legitimate concerns of users and consumers and that the economic arguments often cited in opposition are unfounded. This, in turn, may persuade the Community to adopt the higher standards of animal welfare existing in certain Member States. In the medium term, therefore, competition and exemplary practice may provide the basis for promoting animal welfare throughout the Community.

By contrast, "caps" (i.e. provisions which prohibit Member States from subsequently embracing higher standards of animal welfare) not only contravene the principle of subsidiarity and proportionality in Art.5 (4) of the Treaty on the European Union (TEU) but, as already demonstrated, prevent animal welfare from being promoted within the Community by way of example. As such they are incompatible with the Union's policy on animal welfare in Art. 13 of the TFUE.

There is a fear that amongst farmers that those who keep their animals in open stalls with exercise and grazing areas will suffer a competitive disadvantage compared to farmers who keep them in stalls with continuous solid floors, tethers or cages. One way of allaying this fear is to label products obtained from animals kept in appropriate conditions in such a way that they can be clearly and unmistakably distinguished from products obtained from animals kept in less appropriate or inappropriate conditions (i.e. by using the 0 - 3 labelling scale described above). In addition, any fear that producers who treat animals appropriately could be disadvantaged in relation to their competitors at home and abroad in terms of higher costs and workload can be allayed by incorporating the animal protection component into direct payments and ensuring that "cross compliance" is not limited to monitoring compliance with the (completely



inadequate) minimum requirements of the applicable Directives on pigs, calves, broiler hens and laying hens as is currently the case.

Only once compulsory labelling systems have been introduced for products obtained from animals held under appropriate conditions (e.g. the meat obtained from pigs, calves, cows, broiling hens, turkeys, ducks and even the milk obtained from dairy cows) which are just as clear as the 0 to 3 grading system used in relation to egg production will it be possible to ensure that products obtained under humane conditions achieve a sale price which reflects their higher market value.

The same system should also be introduced for products which normally require efficacy or safety tests if these can establish that the product in question was manufactured without animal testing.

At the same time, the advertising and operation of this labelling system will serve to increase awareness of animal welfare amongst consumers and thereby the general public.

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