

# For a More Humane Union: A Legal Assessment of EU Farm Animal Welfare Laws

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European Institute  
for Animal Law & Policy

ACHIEVING BETTER TREATMENT FOR ANIMALS

# Table of Contents

Introduction..... 4

1. A Legislative History  
of EU Animal Welfare Legislation ..... 8

1.1. The “Five Freedoms” of Animal Welfare in Response to Mass-Scale Animal Abuse..... 8

1.2. The Council of Europe ..... 10

1.3. Farm Animal Welfare in EU Law ..... 12

2. A Piece-by-Piece Analysis  
of EU Farm Animal Welfare Legislation ..... 20

Council Directive 95/58/EC Concerning the Protection of Animals Kept  
for Farming Purposes (“General Farming Directive”) ..... 23

Council Directive 1999/74/EC Laying Down Minimum Standards  
for the Protection of Laying Hens (“Egg-Laying Hens Directive”) ..... 25

Council Directive 2008/119/EC Laying Down Minimum Standards  
for the Protection of Calves (“Calves Directive”) ..... 27

Council Directive 2008/120/EC Laying Down Minimum Standards  
for the Protection of Pigs (“Pigs Directive”) ..... 29

Council Directive/2007/43 EC Laying Down Minimum Rules  
for the Protection of Chickens Kept for Meat Production ..... 31

Council Regulation 1/2005 on the Protection of Animals During Transport  
and Related Operations (“Transport Regulation”) ..... 33

Council Regulation 1099/2009 on the Protection  
of Animals at the Time of Killing (“Slaughter Regulation”) ..... 37

3. A Classification of Shortcomings  
in EU Farm Animal Welfare Laws ..... 38

Limited Scope..... 40

Inadequate Standards ..... 42

Vagueness ..... 48

Disproportionate Exemptions..... 50

Enforcement Issues ..... 51

Fragmented Implementation and Distortion in Competition ..... 54

Annex 1: EU Farm Animal Welfare Legislation ..... 56

Annex 2: European Court of Justice Rulings about Farm Animal Welfare Legislation ..... 58

Annex 3: Timeline of the Adoption of EU Farm Animal Welfare Legislation  
and Relevant Caselaw by the European Court of Justice ..... 66

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Animal Law Europe, Bruxelles, 2022.

Please be advised: this document contains images and information  
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# For a More Humane Union:

A Legal Assessment of EU Farm Animal Welfare Laws.

## EXECUTIVE SUMMARY

Despite being the only jurisdiction in the world to have enacted such extensive farm animal welfare laws, the EU has become a major center of factory farming – a method of industrial farming which is highly deleterious to animals. The proliferation of this method of farming is a symptom of the failure of EU farm animal welfare laws, however developed they have become relative to other jurisdictions. The European Commission themselves, while conceding the current regulatory framework has been inadequate, has announced that EU farm animal welfare will undergo a significant revision in the coming years.

This would not be the first attempt, however, the EU has taken in revising its farm animal welfare legislation, with two of the major acts having undergone three revisions since their enactment. Those past attempts have focused specifically on what standards to include in the legislation, but what has been lacking in the revision process has been recommendations on legal drafting, which would ensure the laws produce their intended effects, rather than inviting a variety of interpretations due to vague legalese, as is currently the case. This report analyses and articulates such shortcomings in current EU animal welfare laws, before formulating 17 recommendations for better, more legible legal drafting that would lead to improved treatment for farm animals.



# Introduction

- 1 Directive 98/58/EC Concerning the Protection of Animals Kept for Farming Purposes.
- 2 European Commission, Attitudes of Europeans Towards Animal Welfare, Special Eurobarometer Report 442, 4, March 2016.

Despite being the only jurisdiction in the world to have enacted farm animal welfare regulations, the EU has become a major center of factory farming – a method of industrial farming which is highly deleterious to animals. On average, over the past few years, the EU has killed 11 billion animals for food purposes annually.

The ineffectiveness of EU regulations to counter the development of factory farming can be accounted for by the accommodating stance of EU animal welfare law towards these systems. Beginning in the early 1980s, up through the late 1990s, the narrative framing put forth by the EU institutions and the animal agriculture industry around the enactment of EU animal welfare regulations has created the impression in consumers, citizens, and EU lawmakers themselves that EU animal welfare laws have been driven by ethical considerations. As a matter of fact however, the standards contained in EU farm animal welfare laws have primarily sought to ensure a level playing field in the EU by harmonizing management practices on farms.

But even with this aim, the vague drafting and the ambiguous, even contradictory requirements plaguing EU animal welfare laws have fallen short of “ensuring the smooth running of the organization of the market in animals.”<sup>1</sup> Furthermore, outdated standards in animal welfare science and societal demand contained in the EU regulations have fueled discontent among civil society, which increasingly feels that the EU institutions should act to ensure the welfare of farm animals.<sup>2</sup>

Only the intense advocacy work of the animal welfare movement has managed to secure key achievements for farm animals at the beginning of the 2000s, such as limitations on the use of cages for calves, sows, and egg-laying hens. And even then, these successes have been limited by very minimal improvements to ensure no major disruption to industrial farm animal production. Some of these superficial changes include a limit on the use of crates for calves, up to eight weeks from the time the calf is born; the use of pig crates up to a three week duration per production cycle, and the requirement that cages in egg farming should be enriched.

These minimal improvements in the treatment of farm animals have caused the EU institutions to tout the EU as a world leader on farm animal welfare. But the reality is that management practices on European factory farms only differ marginally from common practices in industrial farm animal production around the world. Furthermore, when compared to many jurisdictions in the Global South, the EU slaughters many more animals in terms of quantity, and qualitatively, the EU has



Italy, 2015, Jo-Anne McArthur / Essere Animal / We Animals Media

worse outcomes when it comes to animal welfare and creating incentives for citizens to adopt a more plant-based diet.

With the implementation of the European Green Deal, the new European Commission has shown signs of receptiveness to the opinion of EU citizens. In particular, the Commission has presented the revision of animal welfare legislation as a major achievement of democratic governance and animal protection. One reason for optimism that the upcoming revisions may succeed where the past several attempts have failed is that the main text of the EU Constitutional Treaty has been revised to recognize animal sentience, whereas that was not the case ten years ago. This revision is thus an unprecedented opportunity to ensure EU farm animal welfare legislation comes into alignment with the constitutional mandate of the Union and Member States to “take into account the welfare of animals.”

This White Paper highlights the shortcomings of EU animal welfare legislation, which have contributed to widen the gap between common legal industry practices on the one hand, and scientific knowledge and social expectations on the other. This work further offers remedies to improve the quality of the law so that it finally produces the effects the new Legislature intends. In doing so, this report advocates for a complete change in the way EU animal welfare legislation is discussed, drafted, and implemented. This report offers solutions to address the particular issues posed by low-quality legal drafting and the over-complicated procedures to amend secondary and tertiary legislation.

This White Paper is structured into three parts:

The **first part** presents a history of EU farm animal welfare legislation, while also demystifying the EU's competence in regulating the treatment of farm animals.

The **second part** offers an analysis, via factsheets, of each of the pieces of legislation that comprise EU farm animal welfare legislation, detailing the content, limitations, and relevant interpretation of each law by the European Court of Justice.

The **third part** presents another series of factsheets which describe the main shortcomings of EU farm animal welfare legislation, followed by a list of non-exhaustive examples of how such shortcomings have manifested. These factsheets also include boxes that specify technical aspects of EU law-making and conclude with targeted legal recommendations for revision.



Turkey, 2018. Jo-Anne McArthur / Eyes On Animals / We Animals Media

# 1. A Legislative History of EU Animal Welfare Legislation

3 For an update on Ruth Harrison work, see Peter Singer, *Animal Liberation* (1975).

4 Roger Brambell, Report of the Technical Committee to Enquire Into the Welfare of Animals Kept Under Intensive Livestock Husbandry Systems, Great Britain Parliament, H.M. Stationery Office (1965).

## 1.1. The “Five Freedoms” of Animal Welfare in Response to Mass-Scale Animal Abuse

### THE FIVE FREEDOMS MODEL

Animal welfare as a law and policy concept was developed in 1965 in the United Kingdom (UK), following the publication of *Animal Machines* by Ruth Harrison, an animal protection activist. The book featured an investigation of British industrial farms and sparked public concern over the suffering of farmed animals in industrial animal agriculture.<sup>3</sup> In response, the UK government commissioned a report by Dr Francis Brambell, a veterinarian. In his report (the “Brambell report”), Dr Brambell theorized the conceptual framework that would later define acceptable farm animal welfare levels: the Five Freedoms.<sup>4</sup> In 1979, the UK created an independent advisory body, the Farm Animal Welfare Council (FAWC) which formalized its recommendations to the government of Great Britain using the “Five Freedoms” concept.

- **Freedom from Hunger and Thirst:** by ready access to fresh water and a diet to maintain full health and vigor.
- **Freedom from Discomfort:** by providing an appropriate environment including shelter and a comfortable resting area.
- **Freedom from Pain, Injury or Disease:** by prevention or rapid diagnosis and treatment
- **Freedom to Express Normal Behavior:** by providing sufficient space, proper facilities and company of the animal’s own kind.
- **Freedom from Fear and Distress:** by ensuring conditions and treatment which avoid mental suffering.

Even though the Five Freedoms represent a landmark in animal protection efforts, this concept has also hindered progress towards the proper consideration of animal sentience in the law. The FAWC, and the many other institutions dedicated to discussing animal welfare policies that came afterwards in the EU, presented the Five Freedoms as a solution to address the systemic abuse exerted upon farm animals. In retrospect, however, the Five Freedoms have had virtually no effect in protecting animals from rampant industrialization of animal agriculture in Europe.

5 Steven P. McCulloch, A Critique of FAWC’s Five Freedoms as a Framework for the Analysis of Animal Welfare, *Journal of Agricultural and Environmental Ethics* (2012).

6 David J. Mellor, Updating Animal Welfare Thinking: Moving Beyond the “Five Freedoms” Towards “A Life Worth Living,” *Animals* (2015).

7 See for instance, The Universal Declaration of Human Rights (1948).

8 See also, Katy Sowery, Sentient Beings and Tradable Products : the Curious Constitutional Status of Animals under Union Law, 17, *Common Market Law Review* (2018).

9 In contrast, Directive 2010/63 on the welfare of animals used for scientific purposes mentions the “3Rs” concept.

### A LEGAL CRITIQUE

Veterinarians, and the FAWC itself,<sup>5</sup> have criticized the Five Freedoms model and have advocated a shift to a framework that would focus on positive experiences for animals, rather than just shielding them from negative experiences.<sup>6</sup> In an attempt to remedy what they consider to be a significant shortcoming of the formulation of proper requirements, the animal welfare scientific community have come up with an alternative model, that of the Five Domains, which reflect the fundamental physiological needs for animals to live positive experiences.

From a legal perspective, the primary issue of the Five Freedoms is not their formulation as negative freedoms (“freedom from”) rather than positive freedoms (“freedom to”), because negative freedoms appear frequently in the law and have produced powerful effects.<sup>7</sup> Rather, the main legal issue with the Five Freedoms is that they are fraught with unspecific wording which has hindered them from producing any prescriptive effects.<sup>8</sup> The Five Freedoms never specify the different acts of violence that producers should be prohibited from exerting upon animals. Instead, the Five Freedoms seem to prohibit causing stress and fear to animals, but never go as far as defining which acts would be constitutive of causing such harm. In fact, the Five Freedoms discuss animal abuse in such general terms that they have even been invoked to assess the welfare of animals used for scientific purposes, even though animal experimentation differs widely from animal agriculture in its practices, quantity, and the types of animals used.

Another issue that undermines the Five Freedom’ prescriptiveness is that some of the Freedoms do not even seem to address common abuse suffered by animals on industrial farms. For instance, the so-called “freedom from hunger” ignores that a primary feature of factory farming is overfeeding, in massive quantities, to make animals grow fatter and faster.

From both an animal studies’ and legal theory perspective, the endorsement of liberationist semantics appears to point the way to an ambitious regulatory framework that would treat animals as rights holders. The reality though is that none of the Five Freedoms contain any practical definitions and specific standards to ensure basic protection, let alone rights. A testimony to the Five Freedoms’ inadequacy to produce any prescriptive effects is that none of the EU legislation pieces on animal welfare mention them,<sup>9</sup> even though the European Commission claims they form the basis of EU law and policy action in the field of animal welfare.<sup>10</sup>

10 European Commission, “Animal Welfare,” [https://ec.europa.eu/food/animals/animal-welfare\\_en](https://ec.europa.eu/food/animals/animal-welfare_en) (visited on February 1<sup>st</sup> 2022).

11 European Commission, Inception Impact Assessment – Revision of EU Animal Welfare Legislation, July 2021, available online: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12950-Animal-welfare-revision-of-EU-legislation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12950-Animal-welfare-revision-of-EU-legislation_en).

12 The Council of Europe does not report any meeting of the Standing Committee of the European Conventions for the Protection of Animals kept for Farming Purposes (“T-AP”) taking place after 2010.

13 These Conventions were adopted by the European Committee on Legal Co-operation (CDCI), which was established in 1963, and whose mandate is to set standards with a wide scope of competence in the field of public and private law.

14 Council of Europe, European Convention for the Protection of Animals During Transport, Nov. 6, 2003, E.T.S. 193.

15 Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.

16 Council of Europe, European Convention for the Protection of Animals for Slaughter, May 10, 1979, E.T.S. 102. Note that the Council of Europe adopted a fourth convention, the European Convention for the Protection of Vertebrate Animals used for Experimental and Other Scientific Purposes, in 1986 (E.T.S. 123).

Finally, from a policy perspective, the Five Freedoms set the course for a type of regulatory action characterized by over-reliance on animal sciences – industry science – with little to no regard for other disciplines such as ethology, philosophy, and law; and a neglect of the perspective of farmers who have resisted animal agriculture industrialization. Another characteristic of the Five Freedoms is the way they resort to concepts with obscure ethical groundings and limited regulatory effects, which conveniently fits industry common practices.

In 2021, the European Commission announced it would switch to using the Five Domains model as a guide, rather than the Five Freedoms, in the course of drafting its proposal for a new EU animal welfare legislation. The adoption of the Five Domains model by the European Commission<sup>11</sup> is a welcoming development regarding the scientific standards that should inform the work of the Legislature. However, the adoption of the Five Domains still falls short of providing a clear policy orientation, one that would prioritize closer regulation of the industry through the use of specific wording and stringent standards.

1.2. The Council of Europe

THE COUNCIL OF EUROPE CONVENTIONS

Besides the FAWC’s Five Freedoms, EU animal welfare legislation has also been significantly influenced by the adoption of a series of three conventions on animal protection by the Council of Europe (CoE). Founded in 1949, the CoE is an international European organization separate from the EU. The CoE now gathers 47 member countries, including Russia and Turkey, in addition to all 27 EU Member States. The CoE derives its competence to enact conventions on animal welfare from its mandate regarding legal cooperation regarding biological safety and “use of animals” between the CoE’s Member States, although the CoE’s efforts to improve farm animal welfare standards have stalled since the late 2010s.<sup>12</sup>

The EU Legislature has been proactive in enacting animal welfare laws protecting animals used for food production (and scientific purposes) since the early 1970s. Between 1968 and 1979, before the EU had enacted most its legislation on animal welfare, the CoE adopted three Conventions pertaining to the protection of farmed animals (CoE Conventions):<sup>13</sup>

- The European Convention for the Protection of Animals During Transport<sup>14</sup>
- The European Convention for the Protection of Animals Kept for Farming Purposes<sup>15</sup>
- The European Convention for the Protection of Animals for Slaughter<sup>16</sup>

These three conventions are binding in the EU to the extent that the EU is a non-State signatory and almost all the EU Member States ratified them. To this day, the EU is the only jurisdiction to have enacted legislation giving force to the CoE Conventions, which have formed the basis for current EU animal welfare legislation.

17 Preamble, Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.

18 A list of these recommendations is available online: [https://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/biological\\_safety\\_and\\_use\\_of\\_animals/farming/A\\_texts\\_documents.asp](https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/A_texts_documents.asp) - TopOfPage (last visited January 3<sup>rd</sup>, 2021).

19 Council of Europe, Recommendations Concerning Cattle, Appendix A, Paragraph 2, “Special Provisions for Bulls Kept for Breeding or Fattening Purposes” (1993).

20 Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 O.J. L 10/7 - 13 (EU).

21 Council of Europe, Recommendations Concerning Cattle, Appendix C “Special Provisions for Calves” (1993).

22 Council of Europe, Recommendations Concerning Cattle, Appendix C “Special Provisions for Calves” (1993).

23 *Ibid.* Article 3(a), 2009 O.J. L 10/8 (EU).

Though foundational, the standards enacted in the CoE Conventions were general and unambitious. This outcome can be attributed to the difficult task of reaching consensus among 47 Member States. Despite the lax standards, however, the Member States of the CoE still identified the pressing issue of mass-scale animal suffering on industrial farms, and thus expressed an intent to protect animals “particularly in modern intensive stock-farming systems.”<sup>17</sup>

*“The member States of the Council of Europe signatory hereto, Considering that it is desirable to adopt common provisions for the protection of animals kept for farming purposes, particularly in modern intensive stock-farming systems.”*  
– Preamble, European Convention for the Protection of Animals Kept for Farming Purposes (1976)

THE COUNCIL OF EUROPE RECOMMENDATIONS

The Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes further substantiated the general rules in the Convention through twelve species-specific recommendations meant to “advance cooperation” between the members of the CoE.<sup>18</sup>

Most standards in the Recommendations are general and open to different interpretations by the Members of the CoE. The majority of the provisions contained in these recommendations are not substantiated by engineering or performance standards. When the provisions are substantiated by engineering or performance standards, which is rare, they are not prescriptive. For instance, the provisions for bulls kept for breeding or fattening purposes provide engineering standards but only “as a guideline.”<sup>19</sup>

A country must ratify a recommendation for it to be binding. To date, the EU has not codified all of the recommendations put forth by the Standing Committee. However, the EU still used these recommendations as a basis for its own farm animal welfare legal standards. As a result, many of the EU legal standards have ended up being very similar to the standards in the Recommendations. For instance, the 2008 Calves Directive<sup>20</sup> has very similar language as the specific provisions for calves contained in the CoE Recommendations concerning cattle.<sup>21</sup>

In other instances though, EU standards are even more stringent than those set in the CoE Recommendations. For example, the Recommendations concerning cattle do not impose a limit of the duration of the use of individual pens for calves, nor do they require that calves be able to see and touch one another.<sup>22</sup> The EU Calves Directive goes beyond these rules, at Article 3(a) requiring that “no calf shall be confined in an individual pen after the age of eight weeks” and that “individual pens for calves [...] must have [...] perforated walls which allow the calves to have direct visual and tactile contact.”<sup>23</sup>

24 Article 3, Consolidated version of the Treaty on European Union, OJ C 326/17 (2012). See also Vincent Bouhier, *Le difficile développement des compétences de l'Union européenne dans le domaine du bien-être des animaux*, 361-364, *Revue Semestrielle de droit animalier* (2013)(in French). Bouhier also notes that the mere presence of a general policy objective is not enough to form the basis of an EU competence as per article 5(2), TEU, which requires that a competence be specific enough.

25 Point 73, C-189/01, *Jippes and Others*, 21 July 2001.

26 T-361/14 , H.B. *contre Commission*, 5 April 2017.

27 *Ibid.* Point 37

28 Article 40, TFEU. See also Katy Sowery, *Sentient Beings and Tradable Products : the Curious Constitutional Status of Animals under Union Law*, 7-8, *Common Market Law Review* (2018). *Contra* Fabien Marchadier, *La protection du bien-être de l'animal par l'Union européenne*, 251, *RTD Eur.* (2018) (in French). Note that the regulation of the welfare of animals other than farmed animals are based on articles 114 (approximation of law), 168(4) (public health), article 191 and following (environmental policy), or article 207 (trade policies) of the TFEU.

29 Point 26, C-131/86, *United Kingdom of Great Britain and Northern Ireland v Council of the European Communities*, 23 February 1988.

30 *Ibid.* 27.

### 1.3. Farm Animal Welfare in EU Law

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#### FARM ANIMAL WELFARE LAW AS COMPETITION LAW

The EU's competence in enacting farm animal welfare standards via the regulation of the agricultural market has not been utilized to its full potential to limit cruelty on animals. EU lawmakers at the time decided not to prioritize animal welfare, even in cases where stricter regulations on industry practices converged with fair competition goals.

- **No Direct Competence to Regulate Animal Welfare**

The EU Legislature has the competence to regulate farm animal welfare only to the extent that it is competent to regulate the agricultural market.<sup>24</sup> In EU law, animal welfare rules affect methods of production. As such, in the eyes of EU regulators, these rules must be harmonized to ensure fair competition between business operators on the EU market.

The European Court of Justice (ECJ) confirmed the EU's indirect competence in regulating farm animal welfare in two rulings, in 2001<sup>25</sup> and 2017.<sup>26</sup> In these rulings, the ECJ confirmed that there was no general principle of animal welfare in the EU. The Court further specified that the EU's policy intervention in animal welfare was strictly limited to the formulation and implementation of the Union's agriculture, fisheries, transport, internal market, research and technological development, and space policies, as determined in Article 13 of the Treaty on the Functioning of the European Union (TFEU).<sup>27</sup>

Even though the EU's competence in agriculture has resulted in the adoption of legislative acts that establish minimum animal welfare standards for farmed animals, these regulatory efforts have been viewed by the EU executive to be primarily motivated by the adoption of "common rules on competition" in agriculture.<sup>28</sup> In a 1988 case, in which the UK challenged the competence of the EU to enact welfare rules for egg laying hens, the ECJ confirmed that the adoption of rules concerning the welfare of egg-laying hens "was made essentially with a view to eliminating unequal conditions of competition in that field."<sup>29</sup> The Court further noted that while "the [Directive] was also conceived with a view to ensuring better treatment for laying hens, [...] varying national rules regarding agricultural products which may affect the proper functioning of a common organization of the market, such as, in this case, differing conditions for the keeping of laying hens, may be harmonized on the basis of Article 43 of the Treaty [on the common agricultural policy] alone."<sup>30</sup>

Because the EU only has indirect competence in enacting animal welfare legislation, the EU Legislature must shoe-horn any animal welfare laws by way of regulation that is first and foremost designed to ensure market harmonization. This subordination of animal welfare rules to market goals largely accounts for the shortcomings of EU animal welfare legislation, and further explains why many animal welfare rules in EU law consist in the codification of common industry practices, rather than the tightening of regulations on the industry.

- **Using Competition Rules as a Lever: A Missed Opportunity**

The EU's prioritizing of market harmonization should, in theory, lead to rigorous drafting in EU law to avoid vagueness and ambiguity, which invariably causes distortions in competition. Similarly, exemptions granted within such legislation should be limited to avoid the fragmentation in the implementation of rules across the Member States. Finally, fair competition provides an incentive for the EU executive to properly enforce its legislation across the Member States, so as to ensure a level playing field.

The EU, however, does not appear to be legitimately concerned with distortions in competition due to uneven animal welfare standards. EU farm animal welfare laws suffer from low quality drafting, in addition to being inconsistently implemented and under-enforced. These three issues – vagueness, inconsistent implementation, and under-enforcement – are structural to the current legislative framework on farm animal welfare legislation, and should therefore be addressed in the upcoming revision.

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#### THE RECOGNITION OF ANIMAL SENTIENCE IN THE EU CONSTITUTIONAL TREATY

EU law has recognized the interests of animals for the past 30 years. The integration of such a recognition had been gradual, culminating with the Lisbon Treaty reform of 2007, which recognized animal sentience in law. This constitutional treaty directed the Union and the Member States to take the welfare of animals into account in a number of policies, including agricultural and fisheries policies. So far though, the Legislature has not fully implemented such a constitutional mandate.<sup>31</sup>



31 Katy Sowery, Sentient Beings and Tradable Products: The Curious Constitutional Status of Animals Under Union Law, 8 -11, Common Market Law Review (2018).

**EU Treaties, Protocols, and Declarations: Definitions and Legal Value**

- **EU Treaties:** Also called “Treaties of the European Union,” these are a set of international treaties signed by all EU Member States and act as the EU Constitution. Among other rules, the EU Treaties set the different competences of the EU. Amendments to the treaties require the signature and ratification of every single Member State. The main EU Treaties are the Treaty on the Functioning of the European Union (also called the Rome Treaty, signed in 1957) and the Treaty on the Functioning of the European Union (also called the Maastricht Treaty in 1992) – both amended by the Amsterdam and Lisbon Treaties in 1997 and 2007 respectively. Other EU Treaties are the Treaty establishing the European Atomic Energy Community and the Charter of Fundamental Rights of the European Union (adopted in 2000).
- **Declarations:** A declaration is an instrument through which the European Union relates their point of view on a specific topic. Declarations have the same legal value as the treaties to which they are attached.
- **Protocols:** Protocols are a type of legal instrument annexed to both the Treaty on the European Union and the Treaty on the Functioning of the European Union. Protocols provide detailed measures or actions on a specific part of their respective treaties and typically include measures directly applicable to one or more Member States, more detailed measures to be adopted later, and specifications regarding decision-making procedures in specific policy fields. Like declarations, protocols have the same legal value as the treaties to which they are attached and so signatories of these treaties are also bound by any protocols annexed to them.

• **The 1992 Declaration in the Maastricht Treaty and the 1997 Protocol in the Treaty of Amsterdam**

In 1992, the EU Legislature adopted the Treaty on European Union (TEU, also called the Maastricht Treaty), which codified the governmental structure of the EU as we know it today, with a further integrated single market and the euro currency.

In addition to signing the TEU, the EU Member States adopted a Declaration on the protection of animals, appended to the Maastricht Treaty.<sup>32</sup> The Declaration calls “the European Parliament, the Council and the Commission, as well as the Member States, when drafting and implementing Community legislation on the common agricultural policy, transport, the internal market and research, to pay full regard to the welfare requirements of animals.” It is the first time the interests of animals are mentioned in the EU constitutional treaty, even though this Protocol has no legal value.<sup>33</sup>

32 Treaty on European Union, Declaration on the Protection of Animals, O.J. C 191/0103 (1992).

33 Tara Camm and David Bowles, Animal Welfare and the Treaty of Rome – A Legal Analysis of the Protocol on Animal Welfare and Welfare Standards in the European Union, Journal of Environmental Law, 198 and 200 (2000).

34 Treaty Establishing the European Community, Protocol (No 33) on Protection and Welfare of Animals O.J. C 321E/314 (1997). Also see Tara Camm and David Bowles, Animal Welfare and the Treaty of Rome – A Legal Analysis of the Protocol on Animal Welfare and Welfare Standards in the European Union, Journal of Environmental Law, 200 (2000).

35 Consolidated Version of the Treaty on the Functioning of the European Union, O.J. C 326/54 (2012).

**Declaration n°24 on the protection of animals, Maastricht Treaty (1992)**

*“The Conference calls upon the European Parliament, the Council and the Commission, as well as the Member States, when drafting and implementing Community legislation on the common agricultural policy, transport, the internal market and research, to pay full regard to the welfare requirements of animals.”*

In 1997, the EU Treaties (both the Treaty of Rome and the Treaty of Maastricht) were further amended by the Treaty of Amsterdam, which transferred additional competences from Member States to the EU central government, including on immigration law and policy. In 1997, the EU Legislature also adopted a binding “Protocol on Protection and Welfare of Animals” annexed to the Treaty of Amsterdam.<sup>34</sup> For the first time, animals are referred to as “sentient beings.” This is also the first time the EU Legislature made an exception to the mandate to take into account the welfare of animals for religious, cultural, and regional practices.

**Protocol (No 33) on protection and welfare of animals (1997)**

*The high contracting parties,  
Desiring to ensure improved protection and respect for the welfare of animals as sentient beings;  
Have agreed upon the following provision which shall be annexed to the Treaty establishing the European Community,  
In formulating and implementing the Community’s agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.*

• **The 2007 Lisbon Treaty: The Recognition of Animal Sentience in the EU Constitution**

The EU treaties were further amended in 2007 by the Lisbon Treaty, the most recent revision of the EU Treaties. The Lisbon Treaty amends the Treaty on the Functioning of the EU and included the 1997 Protocol (No 33) on Protection and Welfare of Animals, by way of article 13, TFEU (new).<sup>35</sup>

*“In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.”*

**Article 13, Treaty on the Functioning of the European Union (Lisbon Treaty)**

36 Also see Katy Sowery, Sentient Beings and Tradable Products: The Curious Constitutional Status of Animals Under Union Law, Common Market Law Review (2018).

37 Council Directive 98/58 of 20 July 1998 Concerning the Protection of Animals Kept for Farming Purposes, 1998 O.J. (L 221) 23 - 27.

38 Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 O.J. (L 203) 53 - 57.

39 Council Regulation 1/2005 of 22 December 2004 on the Protection of Animals During Transport and Related Operations, 2005 O.J. (L 3) 1 - 44.

40 Council Directive 2007/43 of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 O.J. (L 182) 19 - 28.

41 Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 O.J. (L 10) 7 – 13.

42 Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 O.J. (L 47) 5 - 13.

43 Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 O.J. (L 303) 1 - 30.

With this inclusion, animals are categorized as both sentient beings and agricultural products in Annex 1 of the TFEU.<sup>36</sup> The new version of the TFEU entered into force in 2009.

• **The Absence of any Effects on Animal Welfare Legislation**

The change in the drafting of the EU Treaties (also called “primary law”) did not entail any new development in the drafting of rules in EU law (“secondary law”) or regulations (“tertiary law”) pertaining to farm animal welfare – nor other laws and regulations more generally affecting the treatment of farm animals. The inconsistency between the language of the EU Treaties and secondary law is particularly striking when it comes to farm animal welfare legislation, composed of seven legislative acts:

1. Council Directive 98/58 of 20 July 1998 Concerning the Protection of Animals Kept for Farming Purposes<sup>37</sup> (General Farming Directive)
2. Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens<sup>38</sup> (Hens Directive)
3. Council Regulation 1/2005 of 22 December 2004 on the Protection of Animals During Transport and Related Operations<sup>39</sup> (Transport Regulation).
4. Council Directive 2007/43 of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production<sup>40</sup>(Broilers Directive)
5. Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves<sup>41</sup> (Calves Directive).
6. Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs<sup>42</sup> (Pigs Directive)
7. Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing<sup>43</sup> (Slaughter Regulation).

The absence of a general update in farm animal welfare legislation since 2009 calls into question its compliance with the EU Treaties, especially the TFEU, which imposes a duty on the Union to fully take the welfare of animals into account on the basis of their sentience.

44 Many scholars consider the difference between implementing and delegated acts to be artificial. The European Court of Justice caselaw, although prolific, gave no clear orientation as to the standards that the administration should rely on when deciding whether it should regulate through implementing or delegated acts. For discussions on implementing *versus* delegated acts, see: Carlo Tovo, Delegation of Legislative Powers in the EU: How EU Institutions Have Eluded the Lisbon Reform, European Law Review (2017); Merijn Chamon, Institutional balance and Community Method in the Implementation of EU Legislation Following the Lisbon Treaty, Common Market Law Review (2016); Antoine Buchet, La réforme des pouvoirs conférés à la Commission européenne, entre métamorphose et réminiscence, *Cahiers de droit européen* (2018) (in French); Dmitri Zdobnõh, Competition Between Articles 290 and 291 TFEU: What Are These Two Articles About, *in* E. Tauschinsky and W. Weiss (eds.), *The Legislative Choice Between Delegated and Implementing Acts in EU Law*, Edward Elgar (2018); Merijn Chamon, Beyond Delegated and Implementing Acts: Where do EU Agencies Fit in the Article 290 and 291 Scheme?, *in* W. Weiss and E. Tauschinsky (eds.), *The Legislative Choice between Delegated and Implementing Acts in EU Law*, Edward Elgar (2018); Merijn Chamon, Dealing with a Zombie in EU law: The Regulatory Comitology Procedure with Scrutiny, *Maastricht Journal of European and Comparative Law* (2016).

**Types of EU Law**

- **Primary law** (Constitutional texts): Rules contained in the EU Treaties (TEU, TFEU).
- **Secondary law** (Legislation): Rules contained in the EU legislative acts. There are two types of legislatives acts in EU law:

- **Directives:** A type of legislative act that lays down objectives that the Member States must achieve by enacting national law (“transposition”).
- **Regulations:** A type of legislative act that lays down precise standards that are directly binding, thereby not requiring transposition.

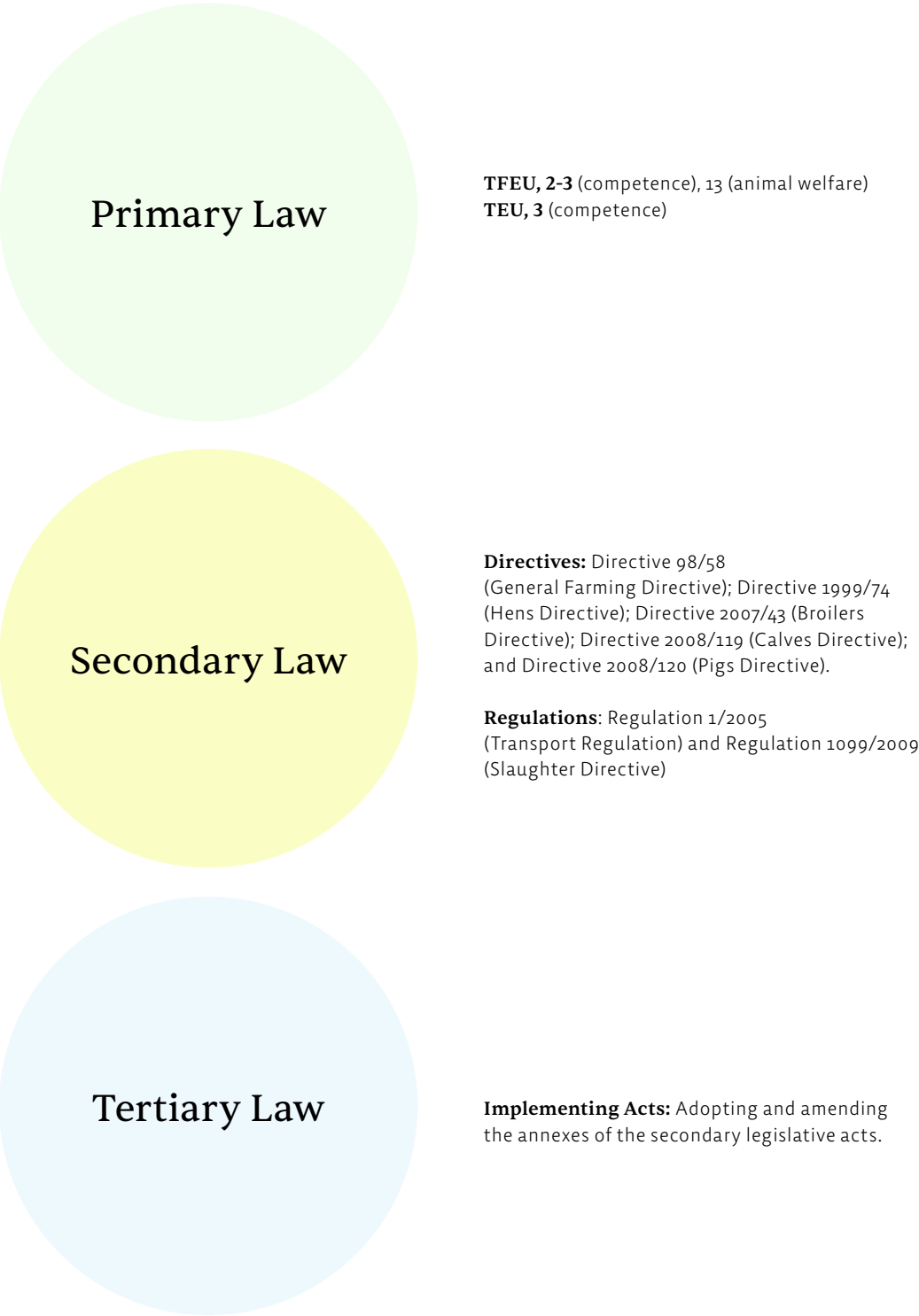
In EU law, regulations are equivalent to legislation, not administrative rules.

- **Tertiary law** (also called “regulations” in other jurisdictions): Administrative rules that specify the implementation of the rules of a law. They are called non-legislative acts because they are adopted by the administration rather than the Legislature. They are the equivalent of “decrees,” “executive orders,” or “regulations” in national jurisdictions. There are two types of tertiary acts in EU law:

- **Implementing acts:** Rules that are unilaterally adopted by the European Commission (executive branch) to set conditions that ensure that EU law is applied uniformly.
- **Delegated acts:** Rules adopted by the Commission to supplement or amend non-essential parts of EU legislative acts. The European Parliament and the Council can oppose them.

In theory, delegated acts and implementing acts differ in their content. In practice, it is quite difficult to differentiate between an act that primarily harmonizes rules from those that only “amend and supplement non-essential parts” of the basic act.<sup>44</sup> What primarily differentiates implementing acts from delegated acts is the oversight by the European Parliament, which can veto a delegated act but cannot reject an implementing act.

EU FARM ANIMAL WELFARE LEGISLATION PER TYPE OF LAW



# 2. A Piece-by-Piece Analysis of EU Farm Animal Welfare Legislation

Explainer: The following document is a collection of factsheets which detail the scope, content, history, and shortcomings of each piece of EU farm animal welfare legislation. These factsheets also provide the caselaw relevant to each law discussed. Please be advised of the following caveats:

- Listed Caselaw**

The listed caselaw only concerns cases that are directly related to the legislative act discussed in the factsheet (as opposed to the animal species discussed in the case). For instance, none of the factsheet list case C – 189/01, Jippes and Others, 21 July 2001, because, even though this case concerns the treatment of domestic sheep, this case primarily concerns the Declaration on Animal Protection in the Treaty of Amsterdam; it does not concern any of the pieces of EU farm animal welfare legislation. Where there are no caselaw listed (e.g. for the General farming Directive, or the Pigs Directive), it is because no caselaw related to these acts has been found in the European Court of Justice's (ECJ) reports of cases – either because there has not been any, or because the cases have not been published in the reports of cases.
- Lack of Enforcement**

A recurring shortcoming of EU farm animal welfare legislation has been the lack of enforcement of these pieces of legislation. However, because of the European Commission's limited enforcement powers, the responsibility to enforce EU law falls to the Member States. For this reason, enforcement issues are not indicated in the factsheets, except in the specific context of inter-state commerce, such as the transport of live animals, for which the EU is competent to act.

For enforcement issues concerning the EU farm animal welfare Directives and the Slaughter Regulation, please refer to undercover investigations conducted in the Member States by animal protection organizations.



## 2.1. Council Directive 95/58/EC Concerning the Protection of Animals Kept for Farming Purposes ("General Farming Directive")

### Intent

To achieve "uniform application of the Convention," "ensure the smooth running of the organization of the market in animals," and integrate existing animal welfare provisions in EU law with the goal of "[ensuring] rational development of production and to facilitate the organization of the market in animals."<sup>1</sup>

Also mentioned in the recitals:

- **International Law – Council of Europe Convention**

1976 European Convention for the Protection of Animals Kept for Farming Purposes<sup>2</sup> and the 1995 Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes' Recommendation on Domestic Fowls<sup>3</sup>

- **Treaty ("EU primary law")**

Declaration N°24, annexed to the Final Act of the Treaty of European Union<sup>4</sup>

- **Other Non-Legislative Acts**

European Parliament's Resolution of 20 February 1987 on animal welfare policy.<sup>5</sup>

### Legal basis

Article 43 of the Treaty on the Functioning of the EU on the implementation of the common agricultural policy.

### Scope

#### MATERIAL

**All farmed animals:** The Directive covers all animals bred or kept for farming purposes, defined as "all animals, (including fish, reptiles or amphibians) [used] for the production of food, wool, skin or fur or for other farming purposes."<sup>6</sup> Conversely, "wild animals, animals intended for use in competitions, shows, cultural or sporting events or activities, experimental or laboratory animals, any invertebrate animals"<sup>7</sup> are excluded from the scope of the Directive.

**On-farm treatment of animals,** including breeding.<sup>8</sup>

#### TERRITORIAL

The Directive does not apply to imported live animals or animal-source products, nor exported live animals once they leave EU soil.

#### SUBSIDIARITY

More specific provisions laid down in relevant acts with a more restrictive scope take precedence, i.e.: all species-specific directives, and the regulations on transport and slaughter. The standards contained in the General Farming Directive are thus the default standards in EU law in the absence of a more specific provision.

#### Main Provisions

Sets general standards regarding the on-farm treatment of animals, including inspection requirements by the owner, and space, building, infrastructure, feed, and fluids requirements.

#### Limitations

##### LIMITED SCOPE

The Directive does not apply to invertebrates, such as cephalopods, even though cephalopods are otherwise protected under the Directive 63/2010 on the Protection of Animals Used for Scientific Purposes.<sup>9</sup>

Furthermore, the provisions are too broad to address the specific abuse to which many farm animals - including dairy cows, rabbits, ducks, and geese used in foie gras production, and all aquatic animals - are exposed.

#### VAGUENESS

The General Farming Directive is drafted using such vague language that the objective pursued is unclear. The Legislature relies on general concepts that are not defined, such as "unnecessary pain," adequacy and appropriateness in standards of care, but this Directive almost never provides engineering standards to substantiate such concepts and standards.

Examples:

Article 3 : "Member States shall make provisions to ensure that the owners or keepers take all reasonable steps to ensure the welfare of animals under their care and to ensure that those animals are not caused any unnecessary pain, suffering, or injury."<sup>10</sup> Here, the Directive does not provide a definition, nor a standard for how to measure the welfare of an animal, nor does the Directive indicate what would be necessary pain, as opposed to "unnecessary pain."

The specifications in the Annex do not provide measurables and quantifiable standards, and instead use general wording, such as "sufficient number"; "appropriate ability"; "adequate lighting"; "suitable accommodation"; "where appropriate"; "comfortable bedding"; "established experience and scientific knowledge"; "unnecessary suffering" (several times); "within limits that are not harmful to the animals"; "appropriate period of rest"; "where necessary and possible"; "wholesome diet which is appropriate to their age and species"; "fed [...] in sufficient quantity"; "good health"; "minimized [competition]"; "minimal or momentary injury"; "reasonably expected"; "detrimental effect on health and welfare."<sup>11</sup>

#### EXEMPTIONS

Mutilations are allowed when authorized by national provisions.<sup>12</sup>

#### History

The General Farming Directive implements the 1976 European Convention for the Protection of Animals Kept for Farming Purposes adopted by the Council of Europe, which was the last of the three Council of Europe farm animal welfare conventions to be codified in EU law. The EU Legislature has never revised the General Farming Directive.





Italy, 2016. Stefano Belacchi / Essere Animali / We Animals Media.Aitor Garmendia / Tras los Muros

1

Recitals, Council Directive 98/58 of 20 July 1998 Concerning the Protection of Animals Kept for Farming Purposes, 1998 OJ L 221/23.

2

Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.

3

Council of Europe, Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes, Recommendation Concerning Domestic Fowl (*Gallus Gallus*), available online: [https://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/biological\\_safety\\_and\\_use\\_of\\_animals/farming/Rec%20fowl%20E.asp#TopOfPage](https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20fowl%20E.asp#TopOfPage)

4

Treaty on European Union, Declaration on the Protection of Animals, OJ C 191/0103 (1992).

5

European Parliament, Resolution of 20 February 1987 on Animal Welfare Policy, OJ C 76/185 (1987).

6

Article 2, Council Directive 98/58 of 20 July 1998 Concerning the Protection of Animals Kept for Farming Purposes, 1998 OJ L 221/23

7

Article 1, Council Directive 98/58 of 20 July 1998 Concerning the Protection of Animals Kept for Farming Purposes, 1998 OJ L 221/23. Farm animals bred for experimental are covered under EU regulation pertaining to animal-based science. In the absence of EU legislation on the welfare of invertebrate animals, such as mollusks or octopodidae, and domesticated animals used for entertainment and sporting purposes, animal welfare standards for these species depend on the coverage provided in Member States’ legislation (when existing).

8

Article 1, Annex, “Breeding procedures.”

9

Article 1(3(b), Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the Protection of Animals used for Scientific Purposes, OJ L 276/33–79.

10

Article 3, Council Directive 98/58 of 20 July 1998 Concerning the Protection of Animals Kept for Farming Purposes, 1998 OJ L 221/24.

11

Annex, Council Directive 98/58 of 20 July 1998 Concerning the Protection of Animals Kept for Farming Purposes, 1998 OJ L 221/26 - 27.

12

Paragraph 20, Annex, Council Directive 98/58 of 20 July 1998 Concerning the Protection of Animals Kept for Farming Purposes, 1998 OJ L

## 2.2. Council Directive 1999/74/EC Laying Down Minimum Standards for the Protection of Laying Hens (“Egg-Laying Hens Directive”)

### Intent

To “ensure the smooth running of the organization of the market in animals,” and to improve “the welfare of egg-laying hens kept in current battery cages and in other systems of rearing” that are “inadequate” to meet “certain of their needs.”<sup>1</sup>

Also mentioned in the recitals:

Also mentioned in the recitals: the 1976 European Convention for the Protection of Animals Kept for Farming Purposes<sup>2</sup>

1976 European Convention for the Protection of Animals Kept for Farming Purposes<sup>3</sup> and the 1995 Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes’ Recommendation on Domestic Fowls<sup>4</sup>

### Legal basis

Article 43 of the Treaty on the Functioning of the EU on the implementation of the common agricultural policy.

### Scope

#### MATERIAL

**Animals of the species *Gallus Gallus*** for commercial egg-production purposes. Breeders are thus excluded from the scope of the act, as well as chicks.<sup>5</sup>

**Farms with more than 350 egg laying hens used for the purpose of producing commercial eggs.**<sup>6</sup> Farms with less than 350 animals, or farms with breeders, are excluded from the scope of the act.

#### TERRITORIAL

The act does not apply to imported live animals or animal-source products, nor exported live animals once they leave EU soil.

#### SUBSIDIARITY

EU Member States can adopt stricter standards than the ones provided for in the act, as per a 1995 European Court of Justice ruling.<sup>7</sup>

### Main Provisions

The act lays down engineering standards regarding three different methods of production:

In conventional battery cages: sets maximum stocking densities and minimum space allowance, and lays down specifications regarding the feeders, drinkers, and cage floor. The construction of farms with conventional battery cages is prohibited starting in 2003, and the use of conventional battery cages is banned as of January 1st 2012.<sup>8</sup>

In enriched battery cages: sets standards for the use of “enriched cages” with nests, perches, and a littered area; sets maximum density and minimum space allowance; lays down specifications regarding the feeders, drinkers, and cage floor.<sup>9</sup>

In cage-free systems (“alternative systems”): sets maximum stocking densities and minimum space allowance, and lays down specifications regarding the feeders, drinkers, and cage floor.<sup>10</sup>

The act further sets general standards regarding daily inspection rate, lighting, noise levels, and the performing of mutilations.<sup>11</sup>

### Limitations

#### LIMITED SCOPE

The Directive does not apply to breeding animals, chicks, nor to farms with fewer than 350 egg-laying hens.

#### INADEQUATE STANDARDS

The Directive allows the use of cages and high stocking densities) up to 9 animals per square meter<sup>12</sup>.(The Directive also allows the mutilation of the hens ‘beaks.

#### VAGUENESS

The specifications in the annex provide few engineering standards.

Examples:

Paragraph 2: “The sound level shall be minimized. Constant or sudden noise shall be avoided.

Ventilation fans, feeding machinery or other equipment shall be constructed, placed, operated and maintained in such a way that they cause the least possible noise.”<sup>13</sup>

Paragraph 3: “All buildings shall have light levels sufficient to allow all hens to see one another and be seen clearly, to investigate their surroundings visually and to show normal levels of activity. Where there is natural light, light apertures must be arranged in such a way that light is distributed evenly within the accommodation.”

### EXEMPTIONS

Producers performing beak trimming are exempted from the general prohibition on mutilations when beak trimming is allowed in national law.<sup>14</sup>

### LONG TRANSITION PERIODS

The act provides a transition period of 13 years.

### History

The Egg-Laying Hens Directive implements the 1976 European Convention for the Protection of Animals Kept for Farming Purposes<sup>15</sup> as well as the 1995 Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes’ Recommendation on Domestic Fowls adopted by the Council of Europe.<sup>16</sup>

The Egg-Laying Hens Directive is the first species-specific directive to be adopted by the EU Legislature in 1986.<sup>17</sup> It was later amended in 1988<sup>18</sup> following a 1986 court ruling, in which the European Court of Justice sided with the United Kingdom against the EU Legislature, ruling that the EU Legislature had used a different wording in the preamble of the act than which was decided upon by the Member States.<sup>19</sup>

The Egg-Laying Hens Directive was further revised in 1999<sup>20</sup> to provide a moratorium, beginning in 2003, on the construction of farms using conventional cages, and to prohibit the use of conventional battery cages, in addition to lowering density levels among hens on farms. Such a ban on conventional cages provided a 13 year-transition periods, and thus only took effect in 2012.<sup>21</sup>

In the span of 13 years, from 2006 to 2019, 54% of the egg-laying hen population on farms have shifted from caged housing to cage-free systems (barn, free range, and organic systems).<sup>22</sup>

However, the role that the Egg-Laying Hens Directive has played in shifting egg production away from the use of cages is unclear, as the European Commission seems to attribute such a shift to the labels printed on each egg, which indicates to consumers the type of housing system used in production.<sup>23</sup> It is difficult to determine, though, what triggered the shift away from cages because these egg labels began in 2012 – the same year the ban on conventional battery cages in egg production entered into force.

Relevant Caselaw

C ,131/86 – *United Kingdom of Great Britain and Northern Ireland v Council of the European Communities* 23 ,February ) 1988Action for Annulment :(While” it] is[ true that the [Directive] was also conceived with a view to ensuring better treatment for laying hens, [...] it must be emphasized that [...] varying national rules regarding agricultural products which may affect the proper functioning of a common organization of the market [...] may be harmonized on the basis of Article 43 of the Treaty [on the common agricultural policy] alone.”

C – 128/94, Hans Hönig v Stadt Stockach, 19 October 1995 (Preliminary Ruling): Regarding cage area for egg-laying hens, Member States are able to set national rules that are stricter than those in the Directive, even though “such an interpretation may result in farmers in one Member State being treated less favorably than those in other Member States, allowing some inequalities in competition to persist.”

C–339/ 13, Commission v Italy, 22 May 2014 (Infringement Proceeding): The Italian Republic is condemned for failing to fulfill its obligations to ensure, from 1 January 2012, that laying hens are no longer reared in unenriched cage systems as per Article 3 and 5(2) of Council Directive 1999/74/EC of 19 July 1999, which sets minimum standards for the protection of egg-laying hens.

C – 351/13, European Commission v Hellenic Republic, 4 September 2014 (Infringement Proceeding) (unpublished): The Hellenic Republic is condemned by the Court for failing to fulfill its obligations to ensure, from 1 January 2012, that egg-laying hens are no longer reared in unenriched cage systems as per Article 3 and 5(2) of Council Directive 1999/74/EC of 19 July 1999, which sets minimum standards for the protection of egg-laying hens.

1 Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/53.

2 Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.

3 Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.

4 Council of Europe, Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes, Recommendation Concerning Domestic Fowl (*Gallus Gallus*), available online: [https://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/biological\\_safety\\_and\\_use\\_of\\_animals/farming/Rec%20fowl%20E.asp#TopOfPage](https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20fowl%20E.asp#TopOfPage)

5 Article 2, Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/53.

6 Article 1(2), Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/53.

7 C – 128/94, Hans Hönig v Stadt Stockach, 19 October 1995

8 Article 5, Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/54-55.

9 Article 5, Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/55.

10 Article 4, Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/54.

11 Annex, Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/57.

12 Article 4((4), Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/54.

13 Annex, Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/57.

14 Paragraph 8, Annex, Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/57.

15 Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.

16 Council of Europe, Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes, Recommendation Concerning Domestic Fowl

(*Gallus Gallus*), available online: [https://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/biological\\_safety\\_and\\_use\\_of\\_animals/farming/Rec%20fowl%20E.asp#TopOfPage](https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20fowl%20E.asp#TopOfPage)

17 Council Directive 86/113/EEC of 25 March 1986 Laying Down Minimum Standards for the Protection of Laying Hens Kept in Battery Cages, OJ L 95/ 45-48 (1986).

18 Council Directive 88/166/EEC of 7 March 1988 Complying with the Judgment of the Court of Justice in Case 131/86, OJ L 74/ 83-87 (1988).

19 C – 131/86, United Kingdom of Great Britain and Northern Ireland v Council of the European Communities, 23 February 1988.

20 Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/53.

21 Article 5(2), Council Directive 1999/74 of 19 July 1999 Laying Down Minimum Standards for the Protection of Laying Hens, 1999 OJ L 203/55.

22 European Commission, Evaluation of Marketing Standards Contained in the CMO Regulation, the “Breakfast Directives” and CMO Secondary Legislation, 8o (2019).

23 European Commission, Evaluation of Marketing Standards Contained in the CMO Regulation, the “Breakfast Directives” and CMO Secondary Legislation, 84 (2019).

2.3. Council Directive 2008/119/EC Laying Down Minimum Standards for the Protection of Calves (“Calves Directive”)

Intent

To “ensure the smooth running of the organization of the market in animals,” and to improve the welfare of calves, who “should benefit from an environment corresponding to their needs as a herd-living species.”<sup>1</sup>

Also mentioned in the recitals: the 1976 European Convention for the Protection of Animals Kept for Farming Purposes<sup>2</sup>.

Legal basis

Article 43 of the Treaty on the Functioning of the EU on the implementation of the common agricultural policy.

Scope

MATERIAL

The act covers:

Calves confined **for rearing and fattening purposes**.<sup>3</sup>

Bovine animals **less than six months old**.<sup>4</sup>

TERRITORIAL

The act applies to live calves imported to the EU by requiring that animals imported from third countries “be accompanied by a certificate [...] certifying that they have received treatment at least equivalent to that [...] provided in this Directive.”<sup>5</sup>

SUBSIDIARITY

Member States can adopt stricter requirements than those set in the Directive.<sup>6</sup>

Main Provisions

The act sets engineering standards for the confinement of calves in individual crates, by limiting the use of crates from birth until eight weeks of age, establishing minimum space allowance and specifications to allow the calves to have visual and tactile contacts with other members of their species.<sup>7</sup>

The act also prohibits the tethering and

muzzling of calves<sup>8</sup> and sets specific daily inspection rates,<sup>9</sup> feeding and dietary requirements (feeding of colostrum in the first six hours of life minimum, and food must contain minimum iron concentration).<sup>10</sup>

The act further lays down general standards regarding temperature, air quality, bedding materials, and lighting.<sup>11</sup>

Limitations

LIMITED SCOPE

The Directive does not apply to farms with fewer than six calves.<sup>12</sup>

INADEQUATE STANDARDS

The Regulation allows the use of individual crates.

VAGUENESS

The Legislature relies on general concepts such as adequacy and appropriateness in standards of care, but almost never relies on engineering metrics to substantiate such standards.

Examples:  
Paragraph 3: “Insulation, heating and ventilation of the building must ensure that the air circulation, dust level, temperature, relative air humidity and gas concentrations are kept within limits which are not harmful to the calves.”<sup>13</sup>

Paragraph 10: “Floors must be smooth but not slippery, so as to prevent injury to the calves, and so designed as not to cause injury or suffering to calves standing or lying on them. They must be suitable for the size and weight of the calves and form a rigid, even and stable surface. The lying area must be comfortable, clean, and adequately drained and must not adversely affect the calves. Appropriate bedding must be provided for all calves less than two weeks old.”<sup>14</sup>

History

The Calves Directive implements the 1976 European Convention for the Protection of Animals Kept for Farming Purposes,<sup>15</sup> as well as the 1988 Council of Europe Recommendations for Calves.<sup>16</sup>

The Calves Directive, adopted in 1991, is the second species-specific directive

enacted by the EU Legislature.<sup>17</sup> The 1991 Directive sets minimum space allowance for calves kept in crates and requires that calves be able to see each other while confined.<sup>18</sup>

The act was later amended in 1997 to impose a limit on the use of individual crates of up to eight weeks from the time the calf is born,<sup>19</sup> prohibit the tethering of calves, and mandate specific nutritional content of their feed.<sup>20</sup> The Calves Directive was further revised in 2008 to integrate these amendments.<sup>21</sup> Although a new directive was adopted in 2008, the standards contained therein have remained unchanged since 1997.

Relevant Caselaw

C ,1/96–*The Queen v Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming Ltd* 19 ,March1998 )Preliminary Ruling :(A discrepancy between two respective sets of national farm animal welfare laws does not justify a limitation on trade between Member States on the grounds of animal protection, provided both Member States have complied with EU minimum standards.

C ,187/1 – *Criminal Proceedings against Dirk Endendijk* 3 ,April) 2008 Preliminary Ruling” :(A calf is tethered within the meaning of Council Directive/91/629 EEC of 19 November 1991 laying down minimum standards for the protection of calves ,where it] sic [is tied by a rope, irrespective of the material ,length and purpose of that rope”.

C ,355/11 – *G.Brouwer v Staatssecretaris van Economische Zaken ,Landbouw en Innovatie* 14 ,June) 2012 Preliminary Ruling( ” :Directive/91/629 EEC of 19 November 1991laying down minimum standards for the protection of calves must be interpreted as meaning that the requirement ,referred to in Article 4 of that directive] ,and including the prohibition of [the tethering of calves ,applies to calves kept confined by a farmer in the context of a dairy farming operation”.





Spain, 2010. Jo-Anne McArthur / Animal Equality / We Animals Media

1	Recitals, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/7 – 13.	8	Paragraphs 8 and 11, Annex, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/10 - 11.
2	Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.	9	Paragraph 6, Annex, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/10.
3	Article 1, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/8.	10	Paragraphs 11 – 15, Annex, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/11.
4	Article 2(1), Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/7.	11	Annex, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/10 - 11.
5	Article 8, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/8. The extraterritorial effect of the directive is not enough, however, to allow Member States to impose trade restrictions within the Union on animal protection grounds. See C–1/96, The Queen v Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming Ltd., 19 March 1998.	12	Article 3, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/8.
6	Article 11, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/9.	13	Annex, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/10.
7	Article 3, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/8.	14	Annex, Council Directive 2008/119 of 18 December 2008 Laying Down Minimum Standards for the Protection of Calves, 2009 OJ L 10/10.
		15	Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.

2.4. Council Directive 2008/120/EC Laying Down Minimum Standards for the Protection of Pigs (“Pigs Directive”)

Intent

To “ensure the smooth running of the organization of the market in animals”; to ensure “the rational development of production”; to improve the welfare of pigs, which “appears to be compromised by severe restrictions of space”; to ensure “pigs [benefit] from an environment corresponding to their needs for exercise and investigatory behavior.” The Legislature further recognizes that practices such as castration, “tail-docking, tooth-clipping and tooth-grinding are likely to cause immediate pain and some prolonged pain to pigs.”<sup>1</sup>

Also mentioned in the recitals: the 1976 European Convention for the Protection of Animals Kept for Farming Purposes.<sup>2</sup>

Legal basis

Article 43 of the Treaty on the Functioning of the EU on the implementation of the common agricultural policy.

Scope

MATERIAL

**Pigs:** includes pigs of both sexes, at all stages of production for breeding and fattening purposes: piglets, weaners, board and gilts, and sows at all stages of production (gestating and non-gestating).<sup>3</sup>

**In confinement:** “confined for rearing and fattening.”<sup>4</sup>

TERRITORIAL

The act applies to live pigs imported to the EU by requiring that animals imported from third countries “be accompanied by a certificate [...] certifying that they have received treatment at least equivalent to that [...] provided for by this Directive.”<sup>5</sup>

SUBSIDIARITY

EU Member States can adopt stricter standards than the ones provided for in the act.<sup>6</sup>

Main Provisions

The act sets engineering standards regarding the use of gestation and farrowing crates, maximum stocking densities, as well as minimum space allowance per category of animals.<sup>7</sup> The act also sets a maximum of three weeks duration on the use of crates per production cycle,<sup>8</sup> prohibits the tethering of sows,<sup>9</sup> and specifies engineering standards regarding lighting and noise levels, and the act lays out general standards regarding enrichment materials.<sup>10</sup> The act further restricts mutilations by prohibiting the performance of “routine” mutilations.

Limitations

INADEQUATE STANDARDS

The Directive allows for sows to be kept in cages ,pigs to be mutilated „and stocking densities on farms to remain high.

VAGUENESS

The specifications in the annex provide only a few engineering standards.

Examples:  
Chapter I, Paragraph 4: “Pigs must have permanent access to a sufficient quantity of material to enable proper investigation and manipulation activities, such as straw, hay, wood, sawdust, mushroom compost, peat or a mixture of such, which does not compromise the health of the animals.”<sup>11</sup>  
Chapter II (A), Paragraph 1: “Measures shall be taken to minimise aggression in groups.”<sup>12</sup>  
Chapter II(D), Paragraph 1: “When pigs are kept in groups, measures must be taken to prevent fighting which goes beyond normal behavior.”<sup>13</sup>

UNENFORCEABLE PROVISION

Mutilations are allowed under the Pigs Directive, except if such mutilations are performed on a routine basis. However, the concept of “routine” is not substantiated by engineering standards. The wording in the annex seems to define “routine” mutilations not as those performed as a regular part of procedure, but as those mutilations performed when the producer does not comply with minimum standards set in the Directive.<sup>14</sup> If the producer does however

comply with the minimum standards of the Directive, which pertain to enrichment materials and stocking densities, the mutilations the producer inflicts upon animals are, for reasons unknown, not considered “routine” before the law and are thus allowed without penalty.

EXEMPTIONS

Sows and gilts raised on farms with fewer than 10 sows are exempted from the three-week duration on the use of crates.<sup>15</sup> Producers are further exempted from providing nesting materials to sows and gilts when “it is not technically feasible [to do so] for the slurry system used in the establishment.”<sup>16</sup>

History

The Council of Europe’s Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes first adopted recommendations concerning pigs in 1986, which might have prompted the adoption of the EU species-specific directive on pigs.<sup>17</sup>

The EU Legislature adopted the first Pigs Directive in 1991, which prohibited the tethering of sows, imposed a moratorium on the building of farms with tethering sows starting in 1996, and imposed equivalent measures on imported live pigs.<sup>18</sup> In 2001, the Directive was amended twice: first to limit the use of crates for sows to a maximum of three weeks for each production cycle,<sup>19</sup> and second, to update the specifications in the annex, including the provisions on mutilations.<sup>20</sup>

The Pigs Directive was further revised in 2008 to integrate these amendments.<sup>21</sup> Although a new directive was adopted in 2008, the standards contained therein have thus remained unchanged since 2001.

The Council of Europe’s Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes revised its own recommendations concerning pigs in 2004, and the new recommendations provide the same engineering standards as the 2008 EU Pigs Directive.<sup>22</sup>



Italy, 2015. «Balia» (nanny) is written on the side of this sow's cage at a farm in Italy. This signifies that although her piglets have already been taken away, she is still producing milk, and can nurse orphan piglets. Stefano Belacchi / Essere Animali / We Animals Media

1	Recitals, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/5.	10	Annex, Chapter I, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/10.
2	Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.	11	Annex, Chapter I, Paragraph 10, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/10. The Commission Recommendation 2016/336 of 8 March 2016 on the Application of Council Directive 2008/120/EC Laying Down Minimum Standards for the Protection of Pigs as Regards Measures to Reduce the Need for Tail-Docking does not specify any further engineering standards.
3	Article 2(1–9), Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/6.	12	Annex, Chapter II(B), Paragraph 1, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/11.
4	Article 1, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/6.	13	Annex, Chapter II(D), Paragraph 1, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/11.
5	Article 9, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/8.	14	Annex, Chapter I, Paragraph 8, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/10. The Commission Recommendation 2016/336 of 8 March 2016 on the Application of Council Directive 2008/120/EC Laying Down Minimum Standards for the Protection of Pigs as Regards Measures to Reduce the Need for Tail-Docking does not specify any further engineering standards.
6	Article 12, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/9.	15	Article 3(3), Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/7.
7	Article 3, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/6 – 7.		
8	Article 3(4), Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/7.		
9	Article 3(3), Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/7.		

16	Annex, Chapter II(B), Paragraph 3, Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/11.
17	Council of Europe, Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes, Recommendation Concerning Pigs (1986), available online: <a href="https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20pigs%20E.asp#TopOfPage">https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20pigs%20E.asp#TopOfPage</a> .
18	Council Directive of 19 November 1991 Laying Down Minimum Standards for the Protection of Pigs, 1991 OJ L/340/33-38.
19	Council Directive 2001/88/EC of 23 October 2001 amending Directive 91/630/EEC Laying Down Minimum Standards for the Protection of Pigs, 2001 L 316/1 - 4.
20	Commission Directive 2001/93/EC of 9 November 2001 Amending Directive 91/630/EEC Laying Down Minimum Standards for the Protection of Pigs, 2001 OJ L/36 – 38.
21	Council Directive 2008/120 of 18 December 2008 Laying Down Minimum Standards for the Protection of Pigs, 2009 OJ L 47/5 – 13.
22	Council of Europe, Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes, Recommendation Concerning Pigs (2004), available online: <a href="https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20pigs%20rev%20E%202004.asp#TopOfPage">https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20pigs%20rev%20E%202004.asp#TopOfPage</a> .

2.5 .Council Directive/2007/43 EC Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production

Intent

To “avoid distortions of competition that may interfere with the smooth running of the common market organization in that sector and also to ensure the rational development of the sector” and to “[introduce] animal welfare improvements in the intensive farming of chickens to lay down minimum rules for the protection of chickens for meat production.” The Recitals further specify that “the rules should focus on the welfare problems in intensive farming systems,”<sup>1</sup> and the recitals mention that the welfare levels of “fast growth rate” chickens require the adoption of minimum environmental standards to ensure their welfare.<sup>2</sup>

Also mentioned in the recitals:

- International Law – Council of Europe Convention 1976 European Convention for the Protection of Animals Kept for Farming Purposes<sup>3</sup>
- 1995 Council of Europe’s Recommendation Concerning Domestic Fowl<sup>4</sup>
- Treaty (“EU primary law”) Protocol n°33 on Protection and Welfare of Animals annexed to the Treaty of Amsterdam.<sup>5</sup>

• Other Non-Legislative Acts  
The Report of the Scientific Committee on Animal Health and Animal Welfare of 21 March 2000 on the Welfare of Chickens Kept for Meat Production (Broilers).<sup>6</sup>

Legal basis

Article 43 of the Treaty on the Functioning of the EU on the implementation of the common agricultural policy.

Scope

MATERIAL

**Chickens:** Animals of the species *Gallus Gallus* kept for meat production purposes.<sup>7</sup> Breeders are excluded from the scope of the act.<sup>8</sup>

**On industrial farms:** Farms that employ methods of production other than intensive indoor are not covered by the act.<sup>9</sup>

**Farms with more than 500 chickens10 and for the purpose of farming commercial broiler chickens.** Hatcheries are excluded from the scope of the act.

TERRITORIAL

The act does not apply to imported live animals or animal-source products, nor does the act apply to exported live animals once they leave EU soil.

SUBSIDIARITY

EU Member States can adopt stricter standards than the ones provided for in the act.<sup>11</sup>

Main Provisions

The act sets maximum stocking densities.<sup>12</sup> The act further sets engineering standards for lighting, record-keeping, and inspection rates. Lastly, the act sets general standards regarding litter use, feeding, and noise level.

Limitations

LIMITED SCOPE

All farms with fewer than 500 animals are exempted, as well as hatcheries and breeding farms.

INADEQUATE STANDARDS

The Directive allows the use of fast-growth breeds and extremely high stocking densities (up to 42 kilograms per square meter).

VAGUENESS

The specifications in the annex provide only a few engineering standards.

Examples:

Annex 1, Paragraph 4: “Ventilation shall be sufficient to avoid overheating and, where necessary, in combination with heating systems to remove excessive moisture.”<sup>13</sup>  
Annex 1, Paragraph 5: “The sound level shall be minimized. Ventilation fans, feeding machinery or other equipment shall be constructed, placed, operated and maintained in such a way that they cause the least possible amount of noise.”<sup>14</sup>

For producers who keep their animals at density levels above 33kg/m2, the official veterinarian should communicate data on the number of animals dead on arrival at the slaughterhouse to the producer in case of high mortality rate. However, such a rate is not specified in the annex of the Directive.<sup>15</sup> The consequences of the communication of the mortality rate from the veterinarian to the producer remain equally undefined, as well as the actions that the producer should undertake following such a communication (“Appropriate actions shall be taken by the owner or the keeper of the animals and by the competent authority”).<sup>16</sup> Lastly, what constitutes “poor animal welfare conditions” remains unspecified.<sup>17</sup>

EXEMPTIONS

• Density Levels

Producers are exempted from the maximum density level set at 33kg/m2 provided they comply with specifications in the annexes.<sup>18</sup> Producers can confine broiler chickens up to a density level of 39kg/m2 provided they comply with the specifications in Annex I and II, which requires producers to comply with temperature and air quality standards.<sup>19</sup>

Producers are further exempted from this second limit on density levels, up to 42kg/ m2, provided they comply with the provisions in all three annexes of the act, which require the monitoring mortality rate in flocks.<sup>20</sup> In practice, 60% of EU producers make use of these exemptions, which have thus become common practice.<sup>21</sup>

• Beak Trimming

Producers performing beak trimming are exempted from the general prohibition on mutilations when beak trimming is allowed in national law.<sup>22</sup>



History

The Broilers Directive is the most recent species-specific directive to have been adopted by the EU Legislature. Just like the Council of Europe's Recommendations,<sup>23</sup> the Directive intends to ensure minimum welfare levels for fast-growth breeds of broiler chickens by regulating environmental standards on farms (i.e. lighting levels, noise,

humidity, etc.). Although the Legislature has identified the issue posed by fast-growth chicken breeds, the standards in the Directive focus exclusively on improving environmental standards.

The Broilers Directive also inaugurated a new way of regulating animal welfare, called “compliance-based,” which relies on the compliance of objectives (e.g.: low mortality rate), rather than strict rules in

the regulation. The Broilers Directive further integrated the use of “animal-based indicators,” which are supposed to help operators ensure compliance with rules, by indicating substandard animal welfare levels in real time.

2.6 Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations (“Transport Regulation”)

Intent

To limit “the transport of animals over long journeys [for reasons of animal welfare].”<sup>1</sup>

Also mentioned in the recitals:

- International Law – Council of Europe Convention 1976 European Convention for the Protection of Animals During International Transport<sup>2</sup>
- Treaty (“EU primary law”) Protocol n°33 on Protection and Welfare of Animals annexed to the Treaty of Amsterdam.<sup>3</sup>

- Other Non-Legislative Acts

The Report from the Commission to the European Parliament and the Council on the experience acquired by Member States since the implementation of Council Directive 95/29/EC of 29 June 1995 amending Directive 91/628/EEC concerning the protection of animals during transport.<sup>4</sup>

Legal basis

Article 43 of the Treaty on the Functioning of the EU on the implementation of the common agricultural policy.

Scope

MATERIAL

**Live vertebrates:** Including companion animals.<sup>5</sup>

**For all transport by road, rail, air, and sea,** taking place “in connection to an economic activity,” except in cases of the transport of an animal to a veterinary practice.<sup>6</sup>

The Regulation covers the period **starting from the moment the animals are loaded, until they are unloaded** from the vehicles, including during transfer and rest periods.<sup>7</sup>

TERRITORIAL

The European Court of Justice interpreted the act as applying outside the EU in

cases where the journey has started from an EU Member State.<sup>8</sup>

The act does not require importers of live animals to comply with the standards in the act.

SUBSIDIARITY

EU Member States can adopt stricter standards than the ones provided for in the act for transport “taking place entirely within the territory of a Member State or during sea transport departing from the territory of a Member State.”<sup>9</sup> For transport taking place partly outside a given Member State, the European Court of Justice ruled that stricter national rules can apply, provided these are proportionate.<sup>10</sup>

Main Provisions

The act sets rules for the transport of gestating, unweaned, and injured animals;<sup>11</sup> sets a maximum limit on journey time;<sup>12</sup> sets engineering standards for the building of vehicles and boats; sets minimum space allowance per species;<sup>13</sup> sets rules for the feeding and watering of animals; sets rules for the handling of animals during loading and unloading; sets specifications for resting areas; and imposes minimum training requirements for transporters.<sup>14</sup>

The Regulation further requires that transporters submit a journey plan (“journey log”) detailing the duration of the journey, including rest periods. The Regulation states that this journey log must be submitted for administrative approval prior to the carrying out of any transport.

Limitations

LIMITED SCOPE

Although the act applies to all vertebrate animals, most of the provisions in the act are inapplicable to aquatic animals. The act further excludes invertebrate animals, such as insects (bees).

INADEQUATE STANDARDS

The Regulation allows the transport of “pregnant females for whom 90% or more of the expected gestation period has

already passed,” which poses welfare concerns as these animals are likely to give birth during transport.<sup>15</sup>

The Regulation also allows the transport of unweaned animals,<sup>16</sup> recently birthed, vulnerable to changes in environment.

The Regulation allows long periods of transport, up to 24 hours for pigs for instance.<sup>17</sup>

The Regulation allows the use of electric prods.<sup>18</sup>

The Regulation is lacking many specifications, such as minimum space allowance for rabbits, small lambs, and pigs. The Regulation further fails to provide any specification for the transportation of aquatic animals. The transport of these animals is therefore left unregulated under EU law.

VAGUENESS

The rules to calculate the total journey time for transport combining transportation by road or rail and ferries are not clearly drafted in the Regulation. The interpretation of the European Court of Justice in a 2008 ruling did not contribute to clarifying the existing regulation.<sup>19</sup>

UNENFORCEABILITY

Provisions requiring that animals be watered during transport<sup>20</sup> are virtually unenforceable because the animals are rarely unloaded during short breaks of one hour. When water is provided on board, the animals are unfamiliar with the on-board water distribution system and typically do not use it. Some water distribution systems are not adapted to the animals’ morphology.<sup>21</sup>

Similarly, the requirement to water unweaned animals<sup>22</sup> is not enforceable because the young animals do not yet know how to drink from drinking devices, or are still on a milk diet, and the watering system on board does not support the distribution of liquid material thicker than water.<sup>23</sup>

1	Recitals 6, 7, and 8, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/19.	8	Article 1(1), Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/20 – 21.
2	Recital 4, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/19.	9	Ibid.
3	Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.	10	Ibid.
4	Council of Europe, Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes, Recommendation Concerning Domestic Fowl ( <i>Gallus Gallus</i> ), available online: <a href="https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20fowl%20E.asp#TopOfPage">https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20fowl%20E.asp#TopOfPage</a>	11	Article 1(2), Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/21.
5	Treaty Establishing the European Community, Protocol (No 33) on Protection and Welfare of Animals OJ C 321E/314 (1997).	12	Article 3, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/21 – 22.
6	European Commission, Directorate-General for Health & Consumer Protection, Report of the Scientific Committee on Animal Health and Animal Welfare, The Welfare of Chickens Kept for Meat Production (Broilers) (2000), available online: <a href="https://ec.europa.eu/food/system/files/2020-12/sci-com_scah_out39_en.pdf">https://ec.europa.eu/food/system/files/2020-12/sci-com_scah_out39_en.pdf</a>	13	, Annex I, Paragraph 4, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/24.
7	Article 2, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/21.	14	, Annex I, Paragraph 5, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/24.
		15	Annex II, Paragraph 3, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/27.
		16	Ibid.
		17	Annex II, Paragraph 2, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of

	Chickens Kept for Meat Production, 2007 OJ L/182/27.	18	Article 3(3), Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/21.
		19	Annex II, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/26.
		20	Annex III, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/27.
		21	European Commission, Report from the Commission to the European Parliament and the Council on the Application of Directive 2007/43/EC and its Influence on the Welfare of Chickens Kept for Meat Production, as well as the development of Welfare Indicators, 8 (2018).
		22	Annex I, Paragraph 12, Council Directive 2007/43/EC Of 28 June 2007 Laying Down Minimum Rules for the Protection of Chickens Kept for Meat Production, 2007 OJ L/182/25.
		23	Article 2, Council of Europe, Standing Committee of the European Convention for the Protection of Animals Kept for Farming Purposes, Recommendation Concerning Domestic Fowl ( <i>Gallus Gallus</i> ), available online: <a href="https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20fowl%20E.asp#TopOfPage">https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20fowl%20E.asp#TopOfPage</a> .

UNDER-ENFORCEMENT

The Transport Regulation is notorious for being poorly enforced.<sup>24</sup>

History

The EU Legislature first enacted rules on the protection of animals during transport under the form of a directive, in 1977,<sup>25</sup> which codified the 1968 European Convention for the Protection of Animals During Transport<sup>26</sup> into EU law. The EU Legislature revised the 1977 Directive in 1991 to include more specific standards in the annex, expanding the scope to all “vertebrate animals.”<sup>27</sup> The 1991 revision additionally likely included the Council of Europe’s species-specific Recommendations adopted between 1987 and 1990.<sup>28</sup>

The 1991 Directive underwent a revision in 2005, and became a Regulation, to include the standards of the new 2003 European Convention for the Protection of Animals During Transport.<sup>29</sup> The 2005 Regulation expanded its scope to encompass “related operations,” meaning loading and unloading, transfer, and rest periods, and thus provided additional specifications related to these specific stages of transport.

Caselaw

C – 350/97, Wilfried Monsees v Unabhängiger Verwaltungssenat für Kärnten, 11 May 1999 (Preliminary Ruling): Member States are allowed to implement stricter national rules, provided such rules do not have the effect of undermining the free movement of goods on the single market.

C – 300/05, Hauptzollamt Hamburg-Jonas v ZVK Zuchtvieh-Kontor GmbH, 23 November 2006 (Preliminary Ruling): Transporters must take into account the time taken to load and unload the animals in the total journey time.

C – 37/06, Viamex Agrar Handels GmbH, C – 58/06 Zuchtvieh-Kontor GmbH (ZVK) v Hauptzollamt Hamburg-Jonas, 17 January 2008 (Preliminary Ruling): National competent authorities can reduce export refunds proportionately to the damages due to the exporters’ breaches with the Transport Directive. The competent authorities can go as far as denying export refunds should there have been consequences on the welfare of animals due to instances of non-compliance with the Transport Directive.

C – 491/06, Danske Svineproducenter v Justitsministeriet, 8 May 2008 (Preliminary Ruling): Member States are able to lay down national rules stricter than those of the Directive.

C – 207/06, Schwaninger Martin Viehhandel - Viehexport v Zollamt Salzburg, Erstattungen, 17 July 2008 (Preliminary Ruling): In the case of transport by sea between an EU and a non-EU country, by means of vehicles loaded with animals which, without unloading the animals, are then moved onto a seafaring vessel, the duration of the transport does not have to be taken into account in the calculation of the total journey time.

C – 277/06, Interboves GmbH v Hauptzollamt Hamburg-Jonas, 9 October 2008 (Preliminary Ruling): The calculation of the total journey time must include terrestrial transport prior to the journey on a ferry, unless the animals were afforded a 24-hour rest period before boarding the ferry.

C – 455/06, Heemskerk BV and Firma Schaap v Productschap Vee en Vlees, 25 November 2008 (Preliminary Ruling): The transporter is responsible to determine compliance with maximum density levels on sea vessels, regardless of the certification of the vessel by the competent authority of a Member State and the approval of the official veterinarian at departure.

C – 485/09, Viamex Agrar Handels GmbH v Hauptzollamt Hamburg-Jonas, 30 June 2011 (Preliminary Ruling): The Transport Directive applies to rail transport and competent authorities are allowed to reduce export refund, or deny an export refund, on the grounds that the exporter breached the Transport Directive, but only when such breaches concern animal welfare provisions. Competent authorities can proceed to a reduction or refusal of export refund in cases where the animals have suffered as a result of such a breach, even if these sufferings have not resulted in death.

C – 316/10, Danske Svineproducenter v Justitsministeriet, 21 December 2011 (Preliminary Ruling): Member States are allowed to adopt stricter rules than those established in the Transport Regulation. However, rules must be proportionate to the objective of protecting the welfare of animals, and must not disproportionately put domestic operators or EU importers at a disadvantage when exporting live animals.

C – 424/13, Zuchtvieh-Export GmbH v Stadt Kempten, 23 April 2015 (Preliminary Ruling): The Transport Regulation applies to “the stages of the journey which are to take place in the territory of third countries.”

C – 469/14, Masterrind GmbH v Hauptzollamt Hamburg-Jonas, 28 July 2014 (Preliminary Ruling): Rest periods can last longer than one hour, unless this constitutes a risk of injury or undue suffering for the transported animals, and provided the total journey time and resting periods do not exceed the maximum set in the Regulation.

C – 383/16, Vion Livestock BV v Staatssecretaris van Economische Zaken, 19 October 2017 (Preliminary Ruling): Transporters must keep a copy of the journey log until the place of the first unloading in the final destination non-EU country.



Turkey, 2018, Jo-Anne McArthur / Eyes On Animals / We Animals Media

1 Recital 5, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 OJ L/3/1.

2 Council of Europe, European Convention for the Protection of Animals During Transport, Nov. 6, 2003, E.T.S. 193.

3 Treaty Establishing the European

Community, Protocol (No 33) on Protection and Welfare of Animals OJ C 321E/314 (1997).

4 1995 OJ L 148/52.

5 Article 1(5), Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 OJ L/3/4.

6 Article 1(1), Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 OJ L/3/4.

7 Article 2(w), Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 OJ L/3/5 and C – 300/05, Hauptzollamt Hamburg-Jonas v ZVK Zuchtvieh-Kontor GmbH, 23 November 2006.

8 Case C-424/13, Zuchtvieh-Export GmbH v Stadt Kempten, 23 April 2015.

9 Article 1(3), Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 OJ L/3/4.

10 C – 350/97, Wilfried Monsees v Unabhängiger Verwaltungssenat für Kärnten, 11 May 1999 and C – 316/10, Danske Svineproducenter v Justitsministeriet, 21 December 2011.

11 Annex I, Chapter I, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 L 3/19.

12 Annex I, Chapter V, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 L 3/25.

13 Annex I, Chapter VII, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 L 3/27 - 31.

14 Annex I, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 L 3/25 - 31.

15 Paragraph 2, Annex I, Chapter I, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 L 3/19.

16 Paragraph 2, Annex I, Chapter I, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 L 3/19.

17 Paragraph 1.4.(b), Annex I, Chapter V, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 L 3/25.

18 Paragraph 1.9, Annex I, Chapter III, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 L 3/22.

19 C – 207/06, Schwaninger Martin Viehhandel - Viehexport v Zollamt Salzburg, Erstattungen, 17 July 2008.

20 Annex I, Chapter V, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 L 3/25.

21 Christine Hafner and Alexander Rabitsch, The Myth of Enforcement of Regulation (EC) No 1/2005 on the Protection of Animals During Transport, 10 (2014), available online: [https://www.animals-angels.de/fileadmin/user\\_upload/03\\_Publikationen/Dokumentationen/Animals\\_Angels\\_Myth\\_of\\_Enforcement.pdf](https://www.animals-angels.de/fileadmin/user_upload/03_Publikationen/Dokumentationen/Animals_Angels_Myth_of_Enforcement.pdf)

22 Paragraph 1.4. (a), Annex I, Chapter V, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 L 3/25.

23 Christine Hafner and Alexander Rabitsch, The Myth of Enforcement of Regulation (EC) No 1/2005 on the Protection of Animals During Transport, 15 (2014), available online: [https://www.animals-angels.de/fileadmin/user\\_upload/03\\_Publikationen/Dokumentationen/Animals\\_Angels\\_Myth\\_of\\_Enforcement.pdf](https://www.animals-angels.de/fileadmin/user_upload/03_Publikationen/Dokumentationen/Animals_Angels_Myth_of_Enforcement.pdf)

24 See for instance Christine Hafner and Alexander Rabitsch, The Myth of Enforcement of Regulation (EC) No 1/2005 on the Protection of Animals During Transport, 15 (2014), available online: [https://www.animals-angels.de/fileadmin/user\\_upload/03\\_Publikationen/Dokumentationen/Animals\\_Angels\\_Myth\\_of\\_Enforcement.pdf](https://www.animals-angels.de/fileadmin/user_upload/03_Publikationen/Dokumentationen/Animals_Angels_Myth_of_Enforcement.pdf).

25 Council Directive 77/489/EEC of 18 July 1977 on the Protection of Animals During International Transport, 1977 OJ L 200/10–16.

26 Council of Europe, European Convention for the Protection of Animals During Transport, Nov. 6, 1968, E.T.S. 065.

27 Council Directive of 19 November 1991 on the Protection of Animals During Transport 1991 OJ L 340/ 17.

28 Council of Europe, Recommendation No (87) 17 on the Transport of Horses; Council of Europe, Recommendation No (88) 15 on the Transport of Pigs; Council of Europe, Recommendation No (90) 1 on the Transport of Cattle; Council of Europe, Recommendation No (90) 5 on the Transport of Sheep and Goats; Council of Europe, Recommendation No (90) 6 on the Transport of Poultry. Available online: [https://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/biological\\_safety\\_and\\_use\\_of\\_animals/transport/A\\_texts%20and%20documents.asp#TopOfPage](https://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/transport/A_texts%20and%20documents.asp#TopOfPage).

29 Recital 5, Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations, 2005 OJ L/3/1.



## 2.7. Council Regulation 1099/2009 on the Protection of Animals at the Time of Killing (“Slaughter Regulation”)

### Intent

To “avoid pain and minimize distress and suffering of animals during the slaughtering or killing process.”<sup>1</sup>

Also mentioned in the recitals:

- International Law – Council of Europe Convention

1979 European Convention for the Protection of Animals for Slaughter<sup>2</sup>

- Treaty (“EU primary law”)

Protocol n°33 on Protection and Welfare of Animals annexed to the Treaty of Amsterdam.<sup>3</sup>

- Other Non-Legislative Acts

2004 EFSA Opinion on the welfare aspects of the main systems of stunning and killing of the main commercial animal species<sup>4</sup>

2006 EFSA Opinion on the welfare aspects of the main systems of stunning and killing applied to commercially farmed deer, goats, rabbits, ostriches, ducks, geese, and quail<sup>5</sup>

### Legal basis

Article 43 of the Treaty on the Functioning of the EU on the implementation of the common agricultural policy.

### Scope

#### MATERIAL

**Animals “bred or kept for the production of food, wool, skin, fur or other products as well as the killing of animals for the purpose of depopulation and for related operations.”**<sup>6</sup>

For animals killed for food consumption purposes (i.e.: slaughter), the act applies **from the moment the animals are unloaded** from the vehicle that brought them to the slaughterhouse.<sup>7</sup>

Animals killed during scientific experiments, during hunting and recreational fishing, during cultural or sporting events, as well as poultry, rabbits, and hares killed by their owner for their private consumption are not covered by the act.<sup>8</sup>

Fish are excluded from all of the provisions except one (on the necessity to spare animals avoidable pain).<sup>9</sup>

#### TERRITORIAL

All meat products imported to the EU must originate from animals who have been killed in compliance with standards set in the act.<sup>10</sup>

#### SUBSIDIARITY

EU Member States can adopt stricter standards than the ones provided for in the act.<sup>11</sup>

### Main Provisions

The act sets rules for the handling of animals before and during their killing,<sup>12</sup> £in particular in slaughterhouses, and specifies the list of killing methods allowed.<sup>13</sup> The act further sets specifications for the layout, construction, and equipment of slaughterhouses; sets minimum training requirements for slaughterhouse workers; and requires the presence of an “animal welfare officer” to help the slaughterhouse operator comply with animal welfare standards set in the Regulation.<sup>14</sup>

### Limitations

#### LIMITED SCOPE

Although the act applies to all farmed animals, the act excludes virtually all aquatic animals from its scope.

#### INADEQUATE STANDARDS

The Regulation allows virtually all methods of killing, including the stunning of poultry by electrical water bath and the use of high-concentration carbon dioxide on pigs, even though the European Food Safety Authority (EFSA) recommended against these two methods given the disproportionate suffering they inflict upon animals.<sup>15</sup> In 2009, the Legislature did not follow EFSA’s recommendations “because the impact assessment revealed [they] were not economically viable.”<sup>16</sup>

Furthermore, the act does not provide strong safeguarding provisions to ensure operators do not misuse the exemption from the mandatory stunning of animals. Some operators may try to obtain this exemption for economic reasons, rather than for religious purposes, which is why the exemption was included.

#### BROAD EXEMPTIONS

The Slaughter Regulation prohibits the hoisting and shackling of conscious animals in slaughterhouses. However, this prohibition does not apply to poultry animals.<sup>17</sup>

### History

The EU Legislature first enacted rules on the protection of animals during slaughter under the form of a directive in 1974,<sup>18</sup> which was limited to requiring the stunning of animals prior to their bleeding – except in the case of religious killing.

The 1974 Slaughter Directive was revised in 1993<sup>19</sup> to codify the provisions regarding the handling of animals, such as the prohibition on shackling and hoisting the animals, that were put in place in the 1979 European Convention for the Protection of Animals for Slaughter.<sup>20</sup> The 1993 Slaughter Directive further expanded its scope to regulate the killing of animals in general, including for depopulation purposes, and by requiring that imported meat comes from animals killed in accordance with the standards set forth in the Directive.

The 1993 Directive was revised in 2009, becoming a Regulation.<sup>21</sup> Following this revision, the Regulation includes more specific standards concerning killing methods, and additional requirements concerning the training of slaughterhouse workers, as well as the creation of the animal welfare officer.



Relevant Caselaw

C – 147/77, Commission of the European Communities v Italian Republic, 6 June 1978 (Infringement Proceeding): The Italian Republic was condemned for failing to fulfill its obligations to ensure that all animals must be stunned prior to their slaughter by 1 July 1975.

C – 5/94, The Queen v Ministry of Agriculture, Fisheries and Food, ex parte: Hedley Lomas (Ireland) Ltd., 23 May 1996 (Preliminary Ruling): A discrepancy between two respective sets of national farm animal welfare laws does not justify a limitation on trade between Member States, provided both Member States have complied with EU minimum standards.

C – 426/16, Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen, VZW and Others v Vlaams Gewest, 29 May 2018 (Preliminary Ruling) (Grand Chamber): A Member State is allowed to close temporary small slaughterhouses used for religious purposes.

C – 497/17, Œuvre d’assistance aux bêtes d’abattoirs (OABA) v Ministre de l’Agriculture et de l’Alimentation and Others, 26 February 2019 (Preliminary Ruling) (Grand Chamber): Meat from animals that had not been stunned at slaughter cannot carry the organic label.

C – 336/19, Centraal Israëlitisch Consistorie van België e.a. and Others, 17 December 2020 (Preliminary Ruling): A Member State is allowed to prohibit slaughter without stunning, including in cases of animals slaughtered for religious purposes.

1

Recital 2, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/1 – 27.

2

Council of Europe, European Convention for the Protection of Animals for Slaughter, May 10, 1979, E.T.S. 102.

3

Treaty Establishing the European Community, Protocol (No 33) on Protection and Welfare of Animals OJ C 321E/314 (1997).

4

Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to the welfare aspects of the main systems of stunning and killing the main commercial species of animals, The EFSA Journal (2004).

5

Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to the welfare aspects of the main systems of stunning and killing applied to commercially farmed deer, goats, rabbits, ostriches, ducks, geese and quail, The EFSA Journal (2006).

6

Article 1(3), Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/7.

7

Article 3, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/9.

8

Article 1(1), Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/7 - 8.

9

Article 1(1), Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/7.

10

Article 12, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/11.

11

Article 26, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/17.

12

Article 15, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/12.

13

Annexes I and 2, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/19 – 25.

14

Article 17, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/13 – 14.

15

Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to the welfare aspects of the main systems of stunning and killing the main commercial species of animals, The EFSA Journal (2004); Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to the welfare aspects of the main systems of stunning and killing applied to commercially farmed deer, goats, rabbits, ostriches, ducks, geese and quail, The EFSA Journal (2006).

16

Recital 6, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, OJ. L 303/2.

17

Article 15, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, OJ L 303/12.

18

Council Directive 74/577/EEC of 18 November 1974 on Stunning of Animals Before Slaughter 1974 OJ L 316/10–11.

19

Council Directive 93/119/EC of 22 December 1993 on the Protection of Animals at the Time of Slaughter or Killing, 1993 OJ L 340/ 21–34.

20

Council of Europe, European Convention for the Protection of Animals for Slaughter, May 10, 1979, E.T.S. 102.

21

Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009 OJ L 303/1 – 27.



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### 3. A Classification of Shortcomings in EU Farm Animal Welfare Laws



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Limited Scope

1

Article 2, Directive 98/58/EC, OJ L 221/23.

2

Article 1(2), *ibid.*

3

Directive 2010/63/EU of the European Parliament and of the Council of 22 September 2010 on the Protection of Animals used for Scientific Purposes, OJ L 276/33–79.

4

Article 1(3)(b), *Ibid*, OJ L 276/39.

5

Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to the "Aspects of the biology and welfare of animals used for experimental and other scientific purposes," The EFSA Journal, 292 (2005) 292, 1-46. See also: Jonathan Birch et al., Review of the Evidence of Sentience in Cephalopods, Molluscs, and Decapods Crustaceans, The London School of Economics (2021) and Belinda Tonkins, Why Are Cephalopods Protected in Scientific Research in Europe?, Working Paper (2016).

6

Article 1, Council Directive 1999/74, OJ L 203/53 and Article 1,Council Directive 2007/43, OJ L 182/20.

7

Article 3, Council Directive 2008/119, OJ L 10/8.

8

Article 1, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, OJ L 303/7.

9

Article 2(1), Council Directive 2008/119, OJ L 10/8, in light of C-355/11, *G. Brouwer Versus Staatssecretaris van Economische Zaken, Landbouw en Innovatie*, June 14 2012.

Limited Scope

Although the EU is one of the few jurisdictions in the world to have enacted farm animal welfare legislation, the EU legislation remains very limited in two crucial ways. The first pertains to its material scope, meaning the species types and ages of animals affected under the legislation. The second key shortcoming of EU farm animal welfare law would be its territorial scope, meaning the types of places encompassed under the law. On both counts, material and territorial scope, EU farm animal welfare legislation is too limited to adequately protect animals from harm.

• Examples

**Limited material scope:** The General Farming Directive covers “any animal (including fish, reptiles, or amphibians” bred or kept for the production of food, wool, skin or fur or for other farming purposes”<sup>1</sup> but excludes invertebrate animals, such as cephalopods or insects, from its scope.<sup>2</sup> On the other hand, Directive 2010/63 Directive on the protection of animals used for scientific purposes<sup>3</sup> includes cephalopods in its scope,<sup>4</sup> on account of their sentience,<sup>5</sup> and as per Article 13, TFEU.

**Limited territorial scope:** The Egg-Laying Hens and the Broilers Directives respectively exclude from their scope “establishments with fewer than 350 egg-laying hens and 500 chickens.”<sup>6</sup> Similarly, the Calves Directive applies to holdings with more than six calves.<sup>7</sup> Such a size requirement does not exist in the Pigs Directive, which applies to all farms with pigs.

**Limited de facto scope:** There are also cases where an act encompasses broad categories of animals, but the act’s provisions only apply to very few categories of animals. As a result, large portions of animals are in fact excluded from the scope of key legislative acts. Such is the case for fish, who are supposedly covered under the General Farming Directive as vertebrate animals, as well as the Transport Regulations. However, none of the provisions in these two acts apply to fish, since the Legislature primarily intended the rules to apply to terrestrial animals. Fish are further excluded from almost all specific provisions in the Slaughter Regulation.<sup>8</sup>

Similarly, animals who suffer specific types of abuse on farms and who do not benefit from species-specific directives are also left outside the scope of EU farm animal welfare legislation. This is the case for geese and ducks, just to name a couple, who are exposed to cruel industry practices in the context of *foie gras* production. This is also the case for dairy and beef cows, who only receive protection under the Calves Directive<sup>9</sup> until they are six months of age, whereas pigs of all ages are included in the scope of Pigs Directive.

• Recommendations

1.

Define scope based on best available science
2.

Establish scope range consistently across legislative acts
3.

Define species-specific rules to ensure scope is effective

Inadequate Standards

10 Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to the welfare aspects of the main systems of stunning and killing the main commercial species of animals, The EFSA Journal (2004).

11 Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to the welfare aspects of the main systems of stunning and killing applied to commercially farmed deer, goats, rabbits, ostriches, ducks, geese and quail, The EFSA Journal (2006).

12 Recital 6, Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, OJ L 303/2.

13 European Commission, "Citizens' European Initiative," [https://europa.eu/citizens-initiative/initiatives/details/2018/000004\\_en](https://europa.eu/citizens-initiative/initiatives/details/2018/000004_en) (last visited January 26th 2021).

14 European Commission, Special Eurobarometer 442 "Attitudes of Europeans towards Animal Welfare," 4 (2016).

15 79%. Eurogroup for Animals, Compassion in World Farming, "Fish Welfare Survey" (2018), available online: <https://comresglobal.com/polls/eurogroup-for-animals-ciwf-fish-welfare-survey/>

16 European Parliament, Resolution of 4 July 2012 on the European Union Strategy for the Protection and Welfare of Animals 2012–2015, 2012/2043(INI) (2012).

17 European Parliament, Resolution of 14 March 2017 on minimum standards for the protection of farm rabbits, 2016/2077(INI) (2017). See also the 2015, the European Parliament Resolution on a new animal welfare strategy for 2016-2020, calling "on the Commission to ensure an updated, comprehensive and clear legislative framework which fully implements the requirements of Article 13 of the TFEU"; the 2015 Resolution on animal welfare, antimicrobial use and the environmental impact of industrial broiler farming, stressing "that unfair competition leads to an uneven playing field, as those who are non-compliant undercut those who comply with the rules"; and the 2021 resolution calling on the Commission "to propose a revision of Directive 98/58/EC with the objective of phasing out the use of cages in EU animal farming, assessing a possible phasing-out by 2027."

Many standards in EU farm animal welfare legislation are outdated in light of the best available science. Furthermore, many standards, while they fit industry economic interests, do not adequately meet society's demand for better protection levels of animals.

• Examples

**Inadequate standards in light of science produced by EU experts:** In 2004 and 2006, the European Food Safety Authority (EFSA) produced scientific opinions in which they recommended the phase-out of the use of carbon dioxide for pigs<sup>10</sup> and the use of water bath stunners for poultry.<sup>11</sup> In 2009, the Legislature did not follow EFSA's recommendations "because the impact assessment revealed [they] were not economically viable."<sup>12</sup>

**Inadequate standards in light of societal and political demand:** **EU citizens** regularly express their desire for higher animal welfare standards in the legislation. In 2020, in response to the inertia following the adoption of the Lisbon Treaty, 1.2 million citizens petitioned the European Commission to ask for the prohibition on the use of cages for laying hens, rabbits, pullets, broiler breeders, layer breeders, quail, ducks and geese; farrowing crates and stalls for sows; individual calf pens through the "End the Cage Age" European Citizens' Initiative.<sup>13</sup>

EU citizens are heavily polled and surveys regularly show strong support for animal welfare reforms. In 2016, an official survey showed that 82% of EU citizens "believe the welfare of farmed animals should be better protected than it is now" and that "the absolute majority of Europeans strongly agree that imported products from outside the EU should respect the same animal welfare standards as those in the EU (62% "totally agree")."<sup>14</sup> More recent polls have found that the overwhelming majority of EU citizens say that "the welfare of fish should be protected to the same extent as the welfare of other animals we eat."<sup>15</sup>

Some **national jurisdictions** have also adopted bans on certain practices on account of animal welfare. For instance, Austria, Germany, and Luxembourg banned the use of battery cages for hens – and Czechia, likewise, just passed a ban on the use of cages in egg production in November, which is slated to take effect in 2027. Sweden has banned the use of gestation and farrowing crates for pigs and mutilations on pigs, and Finland and Lithuania have banned tail docking.

The **EU institutions** themselves seem to share the desire of EU citizens for increased levels of protection for farmed animals. The European Parliament has adopted several resolutions since the Lisbon Treaty entered into force in 2009. In a 2012 resolution, Members of the European Parliament urged "the Commission to be more ambitious in including and prioritizing reciprocity of animal welfare standards [...] in its trade policy [...] and to promote animal welfare in third countries by requiring equivalent welfare standards for imported animals and products accompanied by strict controls."<sup>16</sup>

18 European Committee of the Regions, Opinion on the Common Agricultural Policy, NAT-VI/034, 5 December 2018; European Committee of the Regions, Opinion on agroecology, NAT-VII/010, 5 February 2021.

19 Article 22, Regulation 178/2002 of the European Parliament and of the Council of 28 January 2002 Laying Down the General Principles and Requirements of Food Law, Establishing the European Food Safety Authority and Laying Down Procedures in Matters of Food Policy, OJ L 31/12 (2002).

20 As per TFEU, Annex I; Article 2, Regulation 178/2002, O.J. L 31/7 (2002).

21 Article 22(5)(b), Regulation 178/2002, OJ L 31/13 (2002).

22 Article 29, Regulation 178/2002, OJ L 31/16 (2002).

23 Article 28, Regulation 178/2002, OJ L 31/15 (2002).

24 Article 23(a), Regulation 178/2002, OJ L 31/13 (2002).

25 Article 30(1), Regulation 178/2002, OJ L 31/16 (2002).

26 Article 30(3) and (4), Regulation 178/2002, OJ L 31/16-17 (2002).

27 As ruled in cases C/9-56, Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community, 13 June 1958 and C/10-56 Meroni & Co., Industrie Metallurgiche, società in accomandita semplice v High Authority of the European Coal and Steel Community, 13 June 1958 ("Meroni Doctrine").


28 Novel foods, such as cell-based agricultural products and insects, are subjected to a market authorization regime.

29 See the "Meroni Doctrine" (supra n. 69) in light of C-270/12, United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union, 22 January 2014 (Grand Chamber). See also Merijn Chamon, Beyond Delegated and Implementing Acts: Where do EU Agencies Fit in the Article 290 and 291 Scheme?, in W. Weiss and E. Tauschinsky (eds.), The Legislative Choice between Delegated and Implementing Acts in EU Law, Edward Elgar (2018).

In 2015, the European Parliament also adopted a resolution on minimum standards for the protection of farm rabbits.<sup>17</sup> Since 2013, the Committee on Petitions of the European Parliament has received 89 petitions and citizens' enquiries related to animal welfare.

Furthermore, the European Committee of the Regions adopted opinions in favor of the end of the use of cages in 2018 and again in 2021.<sup>18</sup>

**The European Food Safety Authority**



- What is EFSA?**

The European Food Safety Authority (EFSA) was created in 2002 and is one of the 37 EU agencies. Its mission is to advise the EU Legislature on matters related to feed and food safety by providing scientific expertise to contribute to a “high level of protection of human life and health.”<sup>19</sup>
- Mandate on Farmed Animals**

EFSA's mandate extends to farm animals insofar as farm animals are considered food products and thus can pose food safety risks.<sup>20</sup> However, EFSA's mandate also includes, as a secondary mission, “the provision of scientific opinions on other matters [than food and feed safety risks] relating to animal health and welfare [...]”<sup>21</sup>
- Scientific Opinions on the Welfare of Farmed Animals**

EFSA has produced opinions at the request of the Commission, the European Parliament, and Member States.<sup>22</sup> Since its creation in 2002, the EFSA has published 49 scientific opinions on the welfare of farmed animals. Each opinion is produced by a Scientific Panel, coordinated by a Scientific Committee.<sup>23</sup> EFSA's advisory work also relies on national animal welfare reference centers.

EFSA is held to a standard of the “best possible science.”<sup>24</sup> EFSA further has a duty of vigilance in the case of divergence “between its scientific opinions and the scientific opinions issued by other bodies carrying out similar tasks.”<sup>25</sup> Such a duty entails that EFSA must ensure it uses all the relevant scientific information by cooperating with other bodies in an attempt to resolve diverging scientific opinions. If a divergence of opinions persists, EFSA must clarify the uncertainties of the data in a document made available to the public.<sup>26</sup>
- Legal Value of EFSA's Opinions**

Being an agency, EFSA's mission does not include rulemaking decisions. Instead, its role is strictly advisory.<sup>27</sup>

Even market-authorization decisions<sup>28</sup> remain the sole mandate of the European Commission, even if the latter almost always follows EFSA's scientific opinions. On the other hand, the European Commission has not always followed EFSA's scientific opinions when drafting standards to be included in animal welfare legislation. This stands in contrast with the weight the Legislature gives to the scientific opinions of other scientific agencies, such as the European Medicines Agency. Such an inconsistency in the weight given by the European Commission to certain expert opinions as opposed to others is not clearly addressed in EU law.<sup>29</sup>



30 Regulation 178/2002 of the European Parliament and of the Council of 28 January 2002 Laying Down the General Principles and Requirements of Food Law, Establishing the European Food Safety Authority and Laying Down Procedures in Matters of Food Policy, OJ L 31/1 - 24 (2002).

31 Article 5, Regulation 178/2002, OJ L 31/8 (2002).

32 Article 7, Regulation 178/2002, OJ L 31/9 (2002).

33 Preamble, Council of Europe, European Convention for the Protection of Animals Kept for Farming Purposes, March 10, 1976, E.T.S. 87.

• Remedies:

Under Farm Animal Welfare Legislation:

1. Scientific findings, legal interpretations of texts, and societal demands have all changed over time.  
For these reasons, EU farm animal welfare legislation should include a provision requiring the European Commission to regularly assess the need to update standards in light of scientific progress and relevant caselaw from the European Court of Justice (ECJ). This would ensure that the specifications in the annexes of legislative acts are updated in light of scientific progress as well as investment and funding opportunities for the animal agriculture industry. This provision would also prevent legislative acts from falling out of date, remaining unamended for more than twenty years, as has been the case for the General Farming Directive.
2. Legislative acts should be amended through delegated acts, rather than implementing acts.  
This would allow the European Parliament to have a check of power on the European Commission's rulemaking mandate and would ensure balance between the institutions and increased transparency.

Under the General Food Law (Regulation 178/2002<sup>30</sup>):

The General Food Law should be amended in a way that:

1. "The provision of scientific opinions on [...] matters relating to animal welfare" becomes one of EFSA's missions, independent of the impacts on feed and food safety.
2. The general objectives of the General Food Law should be amended so that they pursue a high level of animal welfare as a main objective, in addition to ensuring high levels of protection of human life and health, and as opposed to merely "taking it into account."<sup>31</sup> To that extent, the General Food Law's precautionary principle<sup>32</sup> should fully apply to animal welfare risks.
3. Animal scientific advice provided by EFSA should be informed by an animal protection principle, particularly one that shields animals from the abuses of "modern intensive stock-farming systems," as was intended by the signatories of the European Convention for the Protection of Animals Kept for Farming Purposes.<sup>33</sup>
4. The provisions regarding diverging opinions should be better implemented to avoid the situation wherein EFSA publishes scientific opinions that diverge from other bodies carrying out similar tasks, including in social sciences.

The European Commission should further conduct a study on the feasibility of creating a specific agency dedicated to informing the Legislature about animal protection, and separated from food safety considerations. The creation of such an agency could lead to a paradigm shift in legislative drafting and rule-making, away from the current doctrine that considers animals primarily as commodities. A new agency such as this could also ensure consistency in the ways in which animal welfare is assessed, independent of human aims.

34 Article 2, Regulation 178/2002, OJ L 31/7 (2002).

35 On wild animal welfare, see Wild Animal Initiative, <https://www.wildanimalinitiative.org/>.

Furthermore, this new agency's mandate should be larger than the current mandate of EFSA, to include live animals other than those "prepared for placing on the market for human consumption,"<sup>34</sup> and animals which are not currently the focus of EFSA's scientific opinions, such as wild animals.<sup>35</sup>

In Comitology rules:

Currently, implementing and delegated acts regarding animal welfare are proposed by the European Commission's Standing Committee on Plants, Animals, Food and Feed. Comitology rules, which determine the functioning of the committees that adopt implementing acts and propose delegated acts, should be amended to create a specific committee dedicated to animal welfare, separate from animal health and food safety issues. This committee should utilize expertise beyond that which is required for food safety and animal health issues, and this committee should invite input from other scientific disciplines, those found in the social sciences for example, rather than solely relying upon veterinarian opinions.

**The European Court of Justice Caselaw**

- **What is the European Court of Justice (ECJ)?**  
The ECJ was founded in 1952 and is the judiciary branch of the EU. To that extent, the ECJ interprets EU law to ensure it is applied consistently across all the 27 Member States. The ECJ is composed of one judge from each Member State and eleven advocates general. The ECJ is located in Luxembourg City, Luxembourg and its working language is French.
- **Types of Actions Before the ECJ**  
The ECJ rules on different type of legal actions:
  - **Preliminary rulings**  
This type of action is the most common before the ECJ and consists of one or several questions from a national court to the ECJ to ask for clarification on how an EU law should be interpreted, if a law is valid, and whether a national law or practice is compatible with an EU law. The opinion of the court takes the form of a ruling. ECJ rulings are binding for Member States in such domains where EU law takes precedence over national law.  
  
*Recent examples: Case C-336/19, Centraal Israëlitisch Consistorie van België e.a. and Others, 17 December 2020; Case C-497/17, Oeuvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture and Others, 26 February 2019. (see Annex 2 for more examples)*

36 For a review of the caselaw related to animals in the European Court of Human Right's caselaw, see Tom Sparks, Protection of Animals Through Human Rights, The Case-Law of the European Court of Human Rights, MPIL Research Paper Series, Max Planck Institute for Comparative Public Law and International Law (2018).

37 For example: the territorial scope of the Transport Regulation in Case C-424/13, Zuchtvieh-Export GmbH v Stadt Kempten, 23 April 2015 ; material scope of the Calves Directive in Case C-355/11, G. Brouwer v Staatssecretaris van Economische Zaken, Landbouw en Innovatie, 14 June 2012.

– **Infringement proceedings**  
An infringement proceeding is a type of case taken against a national government for failing to comply with EU law. Infringement proceedings are typically initiated by the European Commission, as a final step of an infringement procedure, but such proceedings can also be initiated by another EU Member State. If the Court finds against the defendant, the defendant will be fined until it complies with EU law.

*Examples: C – 147/77, Commission of the European Communities v Italian Republic, 6 June 1978; C-339,/ 13, Commission v Italy, 22 May 2014.*

– **Actions for annulment**  
An action for annulment is a type of case initiated by a citizen, an EU Member State, or any of the three EU institutions (European Parliament, the European Commission, and the Council of the EU) against the EU. These actions are undertaken to challenge the enactment of a rule (usually a regulation or directive) adopted by an institution, body, office or agency of the EU. The ECJ has exclusive jurisdiction over actions brought by a Member State against the European Parliament and/or against the Council (apart from Council measures in respect of State aid, dumping and implementing powers) or brought by one European Union institution against another.

*Examples: C – 131/86, United Kingdom of Great Britain and Northern Ireland v Council of the European Communities, 23 February 1988*

– **Actions for failure to act**  
A type of case initiated by a citizen, a company, an EU Member State, or any of the three EU institutions (European Parliament, the European Commission, and the Council) against the EU institution’s inaction to enact rules after it has been called to act.

*There is no example of caselaw involving an action for failure to act related to farm animal welfare legislation.*

- **Caselaw Related to Farm Animal Welfare**  
There exists no review of ECJ caselaw related to farmed animals in the academic literature.<sup>36</sup> However, a quick analysis reveals that the ECJ has handed down 23 decisions specifically relating to farm animal welfare and the interpretation of legislative acts related to farm animal welfare. This ECJ caselaw has significantly contributed to defining EU competence in regulating farm animal welfare, as well as clarifying certain rules, such as the scope of certain legislative acts.<sup>37</sup>

38 C–826/18, LB, Stichting Varkens in Nood, Stichting Dierenrecht, Stichting Leefbaar Buitengebied v College van burgemeester en wethouders van de gemeente Echt-Susteren, 14 January 2021.

- Besides cases that are of direct concern to EU farm animal welfare legislation, there are other ECJ rulings unrelated to farm animal welfare standards, but which have nevertheless had a significant impact on the treatment of farm animals. For example, a 2020 ECJ ruling found in favor of a Dutch animal protection organization challenging the legality of an environmental permit granted by a local administration, allowing for the physical expansion of an industrial pig farm.<sup>38</sup> The Court sided with the plaintiffs on the basis of the 1998 Aarhus Convention on access to information, public participation in decision-making, and access to justice in environmental matters. Such a ruling would not be categorized as a ruling on animal welfare, and yet it has impactful effects on the right to justice for animal protection groups in challenging factory farming.

• **Implementation of ECJ Caselaw**

Unlike Anglo-American legal systems, the continental European law does not formally recognize the existence of legal precedents, whereby a Court is bound by its own past decisions (also known as the stare decisis rule). Although in practice, European courts, including the ECJ, do tend to keep their rulings consistent to ensure legal certainty.

However, the absence of a legal precedence rule still has effects on the implementation of rulings by the ECJ. Even if the European Commission tends to generally implement the decisions contained in the ECJ rulings, it is not strictly bound to do so. For instance, the European Commission immediately implemented a 2019 ruling on the incompatibility between organic rules and slaughter without stunning. By contrast, the European Commission has never launched an infringement procedure against the many Member States who do not comply with the Transport Regulation as interpreted in a 2015 ruling. The most effective way to implement caselaw thus remains through codification, which consists of amending the legislative act to incorporate the ECJ ruling.



Vagueness

39 Annex, Directive 98/58, OJ L 221/26 – 27.

40 Annex III, Directive 2007/43, OJ L 182/27.

41 Annex I, Directive 2008/120, Chapter I, point 4, OJ L 47/10.

42 Paragraph 2, Annex, Directive 1999/74, OJ L 203/ 57.

43 Annex I, Chapter V, Paragraph 2.1, Regulation 1/2005, OJ L 303/25.

Many of the standards contained in EU farm animal welfare legislation are drafted using general terms to such an extent that they leave significant margin for interpretation, and as a consequence, these laws have produced little to no effect on the levels of protection afforded to animals.

EU farm animal welfare legislation typically uses expressions such as “unnecessary suffering,” and adjectives such as “appropriate,” “adequate,” “likely to cause suffering or injury,”<sup>39</sup> or “comfortable.” However, none of these expressions are substantiated by quantifiable, measurable standards. As a result, many of the provisions in EU farm animal welfare legislation read more like guidelines than rules.

• Examples

Absence of engineering standards:

Directive 98/58 contains no engineering standards.

Densities: The Broilers Directive sets different density levels, each attached to a different set of obligations. For operators who keep broilers in stocking densities higher than 33kg/m² and below 42kg/m², the Directive requires official veterinarians to record and report mortality rates on arrival to the slaughterhouse and to conduct post-mortem inspections. However, the Directive only requires that the official veterinarian notify the producer so that the producer may “take appropriate action” if the mortality rate and the results of the post-mortem inspection are “consistent with poor welfare conditions.”<sup>40</sup> In the absence of mortality rates or post-mortem data results above, about which an official veterinarian must notify the producer and the administration, the official veterinarian acts at his or her sole discretion.

Enrichment: The Pigs Directive requires the provision of enrichment material, but does not provide a minimum quantity of such materials per pig or per a particular measurement of space. The Directive merely provides that “pigs must have permanent access to a sufficient quantity of material to enable proper investigation and manipulation activities.”<sup>41</sup>

Nuisances: The Egg Laying Hens Directive sets no standards regarding noise on farms. The Directive merely requires that “the sound level shall be minimized. Constant and sudden noise shall be avoided. Ventilation fans, feeding machinery or other equipment shall be constructed, placed, operated and maintained in such a way that they cause the least possible noise.”<sup>42</sup>

Feeding: The Transport regulation does not provide a minimum feed quantity for poultry, birds, and rabbits. It only requires that “suitable food and water shall be available in adequate quantities.”<sup>43</sup>

44 See also Coller Animal Law Forum, “Animal Welfare,” <https://calf.law/factsheets/animal-welfare> (last visited January 23 2022).

• Remedies

The legislation should follow the principles set in the Better Regulation package so as to ensure legal certainty and comprehensibility of legislative texts. Specifically:

1. EU farm animal welfare legislation should prioritize the enactment of **engineering standards**, which are quantifiable, measurable standards, as opposed to vague rules in the absence of such standards. The Legislature should also move away from regulating practices through performance standards, which only require that operators comply with objectives.<sup>44</sup>
2. EU farm animal welfare should enact **regulatory definitions** to ensure specific practices are allowed or prohibited. The Legislature should move away from relying on vague concepts such as “unnecessary suffering,” and subjective adjectives such as “proper,” “adequate,” or “appropriate.”
3. The European Parliament and the Council would benefit from an increased budget to ensure access to more legal advice resources, and to ensure that the legislative work follows the same high-quality standards as the ones set for the European Commission in the Better Regulation standards.

Disproportionate Exemptions

45 Paragraph 8, Annex, Directive 1999/74, OJ L 203/57.

46 Paragraph 8, Annex I, Directive 2008/120, OJ L 47/10.

47 Article 3, Annex III and V, Directive 2007/43, OJ L 182/21, 26, and 27.

48 European Commission, Report on the Application of Directive 2007/43/EC and Development of Welfare Indicators, 8 (2017).

49 Article 15, Regulation 1099/2009, OJ L 303/12.

50 For an overview of the E.U. pig industry, see The European Parliament, The EU Pig Meat Sector (2020).

Rules contained in the EU farm animal welfare legislation often come with exemptions, which are cases where the rules do not apply.

Exemptions are common in law, however, the standards in legal drafting typically ensure that exemptions are limited, justified, and proportionate to the goal pursued by the law. In many instances though, farm animal welfare provisions contain broad exemptions, the justification of which is hard to comprehend.

• Examples

**Mutilations:** The Egg-Laying Hens Directive provides a general prohibition on “all mutilations” except for beak trimming, provided it “is carried out by qualified staff.”<sup>45</sup> Yet, beak trimming is one of the most common mutilations in egg production, taking place so routinely that allowing the practice to continue defeats much of the purpose of the Directive. Similarly, the Pigs Directive prohibits “all procedures intended as an intervention carried out for other than therapeutic or diagnostic purposes or for the identification of the pigs in accordance with relevant legislation and resulting in damage to or the loss of a sensitive part of the body or the alteration of bone structure.”<sup>46</sup> The provisions then goes on to provide exceptions for teeth-grinding, tail-docking, castration, and nose-ringing. In other words, the list of exemptions embraces all common practice mutilations on industrial farms, in addition to mutilations for identification, therapeutic, and diagnostic purposes.

**Densities:** The Broiler Directive sets a maximum density rate of 33kg/m² on broiler farms, all the while allowing higher density levels “by way of derogation” provided producers comply with additional requirements, including the monitoring of the number of animals declared dead on arrival at the slaughterhouse.<sup>47</sup> 60% of EU broiler producers make use of this derogation, which tends to be more of a common industry practice than a derogation.<sup>48</sup>

**Handling:** The Slaughter Regulation prohibits the hoisting and shackling of conscious animals in slaughterhouses. However, this prohibition does not apply to poultry animals.<sup>49</sup> As a result, the terrestrial animal who is the most farmed – broiler chickens – are therefore subject to a practice that is rightfully banned in the case of other animals.

• Remedy

Exemptions should be limited in scope and only granted for specific situations. They should further be justified in light of the intent expressed by the Legislature, and be proportionate to such a goal. Even considering that the primary goal of EU farm animal welfare legislation is to ensure fair competition between producers across the Union, there cannot be fair competition between countries with vastly different methods of production if all industrial common practices are allowed, as they are in the pig<sup>50</sup> and poultry sectors.

Enforcement Issues

51 Paragraph 8, Annex I, Directive 2008/120, OJ L 47/10.

52 Member States that have prohibited tail docking, such as Sweden, also decreased maximum density levels, further demonstrating the causality between high density levels and the occurrence of cannibalistic behavior. Source: Regulations and general guidelines of the Swedish Board of Agriculture on Pig Husbandry in Agriculture (2017) (Sw.), available online: <http://djur.jordbruksverket.se/download/18.6a85.pdf.d504015f70e4094bab223/1509953346145/2017-02>

53 Paragraph 12, Annex I, Directive 2007/43, OJ L 182/25.

In addition to poor animal welfare standards, EU farm animal welfare legislation suffers from a significant lack of enforcement. Specifically, this means that even when adequate rules do exist, such rules are not necessarily respected, because violations occur and neither the EU institutions nor the Member States' governments ensure that offenders are properly penalized.

Enforcement issues partly account for the lack of effectiveness of EU farm animal welfare. Enforcement issues typically come in one of two types: some rules are not enforced because they are drafted in a confusing way that makes them impossible to enforce. Other rules are clear, but are simply not enforced, because enforcement authorities do not prioritize citing this type of violation for a variety of reasons, such as lack of political will or lack of resources.

• Examples

**Unenforceability:** Certain animals on industrial farms engage in cannibalistic behavior, whereby the animals bite (such as pigs) or peck (such as poultry) one another. Animal welfare scientists and ethologists have demonstrated animals typically engage in this type of behavior when they lack stimulus or are forced into a densely crowded environment. For these reasons, scientists recommend lowering densities on farms and providing animals with more enrichment materials to avoid cannibalistic behavior. Because such recommendations are incompatible with the business model of factory farming, which operates on very tight margins, industrial producers sought to solve the problem of cannibalistic behavior by severing the animals' tails (for pigs) and clipping off part of their teeth or beaks as it would apply to pigs or poultry. The industry performs these animal mutilations to prevent cannibalistic behavior and to safeguard the quality of the meat.

As a response to the severe impacts that mutilations have upon animals, the Pigs Directive prohibits “routine” tail-docking and tooth clipping.<sup>51</sup> The qualifier “routine” suggests that this practice itself is not altogether prohibited, but only the automatization of the practice. However, such an automatization, or routinization, of tail-docking and tooth-clipping is inevitable given the density levels allowed under the Pigs Directive,<sup>52</sup> density levels which invariably lead the animals to cannibalistic behavior. Additionally, provisions regarding enrichment materials do not specify how much enrichment materials should be provided to the pigs. As a result, the prohibition on the “routine” aspect of mutilations remains unenforceable because the only requirement is that producers comply with the rules in the legislation - rules which cause the cannibalistic behavior in the first place.

Similarly, the Broilers Directive prohibits mutilations on broilers, except beak trimming “when other measures to prevent feather pecking and cannibalism are exhausted.”<sup>53</sup> However, density levels allowed under the Broiler Directive are so high that cannibalistic behavior is almost inevitable, making it so producers invariably need to trim the beak of broilers given such density levels.

54 Annex I, Chapter I, Regulation 1/2005, OJ L 3/19 (2005).

55 Paragraph 1.4.(a), Annex I, Chapter V, Regulation 1/2005, OJ L 3/25 (2005).

56 Annex I, Chapter V, Regulation 1/2005, OJ L 3/25 (2005).

57 Annex I, Chapter III, Paragraph 1.8, Regulation 1/2005, OJ L 3/22 (2005).

58 See for instance, Christine Hafner and Alexander Rabitsch, The Myth of Enforcement of Regulation (EC) No 1/2005 on the Protection of Animals During Transport (2014), available online: [https://www.animals-angels.de/fileadmin/user\\_upload/03\\_Publikationen/Dokumentationen/Animals\\_Angels\\_Myth\\_of\\_Enforcement.pdf](https://www.animals-angels.de/fileadmin/user_upload/03_Publikationen/Dokumentationen/Animals_Angels_Myth_of_Enforcement.pdf)

59 Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on Official Controls and Other Official Activities Performed to Ensure the Application of Food and Feed Law, Rules on Animal Health and Welfare, Plant Health and Plant Protection Products, OJ L 95/ 1–142 8 (2017).

60 Regulation (EU) 2021/2116 on the Financing, Management and Monitoring of the Common Agricultural Policy, L 435/187-261 (2021). Specifically, this regulation should eliminate the possibility for Member States to implement an early warning system and to impose Member States to reduce payments by at least 10% when a recipient is found to be in breach with EU farm animal welfare legislation.

61 Article 1117, Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on Official Controls and Other Official Activities Performed to Ensure the Application of Food and Feed Law, Rules on Animal Health and Welfare, Plant Health and Plant Protection Products, OJ L 95/ 1–142 8 (2017).

**Under-enforcement:** A notoriously under-enforced legislation is the Transport Regulation. Provisions such as the limitations on the transport of animals unfit for transport,<sup>54</sup> mandatory feeding of weaned animals,<sup>55</sup> limits on transport duration,<sup>56</sup> and the prohibition on the lifting of birds by the legs during loading<sup>57</sup> are just a few examples of the numerous occurring violations activist groups report.<sup>58</sup>

• Remedies

1. The legislation should follow the principles set in the Better Regulation package so as to ensure legal certainty and comprehensibility of legislative texts. Concepts such as “routine” should be clearly defined using specific and quantifiable standards. Language framed as prohibition or limitations on certain practices should entail compliance with additional standards, and not simply refer to compliance with mandatory rules.
2. Animal welfare rules should be enforced through more systematic inspections and deterring penalties in cases of violation. Such enforcement mechanisms do exist in other legislative acts, such as in the Official Controls<sup>59</sup> and the Common Agricultural Policy’s Horizontal regulations,<sup>60</sup> and these should be made more effective, including by levying stiffer penalties.
3. Rules should further be amended to increase the European Commission’s accountability.<sup>61</sup> Where audits by the Directorate General for Health and Food Safety confirm the existence of significant non-compliance rates in the Member States audited, the European Commission should provide a detailed and duly motivated explanation as to the follow-up legal and non-legal actions it considers undertaking.

62 C – 147/77, Commission of the European Communities v Italian Republic, 6 June 1978; C-339./ 13, Commission v Italy, 22 May 2014. See Annex 2 for a more detailed description.

Infringement Procedures

- Infringement decisions occur when the EU executive “pursues legal action against Member States for failing to comply with their obligations under EU law.” Infringement procedures occur when the European Commission intervenes by notifying an EU country in cases where that country has failed to properly enact an EU law into national law (application failure), or failed to implement such a law (implementation failure). In that sense, infringement decisions constitute the most central mechanism of the EU’s executive enforcement powers.
- There are different levels of intervention; from a simple notification to a full-on legal action before the European Court of Justice (ECJ). An “Infringement Procedure” is a procedure that follows subsequent levels:

1. The Commission first sends a “Letter of Formal Notice,” whereby the Commission requests information to a Member State regarding an issue in implementation or application of EU law.
2. If the Commission is not satisfied with the explanation, it issues a “Reasoned Opinion,” which is a formal request to comply with EU law.
3. In the event where a Member State still does not comply with the European Commission’s request, the Commission can refer the Member State to the ECJ.
4. Finally, if the ECJ rules against the Member State, and the Member State still does not comply, the Commission can start a new, fast-track infringement procedure, which can lead up to a new referral to the ECJ.

The European Commission has twice referred Italy before the ECJ for failure to implement EU law; once in 1978, for failing to transpose into national law the mandatory stunning of animals prior to their bleeding as provided by the 1974 Slaughter Directive. The European Commission referred Italy again to the ECJ in 2014, for failing to implement the prohibition on the use of conventional battery cages within the transition periods laid down in the Egg-Laying Hens Directive. The ECJ sided with the European Commission both times.<sup>62</sup>



## Fragmented Implementation and Distortion in Competition

63 Communication from the Commission on the European Citizens' Initiative (ECI) «End the Cage Age,» 3 (2021), available online: [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2021\)4747&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2021)4747&lang=en)

64 Nancy De Briyne et al., 'Phasing Out Pig Tail Docking in the EU: Present State, Challenges and Possibilities,' 2, Porcine Health Management (2018).

65 Communication from the Commission on the European Citizens' Initiative (ECI) «End the Cage Age,» 3 (2021), available online: [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2021\)4747&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2021)4747&lang=en)

Because the EU legislation is drafted using general terms, and sets objectives rather than measurable standards, many Member States have implemented the EU rules in disparate ways at national level. Some Member States have used their ability to impose stricter national rules in a way that benefits animals. For instance, Austria, Germany, Luxembourg, Czechia, and Slovakia have banned the use of battery cages for egg-laying hens.<sup>63</sup> Similarly, Sweden, Finland, and Lithuania prohibit tail docking on pigs.<sup>64</sup> Sweden also prohibits the use of gestation and farrowing crates for sows.<sup>65</sup> Other countries, such as France and Spain, have chosen not to go above and beyond EU law, thereby allowing the use of cages and the performance of mutilations on pigs within their respective jurisdictions.

These differentiated national rules have resulted in a fragmentation of production standards across the Union, all the while putting progressive countries at a disadvantage compared to Member States whose national legislation does not go above and beyond minimum EU standards.

### • Remedies

1. Improve legislative drafting to reduce the margin of interpretation afforded to national legislatures in transposing EU law into national law.
2. Privilege the regulation of farm animal welfare standards by way of regulations, rather than through directives, so that EU law directly applies into national law

Annex 1

EU FARM ANIMAL WELFARE LEGISLATION

	ADOPTION	REVISION AND AMENDMENTS	SPECIES COVERED	HYPERLINK TO OFFICIAL TEXTS
Council Directive 98/58/EC Concerning the Protection of <b>Animals Kept for Farming Purposes</b>	1998	-	All animals bred or kept for farming purposes, defined as “all animals, (including fish, reptiles or amphibians) [used] for the production of food, wool, skin or fur or for other farming purposes” except invertebrates.	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31998L0058">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31998L0058</a>
Council Directive 1999/74/EC Laying Down Minimum Standards for The Protection of <b>Laying Hens</b>	1986	Revised in 1999	Animals of the species <i>Gallus Gallus</i> for commercial egg-production purposes on farms with more than 350 egg laying hens	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31999L0074">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31999L0074</a>
Council Directive 2008/119/EC Laying Down Minimum Standards for the Protection of <b>Calves</b>	1991	Amended in 1997; revised in 2008.	Calves confined for rearing and fattening purposes, less than six months old kept on farms with more than six calves.	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0119">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0119</a>
Council Directive 2008/120/EC Laying Down Minimum Standards for the Protection of <b>Pigs</b>	1991	Amended in 2001; revised in 2008.	Pigs of both sexes, at all stages of production for breeding and fattening purposes.	<a href="https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008L0120">https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008L0120</a>
Council Directive 2007/43/EC Laying Down Minimum Rules for the Protection of <b>Chickens</b> Kept for Meat Production	2007	-	Animals of the species <i>Gallus Gallus</i> kept for meat production purposes, except breeders, on industrial farms with more than 500 chickens, excluding hatcheries.	<a href="https://eur-lex.europa.eu/eli/dir/2007/43/oj">https://eur-lex.europa.eu/eli/dir/2007/43/oj</a>
Council Regulation 1/2005 on the Protection of Animals During Transport and Related Operations	1977	Revised in 1991 and 2005.	Live vertebrates, for all transport by road, rail, air, and sea, taking place “in connection to a an economic activity,” and starting from the moment the animals are loaded and until they are unloaded to their final destination.	<a href="https://eur-lex.europa.eu/eli/reg/2009/1099/oj">https://eur-lex.europa.eu/eli/reg/2009/1099/oj</a>
Council Regulation 1099/2009 on the Protection of Animals at the Time of Killing	1974	Revised in 1993 and 2009	Animals “bred or kept for the production of food, wool, skin, fur or other products as well as the killing of animals for the purpose of depopulation and for related operation.”	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32005R0001">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32005R0001</a>



# Annex 2

## EUROPEAN COURT OF JUSTICE RULINGS ABOUT FARM ANIMAL WELFARE LEGISLATION

REFERENCE	ACTION TYPE	YEAR	FACTS	RULING	RELEVANT TEXT
C – 131/86, <i>United Kingdom of Great Britain and Northern Ireland v Council of the European Communities</i> , 23 February 1988	Action for Annulment	1988	The UK government challenged the legality of the Egg-Laying Hens Directive on the grounds that the European Communities (former EU) lacked competence in regulating farm animal welfare rules.	The Court sided with the European Communities and ruled that even though “the [Directive] was also conceived with a view to ensuring better treatment for laying hens, [...] varying national rules regarding agricultural products which may affect the proper functioning of a common organization of the market [...] may be harmonized on the basis of Article 43 of the Treaty [on the common agricultural policy] alone.”	Directive 86/113 Laying Down Minimum Standards for the Protection of Egg-Laying Hens Kept in Battery Cages
C – 128/94, Hans <i>Hönig v Stadt Stockach</i> , 19 October 1995	Preliminary Ruling	1995	The applicant was an egg producer who kept egg-laying hens in battery cages. He challenged the legality of the German transposition of the Egg-Laying Hens Directive on the grounds that German national law required a minimum cage area greater than the minimum provided in the directive.	The Court sided against the applicant and ruled that, when it comes to cage area for egg-laying hens kept in battery cages, Member States are able to lay down stricter national rules than those of the directive, even though such an interpretation may result in farmers in one Member State being treated less favorably than those in other Member States, allowing some inequalities in competition to persist.	Directive 86/113 Laying Down Minimum Standards for the Protection of Egg-Laying Hens Kept in Battery Cages
C – 351/13, European Commission v Hellenic Republic, 4 September 2014	Infringement Proceeding	2014	Greece had failed to implement the prohibition on the use of unenriched battery cages after the transition period set in the Egg-Laying Hens Directive.	The Court sided with the European Commission and ruled that the Hellenic Republic had failed to fulfill its obligations to ensure, from 1 January 2012, that egg-laying hens are no longer reared in unenriched cage systems as per Article 3 and 5(2) of Council Directive 1999/74/EC of 19 July 1999, laying down minimum standards for the protection of egg-laying hens.	Directive 1999/74 laying down minimum standards for the protection of egg-laying hens
C-339,/ 13, Commission v Italy, 22 May 2014	Infringement Proceeding	2014	Italy had failed to implement the prohibition on the use of unenriched battery cages after the transition period set in the Egg-Laying Hens Directive.	The Court sided with the European Commission and ruled that the Italian Republic had failed to fulfill its obligations to ensure, from 1 January 2012, that laying hens are no longer reared in unenriched cage systems as per Article 3 and 5(2) of Council Directive 1999/74/EC of 19 July 1999, laying down minimum standards for the protection of laying hens.	Directive 1999/74 Laying Down Minimum Standards for the Protection of Egg-Laying Hens
Calves					
C-1/96, <i>The Queen v Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming Ltd.</i> , 19 March 1998	Preliminary Ruling	1998	The Royal Society for the Prevention of Cruelty to Animals, and Compassion in World Farming Limited, challenged the Minister of Agriculture, Fisheries and Food for its refusal to restrict the export of veal calves to jurisdictions allowing the use of veal crates, when such a practice had been banned in British law.	The Court sided with the UK Minister, ruling that a discrepancy between two respective sets of national farm animal welfare laws did not justify a limitation on trade between Member States, provided both Member States were in compliance with EU minimum standards.	Directive 91/629 Laying Down Minimum Standards for the Protection of Calves
C – 187/1, Criminal proceedings against Dirk Endendijk, 3 April 2008	Preliminary Ruling	2008	A dairy farmer was prosecuted for keeping his calves tethered for more than one hour per day.	The Court ruled against the defendant and specified that “a calf is tethered within the meaning of Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves, where it [sic] is tied by a rope, irrespective of the material, length and purpose of that rope.”	Directive 91/629 Laying Down Minimum Standards for the Protection of Calves
C – 355/11, G. Brouwer v Staatssecretaris van Economische Zaken, Landbouw en Innovatie, 14 June 2012	Preliminary Ruling	2012	A dairy farmer kept his calves tethered and argued that the Calves Directive did not apply to dairy farms.	The Court ruled against the defendant and specified that “Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves must be interpreted as meaning that the requirement, referred to in Article 4 of that directive, [and including the prohibition of] the tethering of calves, applies to calves kept confined by a farmer in the context of a dairy farming operation.”	Directive 91/629 Laying Down Minimum Standards for the Protection of Calves

REFERENCE	ACTION TYPE	YEAR	FACTS	RULING	RELEVANT TEXT
Transport					
C – 350/97, Wilfried Monsees v Unabhängiger Verwaltungssenat für Kärnten, 11 May 1999	Preliminary Ruling	1999	<p>Austria transposed the Transport Directive into national law requiring that animals transported for slaughter should be taken to the nearest slaughterhouse in Austria. Mr Monsees, a truck driver, was charged with breaching the Austrian legislation because he was transporting 31 cattle from Germany to Turkey.</p> <p>Mr Monsees challenged the Austrian authorities and contended that the international nature of the transport precluded application of the national legislation.</p>	The Court ruled against the plaintiff (the Austrian administration) on the grounds that the transposition of the Transport Directive into Austrian law breached the free movement of goods on the single market.	Council Directive 91/628/EEC of 19 November 1991 on the Protection of Animals During Transport
C – 300/05, Hauptzollamt Hamburg-Jonas v ZVK Zuchtvieh-Kontor GmbH, 23 November 2006	Preliminary Ruling	2006	<p>ZVK exported 28 live bovine animals to Egypt in the autumn of 2000 and received an export refund advance from German customs.</p> <p>The German customs subsequently demanded repayment of that advance payment on the grounds that ZVK had not complied with the maximum travel time without rest as laid down in point 48(4)(d) of the Annex to the Transport Directive. ZVK maintains that the length of the journey should be calculated from the time when the transport vehicle left the place of departure, whereas German customs includes loading and unloading time in the total journey time.</p>	The Court sided with the German authorities and ruled that the wording in Article 2(2)(b) of the Transport Directive requires transporters to account for the time taken to load and unload the animals in the total journey time.	Council Directive 91/628/EEC of 19 November 1991 on the Protection of Animals During Transport
C – 37/06, Viamex Agrar Handels GmbH, C – 58/06 Zuchtvieh-Kontor GmbH (ZVK) v Hauptzollamt Hamburg-Jonas, 17 January 2008	Preliminary Ruling	2008	Two exporters challenged a decision by German customs reducing the exporters' export refund on the grounds that the exporters did not comply with the Transport Directive.	The Court sided with the German authorities and confirmed that national competent authorities can reduce export refunds proportionately to the damages caused by the exporters' breaches with the Transport Directive. The competent authorities can go as far as denying export refunds should there have been consequences on the welfare of animals as a result of non-compliance with the Transport Directive.	Council Directive 91/628/EEC of 19 November 1991 on the Protection of Animals During Transport
C – 491/06, Danske Svineproducenter v Justitsministeriet, 8 May 2008	Preliminary Ruling	2008	The union of Danish pig producers challenged the legality of the Danish transposition of the Transport Directive on the grounds that, in each deck in vehicles transporting pigs, Danish law required a minimum height and loading density that was stricter than the standards specified in the directive.	The Court sided against the applicant and ruled that Member States are able to lay down national rules stricter than those provided in the directive.	Council Directive 91/628/EEC of 19 November 1991 on the Protection of Animals During Transport
C - 207/06, Schwaninger Martin Viehhandel - Viehexport v Zollamt Salzburg, Erstattungen, 17 July 2008	Preliminary Ruling	2008	An Austrian exporter applied for an export refund for exporting 33 bovine animals to Albania. The Austrian customs rejected the exporter's application on the grounds that the journey time did not comply with the Transport Directive.	The Court sided with the exporter and ruled that Point 48(7)(a) of the Annex to Directive 91/628 must be interpreted as meaning that, in the case of transport by sea between a geographical point of the European Community and a geographical point situated in a third country by means of vehicles loaded onto vessels without unloading the animals, the duration of the transport does not have to be taken into account if the animals are transported in accordance with the conditions laid down in point 48(3) and (4) of the annex to Directive 91/628, apart from journey times and rest periods. If that is the case, a further period of transport by road may begin immediately after unloading the lorry at the port of destination in the third country, in accordance with point 48(4)(d).	Council Directive 91/628/EEC of 19 November 1991 on the Protection of Animals During Transport
C – 277/06, Interboves GmbH v Hauptzollamt Hamburg-Jonas, 9 October 2008	Preliminary Ruling	2008	An exporter, Interboves, applied for an export refund for the export of 33 live bovine animals to the former Yugoslavia. The German customs rejected Interboves' application on the grounds that Interboves had not complied with point 48.7(b) of the Annex to the Transport Directive, because the animals had been transported with a journey time exceeding 23 hours. Specifically, the animals had been transported for 14 hours 30 minutes by sea, on board a roll-on/roll-off ferry between Bari (Italy) and Igoumenitsa (Greece), and 8 hours 30 minutes by road to Evzoni, the border post between Greece and the former Yugoslav Republic of Macedonia, without any rest periods. The exporter argued the sea-crossing time should not be included in the calculation of the journey time pursuant to point 48.7(a) of the annex to Directive 91/628.	The Court ruled that the calculation of the total journey time must include terrestrial transport prior to the journey on a roll on/roll off ferry, unless the animals were afforded a 24-hour rest period before boarding the ferry.	Council Directive 91/628/EEC of 19 November 1991 on the Protection of Animals During Transport



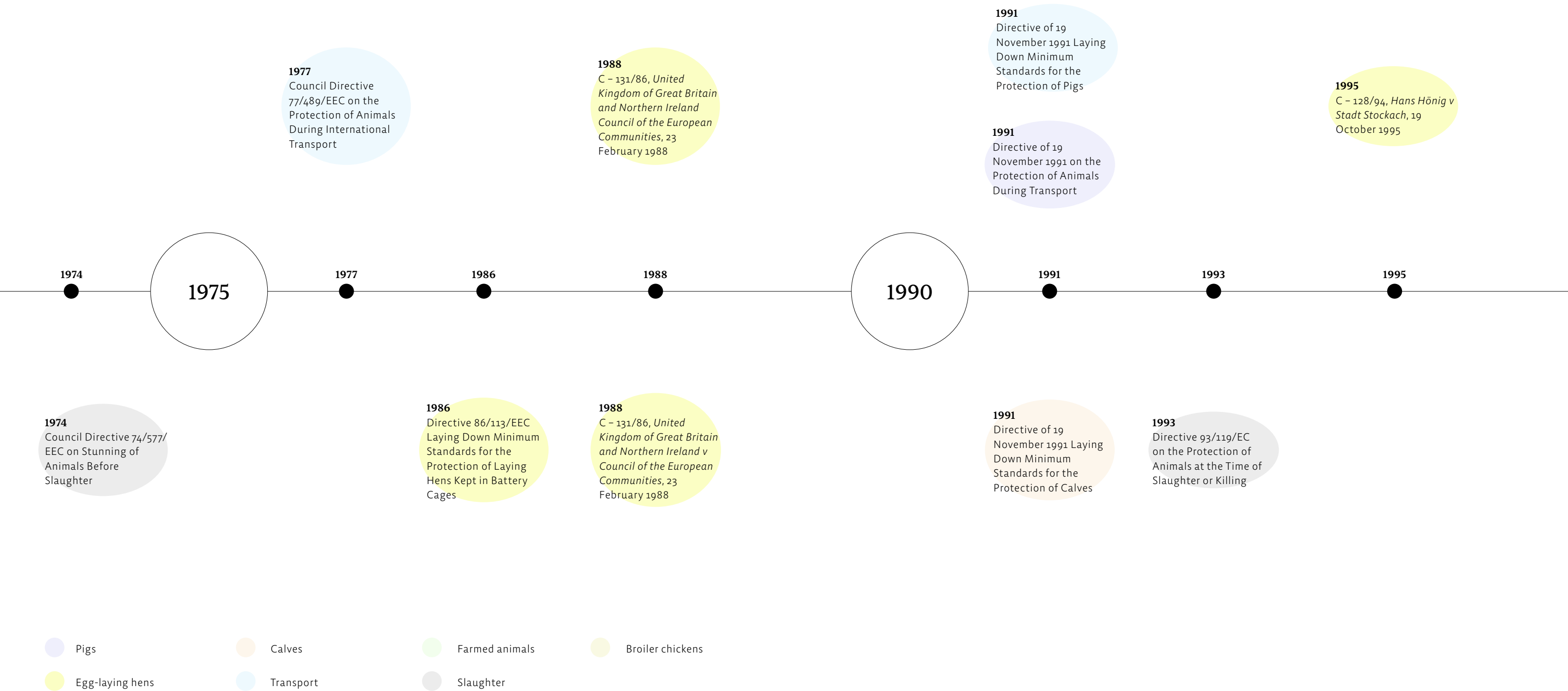
REFERENCE	ACTION TYPE	YEAR	FACTS	RULING	RELEVANT TEXT
C – 455/06, Heemskerk BV and Firma Schaap v Productschap Vee en Vlees, 25 November 2008	Preliminary Ruling	2008	Exporters transported 640 cows, including 40 gestating cows, from Moerdijk, Netherlands to Casablanca, Morocco, on an Irish ship. The Dutch Customs authorities subsequently denied the exporters' application for export refund on the grounds that the density onboard was not compliant with the provisions in Annex I, Chapter VI of the Transport Directive, and exceeded maximum density levels by 111 animals. The exporters argue that the total space allowance on the ship had been certified by the Irish authorities, and the density had been further deemed compliant by the official veterinarian before departure.	The Court sided with the Dutch authorities and determined that the exporters were in breach of the Transport Directive.	Council Directive 91/628/EEC of 19 November 1991 on the Protection of Animals During Transport
C – 485/09, Viamex Agrar Handels GmbH v Hauptzollamt Hamburg-Jonas, 30 June 2011	Preliminary Ruling	2011	Viamex, an export company, submitted a request for export refund to the German customs for the export of 20 live bovine animals from Germany to Egypt, who were transported by rail from Husum (Germany) to Rasa (Croatia) before being loaded onto a ship. The German customs office rejected Viamex's application for export refund on the grounds that the journey time exceeded the maximum allowed under the Transport Directive.	The Court sided with the German authorities and confirmed that Point 48(5) of Chapter VII of the Annex to the Transport Directive applies to rail transport. The Court further ruled that the competent authorities can reduce an export refund, or deny one, on the grounds that the exporter breached the Transport Directive, but only when such breaches concern animal welfare provisions. Competent authorities can proceed to a reduction or refusal of export refund in cases where the animals have suffered, and it is not necessary that these sufferings resulted in death.	Council Directive 91/628/EEC of 19 November 1991 on the Protection of Animals During Transport
C – 316/10, Danske Svineproducenter v Justitsministeriet, 21 December 2011	Preliminary Ruling	2011	The union of Danish pig producers challenged the legality of the Danish transposition of the Transport Directive on the grounds that, in each deck in vehicles transporting pigs, Danish law required a minimum height and loading density in each deck in vehicles transporting pigs that was stricter than the standards specified in the Transport Regulation.	The Court ruled that Member States were allowed to adopt stricter rules than those established in the Transport Regulation. However, rules must be proportionate to the objective of protecting the welfare of animals, and must not disproportionately put domestic operators at a disadvantage when exporting live animals, or EU importers . To that extent, the requirement related to checks on pigs during journeys by road of more than eight hours is deemed disproportionate, whereas the fixing of minimum space allowance for pigs is deemed proportionate.	Council Regulation (EC) No 1/2005 of 22 December 2004 on the Protection of Animals During Transport and Related Operations
C – 424/13, Zuchtvieh-Export GmbH v Stadt Kempten, 23 April 2015	Preliminary Ruling	2015	The competent authorities of the municipality of Kempten, Germany refused clearance for a consignment of 62 cattle to be transported by road from Kempten to Andijan (Uzbekistan) via Poland, Belarus, Russia, and Kazakhstan, on the grounds that the journey log presented by the exporters did not comply with the maximum journey times and minimum rest periods provided for in the Transport Regulation. The exporters argued that the Transport Regulation only applied within the EU territory.	The Court sided with the German competent authorities, and ruled that Article 14(1) of Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations applies including “for the stages of the journey which are to take place in the territory of third countries.”	Council Regulation (EC) No 1/2005 of 22 December 2004 on the Protection of Animals During Transport and Related Operations
C – 469/14, Masterrind GmbH v Hauptzollamt Hamburg-Jonas, 28 July 2016	Preliminary Ruling	2016	Masterrind declared the export of six breeding cattle to Morocco and obtained an advance payment of the refunds linked to that export by decision of the Hamburg-Jonas customs. The Customs subsequently required the refund of such an advance on the grounds that the exporters had breached the Transport Regulation for affording the animals rest periods longer than the minimum provided in the Transport Regulation. As a consequence of repeated and long rest periods, the convoy arrived much later at its destination.	The Court sided with the exporter, ruling that rest periods provided for at Annex I, Chapter V, point 1.4(d) to the Transport Regulation can be longer than one hour, unless such a prolonged length poses risks to animal health or welfare. However, the combined journey time and resting periods, as provided for under point 1.4(d) of that chapter, must not exceed 29 hours, subject to the possibility of extending those periods by 2 hours in the interests of the animals.	Council Regulation (EC) No 1/2005 of 22 December 2004 on the Protection of Animals During Transport and Related Operations
C – 383/16, Vion Livestock BV v Staatssecretaris van Economische Zaken, 19 October 2017	Preliminary Ruling	2017	The Dutch customs denied an exporter's application for export refund on the grounds that the exporter had not kept a copy of the journey log until reaching the place of the first unloading in the third country of final destination.	Points 3, 7 and 8 of Annex II of the Transport Regulation requires that the transporter of bovine animals must keep a copy of the journey log provided for in Annex II to Regulation No 1/2005 up to date until the place of the first unloading in the third country of final destination.	Council Regulation (EC) No 1/2005 of 22 December 2004 on the Protection of Animals During Transport and Related Operations
<b>Slaughter</b>					
C – 147/77, Commission of the European Communities v Italian Republic, 6 June 1978	Infringement Proceeding	1978	Italy had failed to implement into national law the mandatory stunning of animals prior to their bleeding, as provided by the Slaughter Directive.	The Court sided with the European Commission and ruled that the Italian Republic had failed to fulfill its obligations to ensure that all animals must be stunned prior to their slaughter by 1 July 1975.	Council Directive 74/577/EEC of 18 November 1974 on Stunning of Animals Before Slaughter

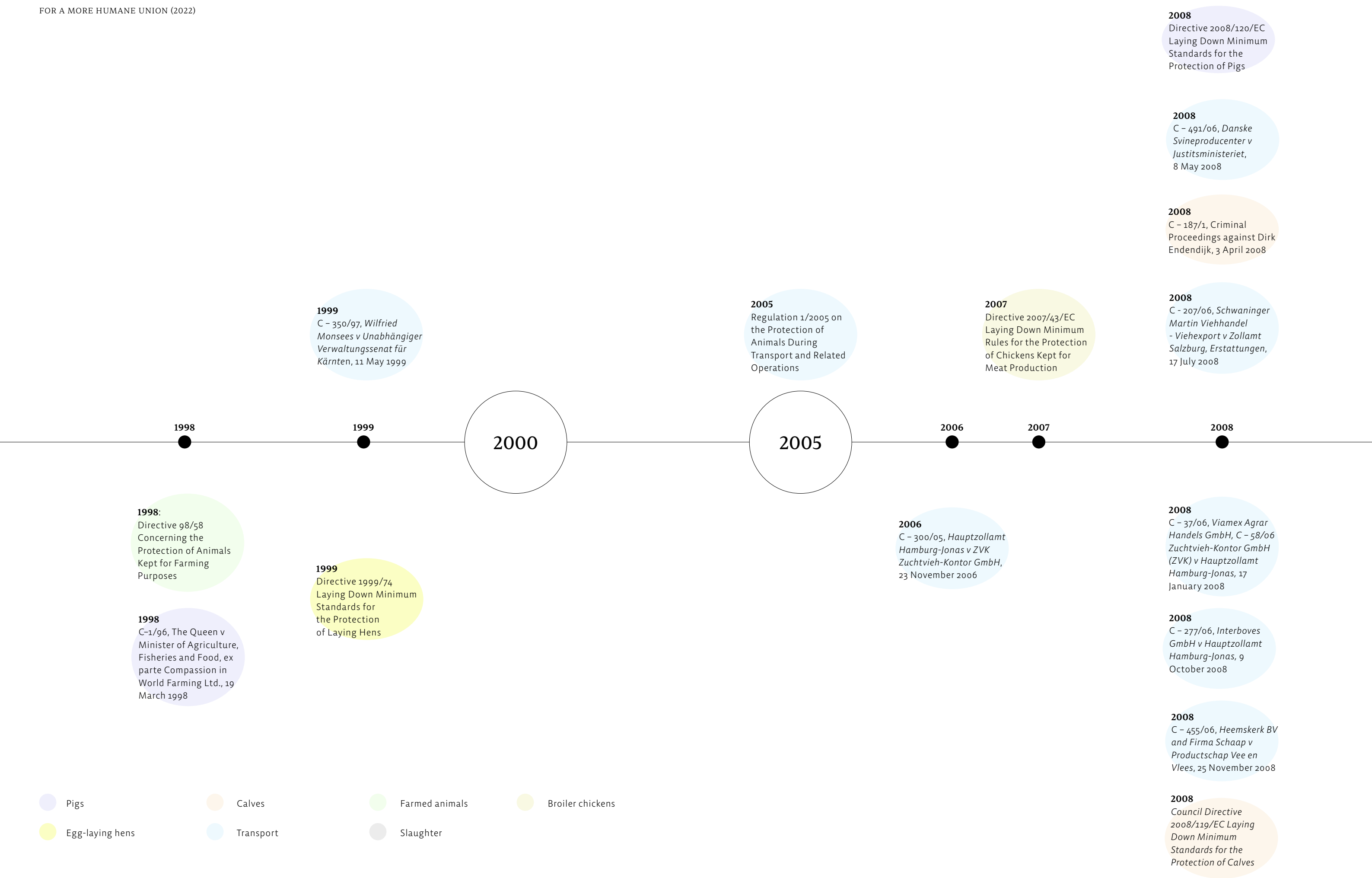
REFERENCE	ACTION TYPE	YEAR	FACTS	RULING	RELEVANT TEXT
C – 5/94, The Queen v Ministry of Agriculture, Fisheries and Food, ex parte: Hedley Lomas (Ireland) Ltd., 23 May 1996	Preliminary Ruling	1996	An exporter challenged the British government for refusing to issue export licenses for live sheep to Spain. The English authorities' refusal was grounded in the fact that Spanish law, unlike English law, did not mandate the stunning of animals prior to their killing.	The Court sided with the applicant and ruled that a discrepancy between two respective sets of national farm animal welfare laws did not justify a limitation on trade between Member States, provided both Member States complied with minimum EU standards.	Council Directive 93/119/EC of 22 December 1993 on The Protection of Animals at the Time of Slaughter or Killing
C – 426/16, <i>Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen, VZW and Others v Vlaams Gewest</i> , 29 May 2018 (Grand Chamber)	Preliminary Ruling	2018	The Flemish Regional Minister ceased to issue approvals for temporary slaughterhouses at which ritual slaughtering could be performed during the <i>Eid al-Adha</i> ("Feast of Sacrifice"). This decision was taken on the grounds that Articles 2(k) and 4(4) and 2(k) of the Slaughter Regulation required that animals subject to ritual slaughter without stunning be slaughtered in slaughterhouses which satisfy the requirements of Regulation No 853/2004 (Hygiene Regulation).	The Court sided with the Flemish authorities and concluded that the Slaughter Regulation read together with the Hygiene Regulation does not infringe upon freedom of religion.	Council Directive 93/119/EC of 22 December 1993 on the Protection of Animals at the Time of Slaughter or Killing
C – 497/17, <i>Œuvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture et de l'Alimentation and Others</i> , 26 February 2019 (Grand Chamber)	Preliminary Ruling	2019	An animal protection organization argued that the Organic Regulation pursued the achievement of high standards in farm animal welfare and that meat from non-stunned animals at slaughter was therefore incompatible with the organic standards.	The Court sided with the applicant and ruled that meat from animals that had not been stunned at slaughter could not benefit from the organic label.	Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009.
C – 336/19, Centraal Israëlitisch Consistorie van België e.a. and Others, 17 December 2020	Preliminary Ruling	2020	Religious communities challenged a decree by the Flemish government prohibiting slaughter without stunning. Applicants argued that such a decree infringed upon the Jewish and Muslim communities' freedom of religion.	The Court sided with the Flemish government on the grounds that Article 26(2) (c) of the Slaughter Regulation, read in the light of Article 13 TFEU and Article 10(1) of the Charter of Fundamental Rights of the European Union, does not preclude a Member State to mandate, in the context of ritual slaughter, a reversible stunning procedure which cannot result in the animal's death.	Council Regulation 1099/2009 of 24 September 2009 on the Protection of Animals at the Time of Killing, 2009



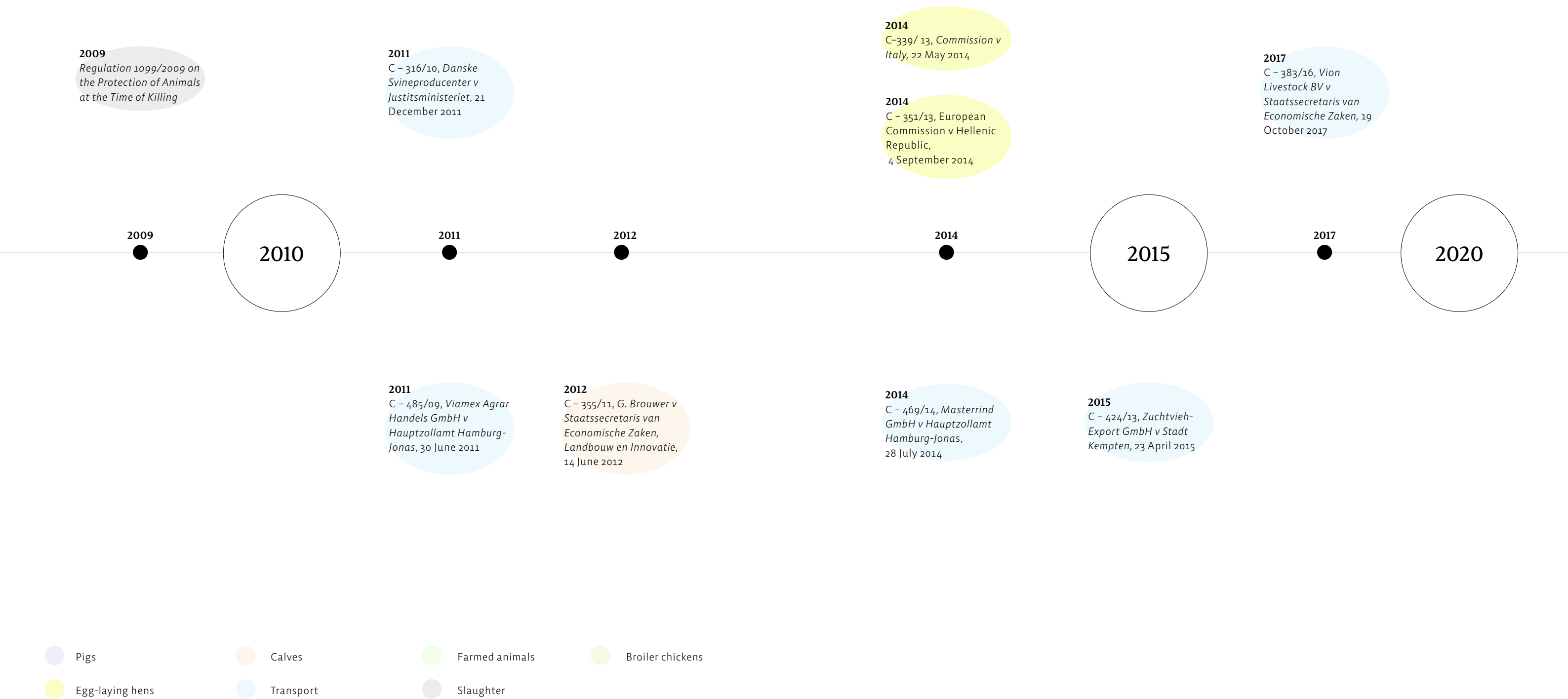
# Annex 3

TIMELINE OF THE ADOPTION OF EU FARM ANIMAL WELFARE LEGISLATION  
AND RELEVANT CASELAW BY THE EUROPEAN COURT OF JUSTICE











# European Institute for Animal Law & Policy

ACHIEVING BETTER TREATMENT FOR ANIMALS

The European Institute for Animal Law & Policy is a nonprofit think tank based in Brussels, Belgium. It was launched in 2021 in response to the European Commission's announcement that EU animal welfare legislation was to undergo revision in the coming years.

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