

January 2012

EUROPEAN UNION LEGISLATION ON THE WELFARE OF FARM ANIMALS

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European Union (EU) law contains a range of helpful provisions designed to protect farm animals on-farm, during transport and at slaughter. The Treaty on the Functioning of the European Union recognises animals as “sentient beings” and requires the EU and its Member States, when formulating and implementing their policies in certain key areas to pay “full regard to the welfare requirements of animals”. EU law has prohibited some of the worst aspects of industrial livestock production: veal crates have been prohibited from 2007, barren battery cages for egg-laying hens from 2012 and sow stalls (gestation crates) are prohibited (except during the first four weeks of pregnancy) from 2013. This article describes and evaluates the above legislation and indicates the scientific research on which it is based. Nonetheless, EU law has to date only gone part way; substantial and far-reaching fresh legislation is needed before the EU can claim to have a body of law which properly ends the suffering inherent in industrial farming and legislates for a positive state of well-being for farm animals.

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I. INTRODUCTION

The European Union (EU)¹ has over the last 37 years established a wide range of detailed legislative provisions concerning the welfare of farm animals. The first such provision was enacted in 1974 and required animals to be stunned (rendered unconscious) before slaughter.²

These EU laws are welcome in that they: 1) establish certain welfare standards for farm animals on-farm, during transport and at slaughter; and 2) prohibit some of the most inhumane aspects of industrial livestock production.³ EU laws have, for example, prohibited veal crates, barren battery cages for laying hens and sow stalls (also known as sow gestation crates), although regrettably sow stalls can continue to be used during the first four weeks of the pregnancy; the first two prohibitions came into force in 2007 and 2012 respectively and the ban on sow stalls comes into force in 2013.⁴ However, EU laws at present go only part way to providing acceptable welfare standards. They need to be strengthened very considerably before they can be viewed as a fully comprehensive set of legislative measures which prohibit all inhumane farming practices and positively promote the well-being of farm animals.

¹ The European Union at present comprises 27 Member States: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Finland, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom. Croatia is scheduled to join the EU during 2013.

² Council Directive 74/577/EEC of 18 November 1974 on stunning of animals before slaughter. Official Journal No. L316, 26.11.1974, p.10. This Directive has now been replaced by the 1993 Slaughter Directive, *infra* n.164 which in turn will be replaced by the 2009 Slaughter Regulation in 2013, *infra* n. 167.

³ Discussed *infra* Section III.

⁴ Discussed *infra* Section III.

Most of the EU laws concerning farm animals are Directives. It has sometimes been erroneously argued by some outside the EU that EU Directives are not binding law, but are simply recommendations. This is not so. The Treaty on the Functioning of the European Union provides that “A directive shall be *binding*, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods”.⁵ The key words are that a Directive is binding as to the result to be achieved, although it is left to each Member State what kind of legislative instrument it employs (provided that it is binding) and precisely what language it uses (provided that the result mandated by the Directive is achieved).

Some EU laws on farm animals are Regulations. An EU Regulation is “binding in its entirety and directly applicable in all Member States”.⁶ This means that, on its entry into force, an EU Regulation automatically becomes, as written, part of the national law of each Member State.

II. TREATY PROVISION ON ANIMAL PROTECTION

EU legislation and policy in this field are underpinned by the Treaty on the Functioning of the European Union which recognises animals as “sentient beings”. Title II of the Treaty lists a number of key principles that should be respected by the EU. Article 13 (part of Title II) of the Treaty provides that 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**”.⁷

The European Commission explains that “This puts animal welfare on equal footing with other key principles mentioned in the same title i.e. promotion of gender equality, guarantee of social protection, protection of human health, combating discrimination, promotion of sustainable development, ensuring consumer protection and the protection of personal data”.⁸

This provision is important in two respects: 1) it recognises animals as “sentient beings”; and 2) it requires the Union and its Member States, in formulating and implementing the Union’s policies in certain key areas, to pay “full regard to the welfare requirements of animals”.

⁵ Treaty on the Functioning of the European Union, art. 288 (emphasis added). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>

⁶ *Id.*

⁷ *Id.*, art 13.

⁸ http://ec.europa.eu/food/animal/welfare/policy/index_en.htm

III. MAIN EU ON-FARM LEGISLATIVE PROVISIONS

The EU has enacted detailed Directives on pigs, calves, laying hens and chickens reared for meat as well as a General Farm Animals Directive which applies a range of broad provisions to all farmed animals.⁹

A. Pigs

EU law on pigs is contained in Council Directive 2008/120/EC laying down minimum standards for the protection of pigs (the Pigs Directive)¹⁰, which consolidates earlier Directives adopted in 1991 and 2001.

1. Prohibition of Sow Stalls and Tethering of Sows

The key aspects of the EU Pigs Directive are that it prohibits the tethering of sows¹¹ and the use of sow stalls,^{12,13} which are widely regarded as among the most inhumane aspects of industrial livestock production.

The tethering of sows has been prohibited from 1 January 2006.¹⁴

The Pigs Directive prohibits sow stalls by providing that from 1 January 2013 sows must be kept in groups (i.e. not in individual stalls) except for the first four weeks of their pregnancy (the Directive permits the use of stalls “during a period starting from four weeks after the service”).¹⁵

A key factor that gives authority and integrity to EU legislation in this field is the fact that it is based on scientific evidence. Before the European Commission draws up proposed legislation, it receives a detailed report from its expert body; today this is the scientific Panel on Animal

⁹ Discussed *infra* in this Section.

¹⁰ Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs. Official Journal L 47, 18.02.2009 p. 5-13.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:047:0005:0013:EN:PDF>

¹¹ *Id.*, art 3.3.

¹² *Id.*, art 3.4.

¹³ The term “sow stalls” refers here to crates which are so narrow that the sow cannot even turn round. She is confined in the crate throughout her 16½-week pregnancy – and for pregnancy after pregnancy, i.e. for most of her adult life.

¹⁴ Pigs Directive, *supra*, n. 10 art 3.3.

¹⁵ *Id.* art. 3.3.

Health and Welfare of the European Food Safety Authority.¹⁶ This report reviews the relevant scientific literature.

The EU's prohibition of sow stalls is based on a 1997 report¹⁷ by the European Commission's Scientific Veterinary Committee (SVC).¹⁸ The SVC's report condemns sow stalls, concluding that "No individual pen should be used which does not allow the sow to turn around easily".¹⁹ This was crucial as, although there is no official definition of a sow stall EU animal welfare campaigners had traditionally defined it as a stall so narrow that the sow cannot turn round. The SVC also stresses that "Since overall welfare appears to be better when sows are not confined throughout gestation, sows should preferably be kept in groups".²⁰

The SVC's report also shows that, as compared with sows housed in groups, sows confined in stalls have weaker bones and smaller muscles due to lack of exercise,²¹ a poorer level of cardiovascular fitness, also due to lack of exercise,²² and a higher incidence of urinary tract infections, associated with inactivity.²³ Moreover, stereotypies, such as bar-biting, which are a major indicator of poor welfare, are frequently observed in sows confined in stalls or tethers.²⁴ The SVC also stated that abnormal inactivity and unresponsiveness are very widespread in confined sows and that since the extent of the inactivity and unresponsiveness indicates abnormal behaviour "the sows may well be depressed in the clinical sense and poor welfare is indicated".²⁵

This provision in the Directive that allows sows to be kept in stalls for the first four weeks after service is criticised in a 2007 report by the European Food Safety Authority which concluded

¹⁶ <http://www.efsa.europa.eu/en/panels/ahaw.htm>

¹⁷ European Commission: Scientific Veterinary Committee, Animal Welfare Section. Report on the welfare of intensively kept pigs, 30 September 1997, http://www.europa.eu.int/comm/food/fs/sc/oldcomm4/out17_en.pdf

¹⁸ The European Commission's SVC consists of independent scientists and veterinary experts. The SVC reports draw together and analyse a large number of scientific papers and provide a full review of the scientific literature in certain fields. In 1997 the SVC was replaced by the Scientific Committee on Animal Health and Animal Welfare (SCAHAW). The SCAHAW's reports are available at http://europa.eu.int/comm/food/fs/sc/scah/outcome_en.html#opinions In 2003 the SCAHAW was replaced by the scientific Panel on Animal Health and Welfare which has been established by the European Food Safety Authority to provide scientific opinions in this field.

¹⁹ SVC report on pigs, *supra* n.17, Recommendation 73.

²⁰ *Id.*

²¹ *Id.* section 5.2.7.

²² *Id.* section 5.2.7.

²³ *Id.* section 5.2.5.

²⁴ *Id.* section 5.2.2.

that allowing sows to be kept in stalls until four weeks after mating severely restricts their freedom of movement and that the lack of exercise leads to impaired bone and muscular strength and reduced cardiovascular fitness.²⁶ In the UK sow stalls have been banned for many years and the ban applies throughout the pregnancy; there is no 'first four weeks' exception.²⁷

2. Hunger in Sows

The food provided for pregnant sows is usually much less than that which they would choose to consume so the animals are hungry throughout much of their lives.²⁸ Intensively reared sows are usually fed on restricted rations of concentrated feed. These provide for the nutritional requirements of the sow, but lack the bulk or roughage to satisfy her hunger.

The Pigs Directive addresses this problem by stipulating that "to satisfy their hunger and given the need to chew, all ... pregnant sows ... must be given a sufficient quantity of bulky or high-fibre food as well as high-energy food".²⁹ This provision came into force on 1 January 2003.³⁰

3. Prohibition of Fully Slatted Floors for Sows

Many pigs are kept on completely slatted floors; it is difficult to provide straw or other bedding or enrichment materials on such floors as it tends to fall between the slats and obstruct the drainage system. The SVC concluded that bedded flooring is important for welfare as it: 1) provides physical and thermal comfort; 2) allows pigs to engage in their natural investigatory and manipulatory activities; and 3) in the case of straw, may provide dietary fibre.³¹ The detrimental nature of fully slatted floors is recognised by the Pigs Directive which stipulates that, in the case of pregnant sows, at least 1.3 square metres [1.55 square yards] per sow of the floor area must be "continuous solid floor", i.e. completely slatted floors are prohibited.³² This

²⁵ *Id.* section 5.2.2.

²⁶ Scientific Opinion of the Panel on Animal Health and Welfare on a request from the Commission on animal health and welfare aspects of different housing and husbandry systems for adult breeding boars, pregnant, farrowing sows and unweaned piglets. *The EFSA Journal* (2007) 572, 1-13.
<http://www.efsa.europa.eu/fr/scdocs/doc/572.pdf>

²⁷ The Welfare of Farmed Animals (England) Regulations 2007. SI 2007/2078.
http://www.legislation.gov.uk/ukxi/2007/2078/pdfs/ukxi_20072078_en.pdf

²⁸ SVC report on pigs, *supra* n.17, Recommendation 69.

²⁹ Pigs Directive, *supra* n.10, art. 3 (7).

³⁰ Council Directive 2001/88/EC of 23 October 2001 amending Directive 91/630/EEC laying down minimum standards for the protection of pigs. Official Journal L316, 01.12.2001 p. 0001-0004, art. 2.
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:316:0001:0004:EN:PDF>

³¹ SVC report on pigs, *supra* n.17. Recommendations 9 and 10.

³² Pigs Directive, *supra* n.10, art 3.2 (a).

provision has been in force from 1 January 2003 in respect of new farms and comes into force in respect of existing farms on 1 January 2013.³³

4. *Provision of Enrichment Materials*

As indicated in the previous section, straw or some similar material is important both for physical and thermal comfort and to provide an outlet for pigs' natural behaviours of chewing, rooting and investigating. Accordingly, the Pigs Directive stipulates that:

“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”³⁴

This provision came into force on 1 January 2003 for fattening pigs and enters into force for sows on 1 January 2013.³⁵

A material other than one of those specified in the Directive may be used but the term “such as” means that the material provided must be as effective as those listed in fulfilling the outcome specified by the legislation which is that pigs must be able to engage in “proper investigation and manipulation activities”.

In assessing whether a material that is not specified in the Directive is effective in enabling pigs to engage in “proper investigation and manipulation activities”, veterinarians, farmers and enforcement officials should be guided both by their own observations on the farm and by scientific research.

A report by the European Food Safety Authority (EFSA) has examined the research and concluded that enrichment materials should be complex, changeable and destructible.³⁶ An EFSA Opinion concludes that toys such as chains, chewing sticks and balls are not effective enrichment materials.³⁷

³³ *Id.* art. 3 (9).

³⁴ *Id.*, Annex I, Chapter I, para. 4.

³⁵ *Id.* art. 3 (5) & (9).

³⁶ Scientific Report of the Panel on Animal Health and Welfare on animal health and welfare in fattening pigs in relation to housing and husbandry. *The EFSA Journal* (2007) 564, 1-100.
<http://www.efsa.europa.eu/en/efsajournal/doc/564.pdf>

³⁷ Scientific Opinion of the Panel on Animal Health and Welfare on a request from Commission on the

A Technical Report submitted to EFSA in 2011 states that an “appropriate enrichment material can be defined as a material which stimulates exploratory behaviour for an extended length of time”.³⁸

An Answer by the European Commission (E-5360/09EN) to a Question from a Member of the European Parliament has confirmed the validity of the EFSA conclusions.³⁹ The Commission Answer states that “The conclusions and recommendations of the [EFSA] opinions regarding fattening pigs⁴⁰ and tail docking⁴¹ are quite clear on enrichment materials. Indeed the scientific opinion on fattening pigs states that since indestructible objects such as chains or tyres are not sufficient to provide for the manipulatory need of pigs, they may be used as **supplement** to destructible and rooting materials but not as a **substitute** for them”. [emphasis added]

5. Prohibition of routine tail-docking

Scientific research shows that in natural conditions pigs are highly active, spending 75% of their day rooting, foraging and exploring.⁴² Such activities are impossible for industrially farmed pigs. The lack of straw or other natural materials prevents the pigs from carrying out their innate behaviours. Bored and frustrated, they turn to the only other ‘thing’ in their bare pens: the tails of other pigs. They begin to chew and then bite those tails.

To prevent tail biting, farmers slice off (dock) part of the piglet’s tail. However, scientific research has for many years shown that the correct way to prevent tail biting is not to dock the tails but to keep the pigs in good conditions, above all to give them straw or some similar material to enable rooting and investigation behaviour. In recognition of this, the Pigs Directive has since 2003 prohibited routine tail docking.

risks associated with tail biting in pigs and possible means to reduce the need for tail docking considering the different housing and husbandry systems. *The EFSA Journal* (2007) 611, 1-13.

<http://www.efsa.europa.eu/en/efsajournal/doc/611.pdf>

³⁸ Preparatory work for the future development of animal based measures for assessing the welfare of pigs. Report 2: Preparatory work for the future development of animal based measures for assessing the welfare of weaned, growing and fattening pigs including aspects related to space allowance, floor types, tail biting and need for tail docking. <http://www.efsa.europa.eu/en/supporting/doc/181e.pdf>

³⁹ <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2009-5360&language=EN>

⁴⁰ Scientific Opinion of the Panel on Animal Health and Welfare on a request from the Commission on Animal health and welfare in fattening pigs in relation to housing and husbandry. *The EFSA Journal* (2007) 564, 1-14. <http://www.efsa.europa.eu/en/efsajournal/doc/564.pdf>

⁴¹ EFSA Opinion on tail biting and tail docking, *supra* n. 37.

The SVC report concluded that tail-docking is likely to be painful when it is carried out and that in some cases it leads to “prolonged pain”.⁴³ The SVC condemned tail-docking, concluding that “The problems of injury following tail-biting should be solved by improved management rather than by tail-docking.”⁴⁴ The SVC stressed that tail-biting can largely be prevented by providing straw or other manipulable materials and keeping pigs at a stocking density which is not too high.⁴⁵

The prohibition of routine tail-docking is welcome. The Pigs Directive provides that tail-docking must not be carried out routinely, but only where there is evidence that injuries to other pigs’ tails have occurred.⁴⁶ Crucially, the law stipulates that before carrying out tail-docking “other measures shall be taken to prevent tail biting and other vices taking into account environment and stocking densities. For this reason inadequate environmental conditions or management systems must be changed”.⁴⁷ This is an important legislative development as it compels farmers to improve the conditions in which pigs are kept, rather than resorting to routine tail-docking. This provision came into force on 1 January 2003.⁴⁸

6. *Prohibition of routine teeth clipping and grinding*

The Directive provides that tooth clipping and grinding must not be carried out routinely, but only where there is evidence that injuries to sows’ teats have occurred.⁴⁹ As with tail docking, the Directive provides that before carrying out these procedures “other measures” must first be taken to prevent piglets injuring the sow’s teats and that for this reason “inadequate environmental conditions or management systems must be changed”.⁵⁰

⁴² Stolba A. and Woodgush D.G.M., 1989. The behaviour of pigs in a semi-natural environment. *Animal Protection* 48: 419-425.

⁴³ SVC report on pigs, *supra* n.17. Recommendation 39.

⁴⁴ *Id.* Recommendation 40.

⁴⁵ *Id.* Section 4.5.2.

⁴⁶ Pigs Directive, *supra* n.10. Annex I, Chapter I, para. 8.

⁴⁷ *Id.*

⁴⁸ Commission Directive 2001/93/EC of 9 November 2001 amending Directive 91/630/EEC laying down minimum standards for the protection of pigs. Official Journal L316, 01.12.2001 p. 0036-0038. art. 2.

<http://eur-lex.europa.eu/Notice.do?val=261696:cs&lang=en&list=426349:cs,261696:cs,&pos=2&page=1&nbl=2&pgs=10&hwords=&checktexte=checkbox&visu=#texte>

⁴⁹ Pigs Directive, *supra* n.10. Annex I, Chapter I, para. 8.

⁵⁰ *Id.*

7. Castration of pigs

In many EU countries (though not in the UK and Ireland) pigs are routinely castrated without anaesthesia or pain relief. The Pigs Directive prohibits the castration of pigs by means that involve the tearing of tissues.⁵¹ However, most pigs in the EU are surgically castrated without anaesthetic and this invariably entails the tearing of tissues. In order to achieve improved compliance the European Commission brought key stakeholders together who drew up the 2011 European Declaration on Alternatives to Surgical Castration of Pigs.⁵² This states that:

- From 1 January 2012, surgical castration of pigs, if carried out, shall be performed with prolonged analgesia and/or anaesthesia; and
- Surgical castration should be abandoned by 1 January 2018.

This Declaration has been signed by a number of leading stakeholders including COPA-COGECA, the main EU farmers' union, UECBV (the European Livestock and Meat Trading Union) and the Federation of Veterinarians of Europe.⁵³

8. Early weaning

The Pigs Directive prohibits the weaning of piglets from the sow at less than 28 days of age unless the welfare or health of the dam or the piglet would otherwise be adversely affected.⁵⁴ However, piglets may be weaned up to seven days earlier if they are moved into specialised housings which are emptied and thoroughly cleaned and disinfected before the introduction of a new group and which are separated from housings where sows are kept, in order to minimise the transmission of diseases to the piglets.⁵⁵

B. Calves

⁵¹ *Id*

⁵² http://ec.europa.eu/food/animal/welfare/farm/docs/castration_pigs_declaration_en.pdf

⁵³ http://ec.europa.eu/food/animal/welfare/farm/docs/castration_pigs_signatories_en.pdf

⁵⁴ Pigs Directive, *supra* n.10. Annex I, Chapter II, para. C3.

⁵⁵ *Id*

EU law on calves is contained in Council Directive 2008/119/EC laying down minimum standards for the protection of calves (the Calves Directive)⁵⁶ which consolidates earlier legislation adopted in 1991 and 1997.

1. Prohibition of Veal Crates

The key aspect of the EU Calves Directive is that it prohibits the veal crate system,^{57,58} which, along with sow stalls and battery cages for egg-laying hens, is widely regarded as one of the most inhumane aspects of industrial livestock production.

Veal crates have been prohibited since 31 December 2006.⁵⁹ As with sow stalls, there is no official definition of a veal crate, but animal welfare campaigners traditionally define it as a crate so narrow that the calf cannot turn round.

The Calves Directive prohibits veal crates by providing that calves must be kept in groups from the age of eight weeks, unless a veterinarian certifies that an animal's health or behaviour requires it to be isolated in order to receive treatment.⁶⁰ Moreover, even where a calf is confined in an individual pen (i.e. before the age of eight weeks, or pursuant to a veterinarian's certificate as referred to in the previous sentence), it cannot be kept in a veal crate as the Directive in effect provides that the pen must be large enough to enable the calf to turn round.⁶¹ What the Directive states is that "the width of any individual pen for a calf shall be at least equal to the height of the calf at the withers, measured in the standing position, and the length shall be at least equal to the body length of the calf, measured from the tip of the nose to the caudal edge of the tuber ischii (pin bone), multiplied by 1.1."⁶²

⁵⁶ Council Directive 2008/119/EEC of 18 December 2008 laying down minimum standards for the protection of calves. Official Journal L 10, 11.01.2009 p. 07-0013. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:010:0007:0013:EN:PDF>

⁵⁷ *Id* art 3 and Annex I, para 11.

⁵⁸ The veal crate system has two essential characteristics: i) the calf is kept in a solid-sided crate of wood, which is so narrow that the calf cannot even turn round from the age of about two weeks. Moreover, as the calf grows bigger, it cannot groom itself properly or stand up or lie down without difficulty; and ii) in order to produce the 'white veal' prized by gourmets, the calf is fed on an extremely unhealthy diet deficient in iron and roughage; indeed, many crated calves are given no solid food at all.

⁵⁹ Calves Directive, *supra* n.56, art 3.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

The prohibition of the narrow veal crate is extremely welcome, but it would be preferable from the welfare viewpoint if EU law required calves to be housed in groups from a very much earlier age than eight weeks. Indeed, the Directive's recitals emphasise the importance of keeping calves in groups; Recital 7 states "it is recognised scientifically that calves should benefit from an environment corresponding to their needs as a *herd-living* species. For that reason, they should be reared in groups".⁶³

The EU's prohibition of the veal crate is firmly based on scientific research. The Scientific Veterinary Committee's (SVC) 1995 report⁶⁴ is highly critical of the veal crate. The fact that a young animal needs proper exercise is recognised by the SVC which states that exercise is necessary for normal bone and muscle development.⁶⁵ The SVC added that "If calves cannot move their limbs sufficiently they are likely to be severely distressed"⁶⁶ and that after six months in an individual pen many calves have severe locomotor problems.⁶⁷

In its Conclusions the SVC report emphasised that "Every calf should be able to groom itself properly, turn around, stand up and lie down normally and lie with its legs stretched out if it wishes to do so".⁶⁸ As the calf grows bigger, none of these activities are possible in the veal crate.

The SVC concluded that the welfare of calves kept in veal crates is "*very poor*".⁶⁹ Their report stated "The welfare of calves is very poor when they are kept in small individual pens with insufficient room for comfortable lying, no direct social contact and no bedding or other material to manipulate".⁷⁰

2. *Prohibition of tethering of calves*

⁶³ *Id.*, Recital 7 (emphasis added).

⁶⁴ European Commission: Scientific Veterinary Committee, Animal Welfare Section. Report on the welfare of calves. 9 November 1995. Brussels, Belgium.
http://ec.europa.eu/food/fs/sc/oldcomm4/out35_en.pdf

⁶⁵ *Id.*, page 23.

⁶⁶ *Id.*, page 23.

⁶⁷ *Id.*, page 23.

⁶⁸ *Id.*, conclusion 14.

⁶⁹ *Id.*, conclusion 10 (emphasis added).

⁷⁰ *Id.*, conclusion 10.

The tethering of calves has been prohibited⁷¹ since 1 January 1998.⁷² This provision is based on the SVC report, which concluded that “tethering always causes problems for calves”.⁷³

3. Requirement to provide solid food and dietary iron

The all-liquid, iron-deficient diet, which is the norm in the veal crate system, has been prohibited⁷⁴ by EU law since 1 January 1998.⁷⁵ The SVC report is highly critical of this diet. It points out that calves “fed on a milk diet with no solid feed [the diet given to most crated calves] would die before adulthood so it is clear that such a diet is not sufficient for healthy growth”.⁷⁶ In other words, crated calves are being fed a lethal diet which would eventually kill them if they were not slaughtered first.

The SVC report concluded that calves which are given a diet which is deficient in iron and, for calves older than four weeks, deficient in roughage (i.e. the diet which is commonplace in the veal crate system) “can have serious health problems, can show serious abnormalities of behaviour, and can have substantial abnormalities in gut development”.⁷⁷

Since 1 January 1998, EU law has required that:

- 1) each calf over 2 weeks old must be provided with a minimum daily ration of fibrous food, the quantity being raised from 50 grammes (g.) [1.8 ounces] to 250 g. [8.8 ounces] per day for calves from 8-20 weeks old;⁷⁸ and
- 2) calves’ food shall contain sufficient iron to ensure an average blood haemoglobin level of at least 4.5 millimols per litre.⁷⁹

⁷¹ Calves Directive, *supra* n.56, Annex I, para 8.

⁷² Commission Decision 97/182/EC of 24 February 1997 amending the Annex to Directive 91/629/EEC laying down minimum standards for the protection of calves. Official Journal L076, 18.03.1997 p. 0030-0031. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997D0182:EN:HTML>

⁷³ SVC report on calves, *supra* n.64, conclusion 11.

⁷⁴ Calves Directive, *supra* n.56, Annex I, para 11

⁷⁵ 1997 Commission Decision on Calves, *supra* n.72, art. 2.

⁷⁶ SVC report on calves, *supra* n.64, page 23.

⁷⁷ *Id* conclusion 20.

⁷⁸ Calves Directive, *supra* n.56, Annex I, para 11

This provision is welcome, but does not go far enough in requiring a proper diet for calves. The SVC report concluded that calves “should receive a minimum of 100 g. [3.5 ounces] of roughage per day from 2 to 15 weeks of age, increasing to 250 g. [8.8 ounces] per day from 15 to 26 weeks of age *but it would be better if these amounts were doubled*”.⁸⁰

C. Egg-laying hens

EU law on laying hens is contained in Council Directive 1999/74/EC laying down minimum standards for the protection of laying hens.⁸¹

1. Prohibition of Barren Battery Cages

The Directive prohibits the use of barren battery cages⁸² from 1 January 2012.⁸³ The prohibition of barren battery cages is based on sound scientific research. An earlier Directive on hens had required a review of the Directive to be based on an opinion of the Scientific Veterinary Committee (SVC).⁸⁴ The SVC’s 1996 report was highly critical of battery cages, concluding that “It is clear that because of its small size and its barrenness, the battery cage as used at present has *inherent* severe disadvantages for the welfare of hens”.⁸⁵

The prohibition of battery cages is, of course, extremely welcome. Unfortunately, however, the Hens Directive permits the use of ‘enriched’ cages.⁸⁶ Under the Directive, ‘enriched’ cages must, from 1 January 2002, provide each hen with at least 600 cm² [93 square inches] of usable cage floor area, which must be at least 45 cm [17.8 inches] in

⁷⁹ *Id.*

⁸⁰ SVC report on calves, *supra* n.64, conclusion 23 (emphasis added).

⁸¹ Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens. Official Journal L203, 03.08.1999 p. 0053-0057.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1999:203:0053:0057:EN:PDF>

⁸² The term “battery cages” refers here to cages which usually contain anything from 5 to, in some parts of the world, 11 hens and which are so small that the hens cannot even stretch their wings. Moreover, in the cage it is impossible for hens to carry out most of their natural behaviours such as laying their eggs in a nest, pecking and scratching at the ground, dust-bathing and perching.

⁸³ Hens Directive, *supra* n.81, art.5 (2).

⁸⁴ Council Directive 88/166/EEC of 7 March 1988 laying down minimum standards for the protection of laying hens kept in battery cages, art. 9. Official Journal L74, 19.3.1988, p. 83.

⁸⁵ European Commission: Scientific Veterinary Committee, Animal Welfare Section. Report on the welfare of laying hens. 30 October 1996. Brussels, Belgium. Conclusion 9 (emphasis added). http://ec.europa.eu/food/fs/sc/oldcomm4/out33_en.pdf

height, and another at least 150 cm² [23.25 square inches] of cage floor area per hen which need be only 20 cm [7.9 inches] high. The Directive stipulates that a nest must be provided.⁸⁷ In addition, enriched cages must provide litter such that pecking and scratching are possible, perches allowing at least 15 cm [5.9 inches] per hen and suitable claw-shortening devices.⁸⁸

Although they are an improvement on barren battery cages, enriched cages offer few significant welfare benefits for hens; this is because the space and height required are too small and the facilities for perching, pecking and scratching are too meagre to enable hens to properly engage in natural movements and behaviours.⁸⁹

2. *Free-range and barn systems*

In practice, free-range hens must not only have access to outdoor runs, but must also have indoor housing for the night-time. The Hens Directive stipulates that barns (where hens are kept indoors but not in cages) and the indoor housing for free-range hens must (1) provide at least 250 cm² [38.75 square inches] of littered area per hen, the litter occupying at least one third of the ground surface of the house;⁹⁰ and (2) have a maximum stocking density of 9 hens per square metre (m²) [1.2 square yards] of usable area.⁹¹ These requirements came into force on 1 January 2007.⁹² Additional provisions for free-range hens apply by virtue of EU law on egg labelling (see next section).

3. *Mandatory labelling of eggs and egg packs*

Since 2004 it has been compulsory for eggs and egg packs to be labelled as to farming method. EU legislation requires eggs to be labelled with a code that allows the farming method to be

⁸⁶ Hens Directive, *supra* n.81, art. 6.

⁸⁷ *Id.* art. 6 (1) (a) & (b) and art. 2 (2) (d).

⁸⁸ *Id.* art. 6 (1) (c) & (d) and 6 (5) and art. 2 (2) (d).

⁸⁹ Pickett H., 2007. Alternatives to the barren battery cage for the housing of laying hens in the European Union. Report by Compassion in World Farming.

http://www.ciwf.org.uk/includes/documents/cm_docs/2008/a/alternatives_to_the_barren_battery_cage_in_the_eu.pdf

⁹⁰ Hens Directive, *supra* n.81, art. 4 (1) (1) (e).

⁹¹ *Id.* art. 4 (1) (4).

⁹² *Id.* art 4 (1) & (2).

identified.⁹³ In addition the egg pack must bear the farming method “on the outer surface in easily visible and clearly legible type”.⁹⁴ The legislation requires the use of one of the following terms on the egg pack: “free range eggs”, “barn eggs” or “eggs from caged hens”.⁹⁵ The term “organic eggs” may also be used.⁹⁶ This legislation is of great importance as for the first time it requires an industrially produced product – battery eggs – to be clearly labelled as such.

The welfare conditions that must be attained for the use of each of these terms are laid down by the legislation.⁹⁷ Eggs bearing the free-range label must by law come from hens who have continuous daytime access to open-air runs which are mainly covered with vegetation.⁹⁸ Moreover, the maximum outdoor stocking density must not exceed 2,500 hens per hectare [2.47 acres] of ground available to the hens or one hen per 4 m² [4.8 square yards] at all times.⁹⁹

4. *Beak trimming*¹⁰⁰

The 1999 Hens Directive prohibits all mutilations, but then goes on to provide that, in order to prevent feather pecking and cannibalism, Member States may authorise beak trimming provided it is carried out by qualified staff on chickens who are less than 10 days old.¹⁰¹

5. *Forced moulting*

⁹³ Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets. Official Journal L 299, 16.11.2007, p 1-149, Annex XIV, section A.III(1). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:299:0001:0149:EN:PDF> The ‘producer code’ referred to in Annex XIV is explained in para 2 of the Annex to Commission Directive 2002/4/EC of 30 January 2002 on the registration of establishments keeping laying hens. Official Journal. L 30, 31.1.2002, p. 44-46. <http://eur-lex.europa.eu/Notice.do?val=272498:cs&lang=en&list=272498:cs,501851:cs,&pos=1&page=1&nbl=2&pgs=10&hwords=&checktexte=checkbox&visu=#texte>

⁹⁴ Commission Regulation (EC) No. 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No. 1234/2007 as regards marketing standards for eggs, Official Journal L 163, 24.6.2008, p. 06-23, art 12(2). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:163:0006:0023:EN:PDF>

⁹⁵ *Id.*, art 12(2) and Part A of Annex I

⁹⁶ Council Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs. Official Journal. L 198, 22.7.1991, p. 1. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1991R2092:20080514:EN:PDF>

⁹⁷ Commission Regulation, *supra* n.94, Annex II.

⁹⁸ *Id.* Annex II, para. 1(a) and (b).

⁹⁹ *Id.* Annex II, para. 1(c)

¹⁰⁰ The term “beak trimming” refers here to the process whereby part of the hen’s beak is sliced off with a hot blade or the application of an infra-red beam..

Forced moulting¹⁰² - when it involves depriving hens of feed for long periods of time – is prohibited by EU law. The relevant provisions are found in Council Directive 98/58/EC concerning the protection of animals kept for farming purposes.¹⁰³ Paragraph 14 of the Directive's Annex provides that:

“Animals must be fed a wholesome diet which is appropriate to their age and species and which is fed to them in sufficient quantity to maintain them in good health and satisfy their nutritional needs”.¹⁰⁴

The practice of depriving hens of feed for several days at a time clearly breaches the requirement to provide feed “in sufficient quantity to maintain them in good health”.

In addition, paragraph 15 of the Annex provides that:

“All animals must have access to feed at intervals appropriate to their physiological needs”.¹⁰⁵

Hens from whom feed is withheld for several days are not being given feed “at intervals appropriate to their physiological needs”.

D. *Chickens reared for meat*

1. *The Broilers Directive*

Chickens reared for meat are commonly referred to as broilers. The Broilers Directive sets a maximum density of 33 kg/m² [72.8 pounds per 1.2 square yards] but, by way of derogation, permits Member States to allow the keeping of broilers up to a maximum of 39 kg/m² [86.0 pounds per 1.2 square yards] provided that a number of welfare conditions are met.¹⁰⁶ These include requirements not to exceed specified maximum levels of temperature, humidity,

¹⁰¹ Hens Directive, *supra* n.81, Annex, Point 8.

¹⁰² The term “forced moulting” refers here to the practice in which hens are deprived of feed from around 5-14 days to shock them back into lay.

¹⁰³ Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes. Official Journal L221, 08.08.1998 p. 0023-0027. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1998L0058:20030605:EN:PDF>

¹⁰⁴ *Id.* Annex, paragraph 14.

¹⁰⁵ *Id.* Annex, paragraph 15.

ammonia and carbon dioxide.¹⁰⁷ As chickens weigh around 2 kg [4.4 pounds] at slaughter, 39 kg/m² equates to 19 chickens being kept per square metre [per 1.2 square yards], representing substantial overcrowding.

By way of further derogation, Member States may allow broilers to be kept up to a maximum of 42 kg/m² [92.6 pounds per 1.2 square yards] if certain further criteria are fulfilled.¹⁰⁸ These include the achievement of consistently low mortality rates.

The Directive contains a number of provisions that are designed to prevent some of the worst welfare problems arising from industrial broiler production. For example, it requires (1) training for persons in charge of chickens;¹⁰⁹ (2) all chickens to have permanent access to dry and friable litter;¹¹⁰ and (iii) all chickens to be inspected twice a day.¹¹¹

2. *Labelling of chicken meat*

Further legal protection is in effect extended to certain broilers by the 2008 Commission Regulation as regards the marketing standards for poultry meat.¹¹² In contrast to the case with eggs, it is not mandatory to state the farming method for poultry meat.

However if, on a voluntary basis the farming method for poultry meat is indicated, the legislation provides that only certain labelling terms may be used in order to denote the type of farming and that if they are used, the meat must come from poultry reared to certain specified standards.¹¹³ For example, chicken meat sold as “free range” must be derived from chickens: 1) whose indoor housing’s stocking rate does not exceed 13 chickens per square metre [1.2 square yards];¹¹⁴ 2) who have during at least half their lifetime, continuous daytime access to open-air runs comprising an area mainly covered

¹⁰⁶ Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production, art 3. Official Journal L 182, 12.7.2007, p. 19-28. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:182:0019:0028:EN:PDF>

¹⁰⁷ *Id.*, Annex II.

¹⁰⁸ *Id.*, art 3 and Annex 5.

¹⁰⁹ *Id.*, art 4.

¹¹⁰ *Id.*, Annex I.

¹¹¹ *Id.*, Annex I.

¹¹² Commission Regulation (EC) No. 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No. 1234/2007 as regards the marketing standards for poultrymeat. Official Journal L 157,1 7.6.2008, p. 46-87. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2008R0543:20110624:EN:PDF>

¹¹³ *Id.* art. 11.

¹¹⁴ *Id.* Annex V, para. (c).

by vegetation of not less than 1 square metre [1.2 square yards] per chicken;¹¹⁵ and who are not slaughtered until 56 days of age or later.¹¹⁶ This last point is important as most modern broilers have been genetically selected to grow so quickly that they reach their slaughter weight at around 40 days of age or less, which is about three times as fast as 50 years ago.¹¹⁷ The birds' legs, heart and lungs often cannot properly support the rapidly growing body, with the result that a substantial number experience painful leg disorders and die of heart failure.¹¹⁸ These problems could be substantially reduced by the use of slower growing broiler genotypes.¹¹⁹

Meat sold under the label "traditional free range" must come from chickens reared to higher standards than ordinary "free range". The chickens must: 1) be stocked in their indoor housing at no more than 12 birds per square metre [1.2 square yards] (this can be increased to 20 birds per square metre where mobile houses are used);¹²⁰ 2) be kept in a poultryhouse which does not contain more than 4,800 chickens;¹²¹ 3) have continuous daytime access to open-air runs at least from the age of 6 weeks, which runs must comprise an area mainly covered by vegetation amounting to at least 2 square metres [2.4 square yards] per chicken;¹²² and 4) be from a strain recognised as slow growing and be at least 81 days of age at slaughter.¹²³ This point is particularly important as it results in practice in the use of genuinely slow growing strains that have very little intrinsic susceptibility to lameness.

E. General Farm Animals Directive

So far this article has examined EU Directives which lay down detailed laws concerning specific species, i.e. pigs, calves, egg-laying hens and chickens reared for meat. The

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Knowles, T. G., Kestin, S. C., Haslam, S. M., Brown, S. N., Green, L. E., Butterworth, A., Pope, S. J., Pfeiffer, D. and Nicol, C. J., 2008. Leg disorders in broiler chickens: prevalence, risk factors and prevention. *Plos one* 3 (2): e1545. doi: 10.1371/journal.pone.0001545.

¹¹⁸ EFSA Panel on Animal Health and Welfare (AHAW): Scientific Opinion on the influence of genetic parameters on the welfare and the resistance to stress of commercial broilers. *EFSA Journal* 2010; 8 (7):1666. [82 pp.] <http://www.efsa.europa.eu/en/efsajournal/doc/1666.pdf>

¹¹⁹ Kestin S.C., Gordon S., Su G., and Sorensen P., 2001. Relationships in broiler chickens between lameness, liveweight, growth rate and age. *Veterinary Record* (2001) 148: 195-197.

¹²⁰ European Commission Regulation on Marketing Standards for Poultry Meat, *supra* n.112, Annex V, para. (d).

¹²¹ *Id.*

¹²² *Id.*

EU has also enacted, in 1998, a Directive¹²⁴ which contains provisions which affect all animals (including fish) bred or kept for the production of food, wool, skin or fur or for other farming purposes.¹²⁵ This is commonly referred to as the General Farm Animals Directive. Some of this Directive's provisions are couched in broad terms, others are more specific.

One fundamental provision in the 1998 Directive is Article 3, which requires EU Member States to:

“make provision 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”.¹²⁶

This provision could arguably be used to challenge the legality of industrial rearing systems. It should not be difficult to establish that such systems cause pain, suffering and/or injury. The challenge would principally turn around what is meant by “unnecessary”. It could be argued that the pain, suffering or injury involved in industrial animal production is not necessary as in each case viable non-industrial alternatives are available.

Another core provision of the 1998 Directive is headed “Freedom of movement” and states that:

“The freedom of movement of an animal, having regard to its species and in accordance with established experience and scientific knowledge, must not be restricted in such a way as to cause it unnecessary suffering or injury.

Where an animal is continuously or regularly tethered or confined, it must be given the space appropriate to its physiological and ethological needs in accordance with established experience and scientific knowledge”.¹²⁷

¹²³ *Id.*

¹²⁴ Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes. Official Journal L221, 08.08.1998 p. 0023-0027. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1998L0058:20030605:EN:PDF>

¹²⁵ *Id.* Definition of “animal” in Article 2.

¹²⁶ *Id.* Art. 3.

¹²⁷ *Id.* Annex, paragraph 7.

This provision, too, could be deployed against industrial close confinement systems. In many cases scientific knowledge clearly indicates that the amount of space provided by close confinement systems is insufficient to meet animals' physiological, and particularly their ethological, needs.

Similarly, the practice of force feeding¹²⁸ ducks and geese to produce foie gras could be challenged under another of the 1998 Directive's provisions which states that:

“No animal shall be provided with food or liquid in a manner ... which may cause unnecessary suffering or injury”.¹²⁹

Force feeding clearly causes suffering and injury.¹³⁰ In its 1998 report the European Commission's Scientific Committee on Animal Health and Animal Welfare (SCAHAW) concluded that, as a result of force feeding, normal liver structure and function is “severely altered and compromised”.¹³¹ The SCAHAW stressed that force feeding, as currently practised, “is detrimental to the welfare of the birds”.¹³² Their report also pointed out the potentially damaging and distressing effects of the insertion of the feeding tube into the oesophagus.¹³³ This can result in accumulated scar tissue in, and serious injury to, the oesophagus of ducks.¹³⁴ In particular, insertion of the tube can result in inflammation of the bird's neck, and bruising and even perforation of the oesophagus.¹³⁵ The SCAHAW report concluded that the mortality rate in force fed birds varies from 2% to 4% in the two week force feeding period compared with around 0.2% in comparable ducks.¹³⁶

¹²⁸ The term “force feeding” refers here to the practice of forcing ducks and geese to swallow excessive amounts of food to produce foie gras, i.e. fat liver. A 20-30 cm. long pipe is thrust down the bird's throat; food is then pumped into the bird through this pipe. By the end of the force feeding period, the birds' livers are swollen to 6-10 times their normal size.

¹²⁹ General Farm Animals Directive, *supra* n.124, Annex, para. 14.

¹³⁰ European Commission's Scientific Committee on Animal Health and Animal Welfare's report on the Welfare Aspects of the Production of Foie Gras in Ducks and Geese. 16 December 1998, Brussels, Belgium.

http://www.europa.eu.int/comm/food/fs/sc/scah/out17_en.html

¹³¹ *Id.* section 5.5.

¹³² *Id.* conclusion.

¹³³ *Id.* Summary, section II (2).

¹³⁴ *Id.* section 5.4.6 and Summary, section II (6).

¹³⁵ Forced feeding: An inquiry into the welfare of ducks and geese kept for the production of foie gras. Produced by Advocates for Animals and the World Society for the Protection of Animals. Carol McKenna, February 2000. http://www.wspa.dk/Images/FoieGrasReport_tcm10-2611.pdf

¹³⁶ SCAHAW report on foie gras, *supra* n.130, section 5.5.

In the light of the above health and welfare problems inflicted on ducks and geese by force feeding, it is difficult to believe that this practice does not contravene the 1998 Directive's prohibition on providing food "*in a manner ... which may cause unnecessary suffering or injury*".

Another important provision of the 1998 Directive stipulates that:

"No animal shall be kept for farming purposes unless it can reasonably be expected on the basis of its genotype or phenotype, that it can be kept without detrimental effect on its health or welfare".¹³⁷

This provision could be used to challenge the use of genotypes which have been selected for such high levels of productivity that the animals suffer from serious health and welfare problems. For example, modern broilers (the chickens reared for their meat) have been bred to grow so quickly that many suffer from painful leg disorders.¹³⁸ Similarly, dairy cows have been bred to produce extremely high milk yields; this leads to metabolic hunger, increased incidences of lameness, lethal production diseases and finally to cows suffering severe loss of body condition and becoming chronically exhausted.¹³⁹ The European Food Safety Authority has concluded that long term genetic selection for high milk yield is the major factor causing poor welfare, in particular health problems, in dairy cows.¹⁴⁰

F. Bovine Somatotrophin

EU law prohibits the use in dairy cows of bovine somatotrophin (BST).^{141, 142} (BST is also known as Bovine Growth Hormone (BGH)). The way that EU law prohibits the use

¹³⁷ 1998 General Farm Animals Directive, *supra* n.124, Annex, paragraph 21.

¹³⁸ EFA Scientific Opinion on the influence of genetic parameters on the welfare and the resistance to stress of commercial broilers, *supra* n. 117.

¹³⁹ Scientific Opinion of the Panel on Animal Health and Welfare on a request from European Commission on welfare of dairy cows. *The EFSA Journal* (2009) 1143, 1-38.

<http://www.efsa.europa.eu/en/efsajournal/doc/1143.pdf>

¹⁴⁰ *Id*

¹⁴¹ The term "Bovine Somatotrophin" (BST) refers here to a genetically engineered version of the dairy cow's own growth hormone. It is administered to dairy cows to increase their milk yield.

¹⁴² Council Decision of 17 December 1999 concerning the placing on the market and administration of Bovine Somatotrophin (BST) and repealing Decision 90/218/EEC. Official Journal L331, 23.12.1999, p. 0071-0072. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999D0879:EN:HTML>

of BST is that it prohibits the placing of BST on the market within the EU for the purpose of its administration to dairy cows by any means whatsoever.¹⁴³

The EU's prohibition is based on a report by the Scientific Committee on Animal Health and Animal Welfare (SCAHAW) which concluded that BST increases the risk of clinical mastitis as well as the duration of treatment of mastitis, that it increases the incidence of foot and leg disorders and that it can induce severe reactions at the injection site.¹⁴⁴

The SCAHAW report also stated that "BST administration causes substantially and very significantly poorer welfare because of increased foot disorders, mastitis, reproductive disorders and other production-related diseases. These are problems which would not occur if BST were not used and often result in unnecessary pain, suffering and distress."¹⁴⁵

The recitals to the EU law point out that diseases such as mastitis, foot lesions and injection site reactions are both painful and debilitating and can lead to poorer welfare and greater morbidity.¹⁴⁶

IV. MAIN EU LEGISLATIVE PROVISIONS ON THE TRANSPORT OF FARM ANIMALS

The EU Transport Regulation¹⁴⁷ lays down an overarching requirement that transporters must not transport any animal, or cause any animal to be transported, in a way which is likely to cause injury or undue suffering to that animal.¹⁴⁸

Under the Regulation three core elements of transport have to be approved and certified, i.e.

1. the transport company has to be authorised;¹⁴⁹

¹⁴³ *Id.* Art, 1.

¹⁴⁴ European Commission's Scientific Committee on Animal Health and Animal Welfare report on Animal Welfare Aspects of the Use of Bovine Somatotrophin. Brussels, Belgium. 10 March 1999. Conclusions 14-16 and 18. http://www.europa.eu.int/comm/food/fs/sc/scah/out21_en.html

¹⁴⁵ *Id.* General Conclusion.

¹⁴⁶ Council Decision on BST, *supra* n.142, recital 9.

¹⁴⁷ Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 L3, 05.01.91 p. 0001-0042. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:003:0001:0044:EN:PDF>

¹⁴⁸ *Id.* art. 3.

¹⁴⁹ *Id.*, art. 10 and 11

2. drivers and attendants transporting animals on journeys of over 65 km [40 miles] must undertake training, pass an examination and hold a certificate of competence;¹⁵⁰
3. livestock vehicles for long journeys have to be inspected and hold a certificate of approval.¹⁵¹

The Regulation's main provisions are as follows:

A. Authorisation of transporters

A detailed authorisation procedure for transport companies is laid down in Articles 10 and 11. A company's authorisation can be suspended or withdrawn in the event of failure to comply with the Regulation.¹⁵²

B. Training of drivers

The Regulation requires all drivers and attendants transporting animals more than 65 km to undertake formal training, pass an examination and hold a certificate of competence.¹⁵³ The examination must be approved by the competent authority, which must ensure that examiners are independent.¹⁵⁴ Annex IV provides considerable detail with regard to the required content of these training courses.

C. Journey logs

In the case of journeys exceeding eight hours where animals are traded between EU Member States or are exported to third countries, the transporter must draw up a journey log showing the places of departure and destination, the estimated journey time and the place(s) where the animals will be given rest, food and water as required by the Regulation for lengthy journeys.¹⁵⁵ The transporter must then submit the journey log to the competent authority, which must check that the log is realistic as regards the estimated journey time and must reject the log if it does not show that the transporter intends to comply with the Regulation during the journey, for

¹⁵⁰ *Id.*, art. 6(5) and 17.

¹⁵¹ *Id.*, art 7 and 18.

¹⁵² *Id.* art 26(4).

¹⁵³ *Id.* arts 6 & 17 and Annex IV.

¹⁵⁴ *Id.*, Annex IV.

¹⁵⁵ *Id.* art. 5 (4) and Annex II.

example, as regards the provision of food, water and rest.¹⁵⁶ This provision has been included because some Member States accept journey logs that indicate that a journey can be completed in an unrealistically short time or that show there is no intention to rest, feed and water animals as required by the Regulation.

D. Journey times, rest, food and water

The Regulation provides that journeys shall not exceed eight hours, after which the animals must be unloaded and given food, water and at least 24 hours rest.¹⁵⁷ At first sight this appears welcome. However, the Regulation goes on to state that where certain additional requirements (which are detailed in the next section) are met, animals can be transported for much longer periods.¹⁵⁸ Cattle and sheep can be transported for 28 hours (with a rest of at least one hour after 14 hours), after which they must be unloaded and given food, water and at least 24 hours rest. If the additional requirements are met, pigs and horses can be transported for 24 hours, after which they must be unloaded and given food, water and at least 24 hours rest. If the additional requirements are met, unweaned animals can be transported for 18 hours, after which they must be unloaded and given food, water and at least 24 hours rest. This pattern of travel and rest can be repeated indefinitely.

E. Certification of vehicles and additional requirements for long journeys

Article 7 requires vehicles undertaking long journeys to be inspected by the competent authority and to have a certificate of approval ('long journeys' are those over eight hours¹⁵⁹). Such a certificate can only be granted once the vehicle has been inspected by the competent authority and found to comply with the standards laid down by the Regulation for vehicles used for long journeys.

The Regulation's main additional requirements for long journeys are¹⁶⁰:

¹⁵⁶ *Id.* art. 14.

¹⁵⁷ *Id.*, Annex 1, Chapter V, points 1.2 and 1.5.

¹⁵⁸ *Id.* Annex 1, Chapter V, points 1.3 and 1.4.

¹⁵⁹ *Id.* art 2(m).

¹⁶⁰ *Id.* Annex 1, Chapter VI.

1. Bedding: Animals must be provided with appropriate bedding which guarantees their comfort and ensures adequate absorption of urine and dung.
2. Ventilation: Vehicles must be equipped with a ventilation system. The system must be designed so that it can be used whether the vehicle is moving or stationary. This is crucial as if ventilation only works when the vehicle is in motion, the animals can suffer greatly in high temperatures when the vehicle is stationary either because the driver is taking a rest or due to heavy traffic, roadworks or delays at the border crossing between the EU and other countries. The Regulation requires the vehicle to have a ventilation system which ensures that temperatures within the vehicle can be maintained between 5°C and 30°C [41°F to 86°F] for all animals, with a 5°C tolerance either way depending on the outside temperature. In the author's view, 35°C [95°F] is far too high and can lead to very poor welfare.
3. Partitions: The vehicle must be fitted with partitions so that separate compartments may be created. This is to prevent animals being thrown about during the journey.
4. Water supply: The vehicle must be equipped with a water supply in order to be able to provide water for the animals on board the vehicle.
5. Food: The vehicle must carry food for the animals.
6. Satellite navigation system: Vehicles used for long journeys must be equipped with a navigation system that records key data. Initially it was believed that this would lead to markedly improved enforcement of the Regulation. Unfortunately, these navigation systems have so far failed to have this anticipated beneficial impact on enforcement.¹⁶¹

F. Fitness for transport

The Regulation prohibits the transport of animals that are not fit for the intended journey.¹⁶² Annex 1 goes into considerable detail as to which animals shall not be considered fit for transport. It also provides that animals who fall ill or are injured during

¹⁶¹ Report from the Commission to the European Parliament and the Council on the impact of Council Regulation (EC) No 1/2005 on the protection of animals during transport. Brussels, 10.11.2011. COM 2011 700 final. http://ec.europa.eu/food/animal/welfare/transport/docs/10112011_report_en.pdf

transport must receive first-aid treatment as soon as possible; they must be given appropriate veterinary treatment and, if necessary, undergo emergency slaughter in a way which does not cause them any unnecessary suffering.

Annex 1 stipulates that when cows in milk are being transported they must be milked at intervals of not more than 12 hours.

G. Treatment of animals

During transport, including loading and unloading, animals must not be suspended by mechanical means, nor lifted or dragged by the head, ears, horns, legs, tail or fleece.¹⁶³ In addition, the use of electric goads must be avoided as far as possible.¹⁶⁴

V. MAIN EU LEGISLATIVE PROVISIONS ON SLAUGHTER

The EU Slaughter Directive provides a detailed, relatively comprehensive set of provisions on welfare at slaughter.¹⁶⁵ The Directive applies to both animals and poultry.¹⁶⁶ The Directive requires all animals, including poultry, to be stunned before slaughter.¹⁶⁷

The Directive will be replaced from 1 January 2013 by a new Slaughter Regulation.¹⁶⁸ The Regulation applies to the killing and related operations of animals bred or kept for the production of food, wool, skin or fur and to the killing animals for the purpose of disease control.¹⁶⁹ It defines “related operations” as operations such as handling, lairaging, restraint, stunning and bleeding.¹⁷⁰

¹⁶² Transport Regulation, *supra* n. 147, art. 3 and Annex 1.

¹⁶³ *Id.* Annex 1, Chapter III, point 1.8 and definition of “transport” in art. 2.

¹⁶⁴ *Id.* Annex 1, Chapter III, point 1.9 and definition of “transport” in art. 2.

¹⁶⁵ Council Directive 93/119/EC of 22 December 1993 on the Protection of Animals at the Time of Slaughter or Killing. Official Journal L340, 31.12.1993, p. 0021-0034. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1993L0119:20070105:EN:PDF>

¹⁶⁶ *Id.* art. 5.

¹⁶⁷ *Id.*

¹⁶⁸ Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing. Official Journal L 303, 18.11.2009, p. 1-30. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:303:0001:0030:EN:PDF>

¹⁶⁹ *Id.* art. 1.

The Regulation contains an overarching provision that animals must be spared any avoidable pain, distress or suffering during killing and related operations.¹⁷¹ It also provides that killing and related operations must only be carried out by persons with the appropriate level of competence to do so without causing the animals any avoidable pain, distress or suffering.¹⁷² Slaughterhouse operators are required to ensure that slaughter operations are only carried out by persons holding a certificate of competence.¹⁷³ The Member States are responsible for ensuring that training courses are available for personnel involved in killing and related operations and for delivering certificates of competence attesting the passing of an independent final examination.¹⁷⁴

The Regulation also requires slaughterhouse operators to:

- 1) draw up standard operating procedures¹⁷⁵
- 2) have monitoring procedures in place¹⁷⁶, and
- 3) designate an animal welfare officer to assist them in ensuring compliance with the welfare rules.¹⁷⁷

A. *Stunning*

The Regulation requires all animals, including poultry, to be stunned before slaughter.¹⁷⁸ Stunning is defined as any intentionally induced process which causes loss of consciousness and sensibility without pain, including any process resulting in instantaneous death.¹⁷⁹

Unfortunately the Regulation provides an important exception to the requirement to stun animals before slaughter.¹⁸⁰ It allows religious slaughter to be carried out without the

¹⁷⁰ *Id.*, art 2.

¹⁷¹ *Id.*, art. 3.

¹⁷² *Id.*, art. 7.

¹⁷³ *Id.*

¹⁷⁴ *Id.*, art 21 and Annex IV.

¹⁷⁵ *Id.* art. 6

¹⁷⁶ *Id.* art 16.

¹⁷⁷ *Id.* art 17.

¹⁷⁸ *Id.*, art. 4.

¹⁷⁹ *Id.*, art. 2.

¹⁸⁰ *Id.*, art. 4(4).

animals being pre-stunned; this means that their throats are cut while they are fully conscious.

B. Bleeding

After stunning, animals are bled, i.e. their throats are severed (this is also known as “sticking”). It is the loss of blood which animals die from except where the stun results in instantaneous death. Even an effective stun will not last for long; after a certain time the animal will begin to regain consciousness.¹⁸¹ Accordingly, it is important that animals are bled as quickly as possible after stunning; a protracted interval between stunning and sticking can result in animals regaining consciousness before death.¹⁸² In the light of this, the Regulation’s provision that stunning must be “followed as quickly as possible by a procedure causing death such as bleeding” is important.¹⁸³

It is essential that animals are stuck in such a way as to lose blood rapidly so that they die as quickly as possible. If blood is lost slowly, animals are in danger of regaining consciousness as they bleed to death.¹⁸⁴ Accordingly the Regulation stipulates that both carotid arteries or the blood vessels from which they arise must be severed.¹⁸⁵ This is important as scientific research shows that it is essential to sever both carotid arteries (or the blood vessels from which they arise) to achieve a rapid bleed out, thereby minimising the risk of animals recovering consciousness.¹⁸⁶

VI. CONCLUSION

The EU has established a body of law which contains a range of important provisions designed to protect the welfare of farm animals.

The Treaty on the Functioning of the European Union recognises animals as sentient beings rather than as just goods or products. The Treaty also requires the EU and its Member States,

¹⁸¹ European Food Safety Authority, 2004. Welfare aspects of animal stunning and killing methods. Scientific Report of the Scientific Panel for Animal Health and Welfare on a request from the Commission related to welfare aspects of animal stunning and killing methods. AHAW/04-027.
<http://www.efsa.europa.eu/en/efsajournal/doc/45.pdf>

¹⁸² *Id.*

¹⁸³ Slaughter Regulation *supra* n. 168, art. 4.

¹⁸⁴ European Food Safety Authority slaughter report, *supra* n.181.

¹⁸⁵ Slaughter Regulation *supra* n. 168, Annex III, para 3.2.

¹⁸⁶ European Food Safety Authority slaughter report, *supra* n.181.

when formulating and implementing their policies on agriculture, transport and fisheries, to pay “full regard” to the welfare requirements of animals.

EU law has prohibited some of the worst aspects of industrial livestock production. Veal crates, barren battery cages and sow stalls are prohibited from 2007, 2012 and 2013 respectively.

EU legislation on transport is disappointing in that it permits prolonged journeys, but it affords some worthwhile protection to animals. For example, it prohibits the transport of ill or injured animals. Transporters are required to have an authorisation which can be withdrawn in the event of breaches of the law. Drivers must have a certificate of competence. In the case of journeys exceeding eight hours, a journey log must be submitted to the competent authority showing where the animals will be given the rest, food and water required by law during lengthy journeys.

EU law on slaughter provides important, detailed safeguards for animal welfare. In particular, the law requires all animals, including poultry, to be stunned before slaughter; though regrettably there is an exception which permits religious slaughter without stunning.

The EU has undoubtedly established an important body of law regarding the welfare of farm animals. That said, very considerable strengthening of the law is required before the EU can take the view that it has put in place a body of law which fully protects the welfare of farm animals and indeed legislates for a positive state of well-being for them. In particular, (1) fresh legislation and improved enforcement of current legislation is required to end all, not just some, of the abuses of industrial animal production such as the keeping of fattening pigs and chickens reared for meat in barren, overcrowded sheds and the genetic selection of animals for very fast growth and high yields which leads to many suffering from serious health and welfare problems, (2) legislation should be enacted for those species that are currently not covered by species-specific legislation such as cattle, turkeys, ducks, rabbits and farmed fish and (3) the transport of animals over huge distances across Europe should be brought to an end; this should be done by enacting a maximum limit of eight hours on journeys to slaughter or for further fattening.

Although much remains to be done, the EU has shown that it is possible to create a body of law which provides a significant level of protection for the welfare of farm animals. Hopefully, other jurisdictions will now look carefully at the EU’s legislation in this field and themselves embark upon creating a detailed body of legislative provisions designed to protect the welfare of farm animals.