

## ANIMAL WELFARE AND PROTECTION OF FARM ANIMALS IN THE EUROPEAN UNION

*Par*

*Ilja Richard PAVONE\**

### ***Abstract***

The European Union (EU) has set a high level of protection for farm animals, probably the highest in the world, spawning secondary legislation (directives and regulations) envisaging minimum welfare standards on rearing, slaughter and transport of farm animals and specific requirements for certain species (pigs, calves, laying hens, broilers). The resulting 'EU animal welfare law', which stems from the recognition of animal sentience in Article 13 TFEU (Lisbon version), protects not only farm animals, but all animals kept in captivity (laboratory animals, pets and animals in zoos). In the present paper, the attention will be focused on the protection of the welfare of farm animals: (animals in intensive stock-farming systems). In particular, I will try to evaluate first, whether this growing corpus of regulations and directives has a beneficial impact on the daily life of billions of animals exploited by the human being for food. Second, I will highlight the main legal developments (which have implied the banning of some of the worst aspects of intensive livestock production, such as veal crates, barren battery cages for egg-laying hens and sow stalls), as well as the main existing shortcomings (mainly related to the lack of an adequate enforcement). In legal terms, animal welfare law raises the issue of the mismatch between legal expectations and practical outcomes, already raised in the literature with reference to the poor record of environmental law.

### ***Résumé***

L'Union européenne a fixé un niveau élevé de protection des animaux d'élevage, probablement le plus élevé au monde. Découlant de l'article 13 TFUE, la « loi européenne sur le bien-être des animaux » protège non seulement les animaux d'élevage, mais tous les animaux gardés en captivité (animaux de laboratoire, animaux de compagnie et animaux en zoos). Dans le présent document, l'attention sera concentrée sur la protection du bien-être des animaux d'élevage. En particulier, nous évaluerons si ce corpus croissant de réglementations et de directives a un impact bénéfique sur la vie quotidienne de milliards d'animaux exploités par l'être humain à des fins alimentaires. Deuxièmement, nous soulignerons les principaux développements juridiques (qui impliquent l'interdiction de certains des pires aspects de l'élevage intensif, tels que les caisses à veaux, les cages en batterie stériles pour les poules pondeuses et les stalles pour truies), ainsi que les principaux défauts du système existant. Sur le plan juridique, la loi sur le bien-être des animaux soulève en effet la question du décalage entre les attentes juridiques et les résultats concrets.

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\* PhD, Researcher, National Research Council of Italy, BioLaw Unit, Rome; Professor of Environmental Law, Tuscia University of Viterbo. This study was mainly carried out during my research stay at Max Planck Institute for Comparative Public Law and International Law (MPIL) in Heidelberg in 2018 thanks to a research grant provided by DAAD (*Deutscher Akademischer Austauschdienst*).

Nowadays, the mass slaughter of animals is on the rise for several reasons. Animals are mainly exploited for food (they must feed 7.5 billion humans), kept in poor conditions in factory farming, and slaughtered for futile reasons, such as food delicacies (the cruel practices of shark finning and *foie gras*), recreation (sport hunting and fishing) or fashion (fur farming industry for skin production). Statistical data show a steady increase in the use of animals both in agriculture and in science<sup>1</sup>, and in particular the global demand for meat is raising in the light of population growth (increase of 70% in beef and poultry)<sup>2</sup>.

The livestock sector of the agriculture industry has undergone a significant transformation in the past few decades shifting from traditional family farm to large farms (Concentrated Animal Feeding Operations – CAFOs)<sup>3</sup>. Nowadays, most of meat is produced in CAFOs, which are high-density facilities that house hundreds or thousands of animals in confinement, where feed is brought to the animals (as opposed to livestock on grazing lands)<sup>4</sup>.

Modern farms are much more efficient than traditional farms, since they allow to produce cheaper and faster meat and poultry, and meat and poultry-related products (milk and eggs).

Industrial livestock production raises, however, environmental (land degradation, impact on global warming, resource consumption)<sup>5</sup> and health issues (food safety, transmission of zoonotic diseases, antimicrobial resistance)<sup>6</sup>, as well as

<sup>1</sup> According to FAO statistical data, in 2014 meat consumption especially in developing countries has been growing at 56% (<<http://www.fao.org/faostat/en/#data/QL>>). The Seventh Report on the Statistics on the Number of Animals used for Experimental and other Scientific Purposes in the Member States of the European Union ([http://ec.europa.eu/environment/chemicals/lab\\_animals/reports\\_en.htm](http://ec.europa.eu/environment/chemicals/lab_animals/reports_en.htm)), denotes a decrease in the use of Non-Human Primates and dogs, but at the same time a rise in the use rodents, such as Mice (60.9%) and rats (13.9%) that are by far the most commonly used species in research (80% mice and rabbits).

<sup>2</sup> World Watch Institute, «Global Meat Production and Consumption Continue to Rise», <<http://www.worldwatch.org/global-meat-production-and-consumption-continue-rise>>.

<sup>3</sup> J.M. MACDONALD, W.D. MCBRIDE, The transformation of U.S. livestock agriculture: Scale, efficiency, and risks, United States Department of Agriculture, <<http://www.ers.usda.gov/Publications/EIB43/EIB43.pdf>>; A. WASLEY, M. DAVIES, D. CHILD, F. HARVEY, «Rise of mega farms: how the US model of intensive farming is invading the world», The Guardian, 18 July 2017, <<https://www.theguardian.com/environment/2017/jul/18/rise-of-mega-farms-how-the-us-model-of-intensive-farming-is-invading-the-world>>.

<sup>4</sup> The main attributes of CAFOs highlighted by the literature are: “confinement feeding, separation of feed and live stock production, specialization, large size, and close vertical linkages with buyers”; J. MC DONALD, «CAFOs: Farm Animals and Industrialized Livestock Production», *Oxford Research Encyclopaedias, Environmental Science*, July 2018, <<http://oxfordre.com/environmentalscience/view/10.1093/acrefore/9780199389414.001.0001/acrefore-9780199389414-e-240>>.

<sup>5</sup> Livestock production is responsible for 14% of carbon emissions but, at the same time, makes exceptional demands on scarce resources like water and land either directly for keeping the animals alive or indirectly for producing their feed. P.J. GERBER, H. STEINFELD, B. HENDERSON, A. MOTTET, C. OPIO, J. DIKMAN, A. FALCUCCI, G. TEMPIO, *Tackling Climate Change Through Livestock: A Global Assessment of Emissions and Mitigation Opportunities*, FAO, Rome, 2013.

<sup>6</sup> As stated by EFSA: “The safety of the food chain is indirectly affected by the welfare of animals, particularly those farmed for food production, due to the close links between animal welfare, animal health and food-borne diseases”. <<https://www.efsa.europa.eu/en/topics/topic/animal-welfare>>.

ethical issues related to farm animal welfare. In fact, these animals spend most of their existences constrained in a small environment characterized by a confined feeding.

In the EU, according to Eurostat data, the farming sector is highly developed, counting 2 billion birds (chicken for meat production, laying hens, turkeys, ducks and geese) and 300 million mammals (cows, pigs, sheep) reared in livestock facilities<sup>7</sup>.

In response to growing concern amongst EU citizens about farm animal welfare and the impact of intensive farming on human and animal health<sup>8</sup>, the EU has adopted a growing corpus of secondary rules (directives and regulations) covering farm animals (on the farm, at slaughter and during transport)<sup>9</sup>. These rules, labelled as 'EU Animal Welfare Law', are grounded in Article 13 of the Treaty on the Functioning of the European Union (TFEU – Lisbon version), which recognises animals as sentient beings. The European legislation on this matter has established the highest standard on animal welfare worldwide<sup>10</sup>.

Despite legal developments in EU law, a number of problems remains unsolved and farm animal abuses are yet widely diffused in EU Member States. As highlighted by Special Report No. 31/2018 on 'Animal Welfare in the EU'<sup>11</sup>, areas of concern regard, in particular, pig tail docking, the extreme confinement of some farm animals for their entire lives, long-distance transport and slaughterhouse stunning. The fact that the worst practices of industrial agriculture have not yet been eradicated, raises the issue of incomplete enforcement ('implementation gap'), whose poor record is a significant shortcoming in EU animal welfare law<sup>12</sup>.

Another problem is related to the hierarchy of values protected by EU law: indeed, the economic interests of farmers (as well as religious practices) often prevail over the principle of respect for animal welfare<sup>13</sup>.

Indeed, the human benefit paradigm behind animal welfare law still considers animals as 'commodities' or 'properties' of the farmer, and welfare concerns are mainly related to eliminating distortions of competition, avoiding barriers to fair competition and trade within the common market.

This paper analyses and elaborates the EU legislation on the mainstreaming of farm animal welfare in agriculture (aquaculture and the welfare of farmed fish fall outside the scope of this paper, since this topic is strictly related to biodiversity protection).

<sup>7</sup> Agriculture, forestry and fishery statistical book, Eurostat statistics explained, September 2017, <[https://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural\\_production\\_-\\_animals](https://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_production_-_animals)>.

<sup>8</sup> EU Special Eurobarometer 442, 'Attitudes of Europeans towards Animal Welfare', 2015, <[https://data.europa.eu/euodp/it/data/dataset/S2096\\_84\\_4\\_442\\_ENG](https://data.europa.eu/euodp/it/data/dataset/S2096_84_4_442_ENG)>.

<sup>9</sup> A consistent set of rules is also devoted to laboratory animals, pets, animals in zoos, wild animals.

<sup>10</sup> P. DALLA VILLA, L.R. MATTHEWS, B. ALESSANDRINI, S. MESSORI, «Drivers for animal welfare policies in Europe», *Revue Scientifique et Technique (International Office Of Epizootics)*, 33(1), 2014, pp. 39-46.

<sup>11</sup> Special report No 31/2018: Animal welfare in the EU: closing the gap between ambitious goals and practical implementation, 2018, <[https://www.eca.europa.eu/Lists/ECADocuments/SR18\\_31/SR\\_ANIMAL\\_WELFARE\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR18_31/SR_ANIMAL_WELFARE_EN.pdf)>.

<sup>12</sup> More in general, on the 'implementation gap' with reference to environmental law, D.A. FARBER, «The Implementation Gap in Environmental Law», *J Korean L.*, 2016, pp. 3-32.

<sup>13</sup> A judgment of the European Court of Justice of 28 May 2018 concerning ritual slaughtering, then confirmed the prevalence of religious practices over animal welfare. ECJ, Case C-426/16, «Liga van Moskeeën en islamitische Organisaties Provincie Antwerpen et al v. Vlaams Gewest».

In the light of this background, what follows is a study on the evolution of the notion of animal welfare within the EU (ethical background, primary and secondary legislation), highlighting the conceptual shift towards animal welfarism (as opposed to the animal rights viewpoint).

Then, the main rules establishing a minimum standard of protection, and addressing single species (keeping of pigs, calves, chicken reared for meat), will be analysed.

Notably, this paper will evaluate whether EU Farm Animal Law failed or succeeded in its final goal to harmonize the national laws of the Member States at the highest level, forcing single Member States to guarantee to farm animals a minimum standard of welfare.

In this regard, it is necessary to clarify to which extent the specific obligations flowing from EU regulations and directives are implemented by the States through their laws and practices. However, the paper will sustain that the legal framework is still evolving within a dynamic scheme, and that EU institutions should intervene in specific sectors that are still uncovered.

## I. ANIMAL WELFARE LAW AT A GLANCE

### 1. The Evolution of Animal Welfare Law

Animal law is the existing corpus of law that deals with or pertains to animals<sup>14</sup>. At the beginning of this century a new branch of law – animal welfare law – has emerged first in the philosophical debate on animal rights and was then translated into positive law, through a growing corpus of legislation devoted to animal welfare<sup>15</sup>.

The debate on animals can be divided into two branches: animal rights and animal welfare viewpoints; the latter is the most developed under a legal perspective for an obvious reason: for people it is easy to say that they are against unnecessary cruelty against animals during slaughtering, than to say that animals are holders of rights, and therefore should not be slaughtered (and they should all become vegetarians)<sup>16</sup>.

In fact, the animal welfare position, then codified in current animal welfare law, has his roots in the thought of the philosopher Robert Garner.<sup>17</sup> According to the welfarist position – although animal suffering is moral relevant – the exploitation of

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<sup>14</sup> J. TANNENBAUM, «What is Animal Law?», *CLEV. ST. L. REV.*, 2013, pp. 891-955.

An animal is in condition of 'good state of welfare' – according to the World Organisation for Animal Health (OIE), "if it is healthy, comfortable, well-nourished, safe, able to express innate [natural] behaviour, and if it is not suffering from unpleasant states such as pain, fear and distress" (Terrestrial Animal Health Code, Vol. I, General Provision, 2011 p. ix).

<sup>15</sup> S. BRELS, «The Evolution of International Animal Law: From Wildlife Conservation to Animal Welfare», in R.A. ABATE (ed.), *What can Animal Law learn from Environmental Law*, Environmental Law Institute, Washington D.C., 2015, pp. 365-383.

<sup>16</sup> On the debate on the ethical admissibility of eating or hunting animals, A. TAYLOR, *Animal Ethics: An Overview of the Philosophical Debate*, Peterborough, Broadview Press, 2003, p. 87 ss.

<sup>17</sup> R. GARNER, *A Theory of Justice for Animals: Animal Rights in a Nonideal World*, Oxford, Oxford University Press, 2013.

animals is ethically admitted (animals are indeed considered as property or goods), but it must be strictly regulated and high standards must be set up to avoid unnecessary suffering in line with the concept of justice.

Some scholars such as Francione, however, advocate that the animal welfare argument has failed in its practice, since animals continue to be slaughtered and exploited in a cruel manner worldwide<sup>18</sup>.

The concept of animal welfare is indeed at odds with regard to the more general position that recognizes animal rights, which received a significant impulse within applied ethics<sup>19</sup>. In fact, the animal rights viewpoint is based on the assumption that animals, as bearers of rights, cannot be used by the human being for its own interest (while the animal welfare viewpoint advocates a beneficial use for the humans)<sup>20</sup>.

Therefore, welfare ethics, separating animal use from animal treatment, consider as an 'axiom' animal exploitation by the human being, investigating on how and for which reasons they are exploited and can be exploited in labs and in farms. However, humans must respect at least a minimum acceptable standard of treatment of animals<sup>21</sup>.

Animal law must not be confused with environmental law and in particular wildlife law: there are strong differences with reference to ethical background, origin, geographical scope (environmental law has a global perspective, does not take into account the suffering of a single animal, but rather the conservation of the most endangered species and only deals with wild animals). However, animal welfare is far from being recognized as a common principle at the international level. Indeed, the international landscape is characterized by a lack of binding rules addressing animal welfare and is not devoid of criticism by animal rights supporters<sup>22</sup>. The regional and domestic landscape is instead marked by a growing number of case law and legislation specifically addressing animal welfare.

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<sup>18</sup> G. L. FRANCIONE, «Animal Welfare and the Moral Value of Nonhuman Animals», *LAW, CULTURE AND HUMANITIES*, 6 (1), 2010, p. 24 ss. see also Josh Milburn, 'Protection for the Sentient in the Nonideal World: A Review of Robert Garner's A Theory of Justice for Animals', *JAE*, 2015, pp. 69 et seq.

<sup>19</sup> P. SINGER, *Applied Ethics*, Oxford, Oxford University Press, 1986.

<sup>20</sup> B.E. ROLLIN, «An ethicist's commentary on animal rights versus welfare», *Can Vet J.* 43 (12) 913; W.L. SUMNER, «Animal welfare and animal rights», *J Med Philos.*, 13 (2), 1998, pp. 159-172. Among the many different animal rights positions we have to distinguish at least two: abolitionism, as argued by Francione et al. (who call not only for the abolition of using domesticated animals, but also for their non-existence), and a stronger animal rights position, as defended by Donaldson and Kymlicka, arguing that animals have rights to inclusion and membership in our society, and that ensuring their non-existence is again an act of injustice. See A. BARRAU, L. SCHWEITZER, *L'animal est-il un homme comme les autres ? Les droits des animaux en question*, Paris, Dunod, 2018, 25 et seq; S. DONALDSON, W. KYMLICKA, *Zoopolis: A Political Theory of Animal Rights*, Oxford, Oxford University Press, 2011.

<sup>21</sup> For a critical position on this assumption, see M.W. FOX, «Humane Ethics and Animal Rights», 4 (4) *INT. J. FOR THE STUDY OF ANIM. PROB.*, 1983, pp. 286-289

<sup>22</sup> On the necessity of a global legal framework addressing animal welfare, A. PETERS, «Global Animal Law: What It Is and Why We Need It», *TEL*, 2016, pp. 9-23.

## 2. The European Landscape on Animal Welfare

The only treaties specifically dealing with animal welfare have been adopted at regional level by the Council of Europe (CoE). The first relevant treaty was the European Convention for the protection of Animals kept for Farming Purposes (1976), followed by the European Convention for the Protection of Animals during International Transport (1978). Indeed, the CoE has established the largest set of international rules on animal welfare.

At the same time the former European Economic Community (EEC), in line with the rise of the ecology movement in the Seventies, started to enact directives devoted to animal protection, including the protection of wildlife animals, zoo animals, pets, farm animals, and animals used for scientific purposes. The first directive dealing with animal welfare dates back to 1974 (Council Directive 74/577 EEC) and it required animals to be stunned (rendered unconscious) before slaughter<sup>23</sup>.

The Eighties registered a growing attention by the European institutions to the animal issue, related to the higher level of public awareness on animal suffering. Indeed, consumers perceived the existing link between animal welfare, food safety and quality products. This concern emerged in the conscience of European consumers in view of the Bovine Spongiform Encephalopathy ('Mad Cow Disease') outbreak in 1986, which was caused by the delivery of cattle feed contaminated with nerve tissues of infected cows<sup>24</sup>.

Several cases of transmission to the human being (under the form of the variant Creutzfeldt-Jakob disease) were since ever recorded. In addition, the society registered a growing emotional sensitivity on cruelty to animals.<sup>25</sup> Consumers expect the EU institutions to pay more attention to animal welfare in the production of animal products, and are indeed willing to pay more for product sources from animal welfare-friendly production systems<sup>26</sup>.

In the last decade animal welfare became a key element of EU policies on animals. Provisions on animal welfare are provided in primary (treaties) as well in secondary (directives, regulations) legislation, and are the object of a EU Animal Welfare Strategy. Indeed, the EU ban on the import of seal products was introduced in the light of the inhuman methods of killing of young seals<sup>27</sup>.

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<sup>23</sup> Council Directive 74/577/EEC of 18 November 1974 on stunning of animals before slaughter.

<sup>24</sup> In the field of animal farming this issue is relevant, since according to the position expressed by the EFSA Panel on Animal Health and Welfare, animal welfare (in particular of animals in intensive livestock farming) affects the safety of the food chain which is indirectly influenced by their wellbeing, particularly those farmed for food production, due to the close links between animal welfare, animal health and food-borne diseases. Stress factors and poor welfare can lead to increased susceptibility to disease among animals (<<https://www.efsa.europa.eu/en/topics/topic/animalwelfare>>).

<sup>25</sup> See Special Eurobarometer 442 – Wave EB84.4 – TNS opinion & social. Report: Attitudes of Europeans Towards Animal Welfare, 2016. 94% of the persons interviewed maintain that animal welfare should be 'an important issue' to be dealt by EU institutions. In particular, the welfare of farmed animals is considered as 'important' for about 75% of respondents ('very important' for 61% of Germans and for 41% of Italians).

<sup>26</sup> European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, "Animal Welfare in the European Union", Brussels, 2017.

<sup>27</sup> Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products. See also Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of

### 3. The Evolution of EU Animal Welfare Law

#### 3.1 Article 13 TFEU

With the growing awareness in Europe of the importance of avoiding unnecessary suffering to non-human individuals and in particular to domesticated animals, animal welfare became a public issue, coming out the domains of the private sphere and philosophical debate. This process culminated in Article 13 TFEU devoted to animal welfare (Lisbon version). This Article affirms the duty upon Member States of respecting animal welfare on the basis of their ‘sentience’<sup>28</sup>, establishing that the mainstreaming of animal welfare is now a concern for EU institutions (although it is not a EU goal).

This norm originates from the Declaration on the Protection of Animals annexed to the Maastricht Treaty of 1992, which stated

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

A specific Protocol on Animal Welfare was then included in the Amsterdam Treaty of 1997<sup>29</sup>. It was the first reference in EU law to animals qualified as sentient beings, since their legal status was upgraded and they were no longer considered as mere ‘goods’ at the same level of agricultural products or plants.

Article 13 TFEU now states:

*“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*

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the Council on trade in seal products. Regulation 1007 and its implementation Regulation were then amended by Regulation (EU) 2015/1775 of the European Parliament and of the Council of 6 October 2015 amending Regulation (EC) No 1007/2009 on trade in seal products and repealing Commission Regulation (EU) No 737/2010. See also Declaration of the European Parliament on banning seal products in the European Union P6 TA(2006)0369 and the Recommendation on seal hunting adopted by the Council of Europe in 2006. R. HOWSE, J. LANGILLE AND K. SYKES, «Animal Welfare, Public Morals and Trade: the WTO Panel Report in EC – Seal Products», ASIL INSIGHTS, 18 (2), 2014, <<https://www.asil.org/insights/volume/18/issue/2/animal-welfare-public-morals-and-trade-wto-panel-report-ec-%E2%80%93-seal>>.

<sup>28</sup> EFSA in its Report of 24 April 2017 affirmed that “different manifestations of consciousness can be observed in animals (but further refinement is still needed to characterize their level and content in each species)”. For a different conception of animal welfare not necessarily related to the concept of consciousness (‘conscious-free’ definition of animal welfare), see Marian Dawkins, *Animal welfare with and without consciousness*, 301 (1) JOURNAL OF ZOOLOGY, 2017, 1-10.

<sup>29</sup> T. CAMM, D. BOWLES, «Animal welfare and the treaty of Rome - legal analysis of the protocol on animal welfare and welfare standards in the European Union», J ENV L, 2000, pp. 197-205.

*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*<sup>30</sup>.

The sentence of animals implies that animals are something different from inanimate objects, and therefore have a sound interest in avoiding unnecessary or unreasonable pain<sup>31</sup>.

As stated by Rykland and Nurse *“it is a milestone in the evolution of EU law and animal welfare that animals are no longer perceived in law solely as goods, the free movement of which is ensured in an internal market of twenty seven members”*<sup>32</sup>.

Article 13 is a milestone in animal protection because now animal welfare is placed at the same level as other key principles mentioned in Title II TFEU (‘Provisions having general application’), such as promotion of gender equality, guarantee of social protection, protection of human health, the fight against discrimination, promotion of sustainable development, consumer protection and the protection of personal data. But at the same time this formulation presents some shortcomings that strongly limit its scope. First the concept of animal welfare is not included neither amongst the founding principles of the EU (Article 2 TEU), which include liberty, democracy, respect for human rights and basic civil liberties, and rule by law, neither amongst the aims of the EU (Article 3 TEU), such as sustainable development or the improvement of the quality of the environment<sup>33</sup>. Indeed, Article 13 is based on a welfare ethics that does not intend to call into question the legitimacy of the human exploitation of animals. Farm animals continue to be considered as goods and a property of the farmer according to EU law, whose utility relies on being a source of income for their owner and of food for EU consumers<sup>34</sup>. Therefore, practices such as slaughter of animals for human consumption or recreation, fishing, experiments on animals, are not (obviously) banned, although strictly regulated. This point is very important, because if the EU had opted for an animal rights approach, it would have implied several bans and a call into the question of the dominant mercantilist approach. Indeed, one could argue that the reference to animal welfare in Article 13 is simply a political move to maintain a high EU’s reputation in foreign markets and to appease animal rights’ supporters.

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<sup>30</sup> The project of treaty establishing a constitution for Europe, never approved, contained the proposal to insert an Article in the Treaty (Article III-121).

<sup>31</sup> I. A. ROBERTSON, *Animal Welfare and the Law: Fundamental Principles for Critical Assessment*, London, Earthscan from Routledge, 2015, p. 328.

<sup>32</sup> D. RYKAND, A. NURSE, «Mainstreaming after Lisbon: Advancing Animal Welfare in the EU Internal Market», *EUR. ENERGY AND ENVIR. L. REV.*, 2013, pp. 101-115 at 109.

<sup>33</sup> A. VON BOGDANDY, *Founding Principles*, in *PRINCIPLES OF EUROPEAN CONSTITUTIONAL LAW* 11 (A. VON J. BAST eds. 2010), Londra, Hart Publishing, pp. 11-54; K.P. SOMMERMANN, *Article 3 [The Objectives of the European Union]* in *THE TREATY ON THE EUROPEAN UNION (TEU)* (H.B. BLANKE, S. MANGIAMELI eds. 2013), Dordrecht, Springer, pp. 157-183.

<sup>34</sup> K. OVIE, *Harmonized Approaches in Intensive Livestock Production Systems in Europe*, in *INTERNATIONAL FARM ANIMAL, WILDLIFE AND FOOD SAFETY LAW*, (G. STEIER, K.K. PATEL eds., 2017), Dordrecht, Springer, pp. 269-303, at 279.



Two further problematic aspects emerge: the first is concerned with the ‘poor wording’ of Article 13, since the EU and its Member States shall only *pay full regard* to animal welfare (which is not a statutory obligation); with reference to environmental protection, for instance, policies “must be integrated *into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development*”. Another controversial element regards the supremacy that is afforded to the respect for cultural traditions and religious rites compared to animal protection. Therefore, some cruel practices related to the consumption of meat products (i.e. Kosher and Halal slaughter) are still tolerated and protected in Europe, being put in a value system more important than animal welfare requirements. Indeed, EU institutions must refrain from interfering with religious and cultural traditions also if it implies unnecessary animal suffering.

However, despite its shortcomings, Article 13 TFEU paved the way for the adoption of the “Strategy for the Protection of and Welfare of Animals” (2012-2015), which places the EU at the forefront on animal protection on the international arena (especially if compared to the almost complete lack of any form of protection in African and Asian countries)<sup>35</sup>.

### 3.2 EU Legislation on Animal Welfare

The EU welfare legislation is mainly based on the set of conventions elaborated under the aegis of the Council of Europe<sup>36</sup>. The EU adopted an Animal Welfare Strategy 2012-2015, then renewed by the “New Animal Welfare Strategy for 2016-2020” and promoted an EU platform on animal welfare<sup>37</sup>, which has amongst its tasks “*to contribute to the promotion of Union standards on animal welfare as to valorise the market value of Union products at global level*”<sup>38</sup>.

EU strategies have promoted an approach based on animal welfare indicators in order to assess the welfare of animals: indeed, EU animal welfare policy is

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<sup>35</sup> A few of developing countries do have legal provisions on the protection of animals. In Northern Africa, Egypt’s 2014 Constitution has established at Art. 45 the duty to perform a ‘kind treatments of animals’ (*al-rifq bi-l-hayawan*). In India, due to the influence of the Hindu religion, that banishes the killing of cows as sacred animals and the feeding with beef products, animals enjoy a higher standard of protection if compared to neighbouring countries. Art. 51 (G) of the Indian Constitutions states that “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures” and a Prevention of Cruelty to Animals Act was enacted in 1960.

<sup>36</sup> The EU never acceded to the European Convention for the Protection of Animals for Slaughter (ETS 102), but acceded on 18 October 1998 to the European Convention for the Protection of Animals kept for Farming Purposes (ETS 087), on 30 April 1998 to the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (ETS 123). The European Convention for the Protection of Animals during International Transport (ETS 193) was instead signed (but not yet ratified) on 25 June 2004. See < <http://www.coe.int/en/web/conventions/full-list> >.

<sup>37</sup> <[https://ec.europa.eu/food/animals/welfare/eu-platform-animal-welfare\\_en](https://ec.europa.eu/food/animals/welfare/eu-platform-animal-welfare_en)>.

<sup>38</sup> Article 2, let. c), Commission Decision of 24 January 2017 establishing the Commission Expert Group ‘Platform on Animal Welfare’, C/2017/0280 OJ C 31, 31.1.2017, p. 61–66, <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017D0131%2801%29>>.

grounded on scientific knowledge and evolves accordingly<sup>39</sup>. Therefore, animal welfare is the starting point in framing specific legislation on farm animals, while also paying particular attention to maintaining a high level of competitiveness of the EU agricultural industry.

## II. EU FARM ANIMAL WELFARE LEGISLATION

### 1. Farm Animals in Agriculture

The protection of animal welfare on-farm, which includes standards for their transport and conditions at the time of stunning and slaughter, is founded on the Common Agricultural Policy (CAP)<sup>40</sup>, and in particular on Article 43 TFEU ('Common organization of market in agricultural products'), which falls in Title III ('Agriculture and Fisheries')<sup>41</sup>. In detail, an "agricultural activity" is considered as the "*production, rearing or growing of agricultural products, including harvesting, milking, breeding animals and keeping animals for farming purposes*" (Article 2 of Regulation No. 73/2009)<sup>42</sup>.

Given the absence of a specific animal welfare policy and animal welfare competence in EU treaties, the CAP provides the legal basis for the EU legislation on farm animals through the principle of subsidiarity (Art. 5, Para. 3, TEU)<sup>43</sup>.

EU legislation on farm animals aims to harmonizing domestic legislation in order to guarantee fair competition amongst EU farmers. Indeed, higher animal welfare standards imply increasing production costs. Therefore, it is obvious that

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<sup>39</sup> H. VAN DE WEERD, J. DAY, *The legal journey to improved farm animal welfare*, (in N. AMOS, R. SULLIVAN, eds.), *THE BUSINESS OF FARM ANIMAL WELFARE*, London, Routledge, 2018, pp. 47-63.

<sup>40</sup> R. HORGAN, A. GAVINELLI, «The expanding role of animal welfare within EU legislation and beyond», *Livestock Science*, 103, 2006, pp. 303-30.

<sup>41</sup> For Article 38 of the TFEU "the internal market shall extend to agriculture, fisheries and trade in agricultural products", and 'agricultural products' means the products of the soil, of stock farming and of fisheries, and products of first-stage processing directly related to these products". Agriculture is a shared competence and not an area of exclusive competence of the Union. Par. 1 of Article 39 of the TFEU identifies the objectives of the CAP, which are to increase productivity by promoting technical progress and ensuring better use of production factors; to ensure a fair standard of living for the agricultural community, particularly by increasing individual earnings of persons engaged in agriculture; to stabilize agricultural markets; and to assure both availability of supplies and reasonable prices for consumers.

<sup>42</sup> Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003.

<sup>43</sup> Art. 5, Para. 3, TEU, states "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level". The attribution to the EU of the definition and implementation of a Common Agricultural Policy, means that there is no simple regulation of agricultural products in EU law but rather that there is a common policy for the entire agricultural sector. Therefore, the EU has the power to carry out programmatic and regulatory interventions on both the production and market of agricultural products. J.A. MCMAHON, M.N. CARDWELL, *Research Handbook on EU Agriculture Law*, London, EE Elgar, 2013, p. 18 ss.

lower animal welfare standards would entail distortions in the internal market for agricultural products<sup>44</sup>.

In this sector one can highlight three different sets of rules: 1) directives and regulations which contain provisions which affect all animals (including fish) bred or kept for the production of food, wool, skin or fur or for other farming purposes (the most important act is commonly referred to as the General Farm Animals Directive<sup>45</sup>, followed by EU Regulation on the protection of animals at the time of killing<sup>46</sup>, and by EU Regulation No. 1/2005 on the protection of animals during transport and reared operations<sup>47</sup>); 2) directives and regulations which lay down minimum standards concerning the welfare of specific species, such as laying hens<sup>48</sup>, calves<sup>49</sup>, pigs<sup>50</sup> and chickens reared for meat<sup>51</sup>; 3) regulations concerning food safety and animal health ('Hygiene' Package)<sup>52</sup>.

The founding moment of these rules is provided by the Resolution of the European Parliament on animal welfare policy of 20 February 1987, whereas it called the Commission to make proposals on minimum welfare standards.

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<sup>44</sup> As highlighted in the above quoted Report No. 31/2018, the CAP also provides its contribution to the achievement of animal welfare goals through "cross-compliance"; it is a mechanism that links most CAP subsidies to farmers to compliance with specific environmental standards, including animal welfare. In detail, Regulation N. 1305 (Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005) which lays down general rules governing Union support for rural development financed by the European Agricultural Fund for Rural Development (EAFRD), states that "animal welfare payments under this measure shall be granted to farmers who undertake, on a voluntary basis, to carry out operations consisting of one or more animal welfare commitments" (Art. 33, 'Animal Welfare').

<sup>45</sup> Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes. 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".

<sup>46</sup> Council Regulation No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing.

<sup>47</sup> Council Regulation No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations.

<sup>48</sup> Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens (although there are still shortcomings, i.e. millions of male chicks are slaughtered immediately after hatching).

<sup>49</sup> Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves.

<sup>50</sup> Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs.

<sup>51</sup> Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production.

<sup>52</sup> The EU legislation on the prevention of the transmission of animal diseases to the human being is mainly based on the scope and content of Regulation No. 429/2016 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law'). In fact, the EU recognizes that animal health and animal welfare are strictly interconnected and contribute to food safety (Regulation No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules). The EU adopted in this field one of the highest standards of human health protection.

## 2. General Farm Animals Directive

Council Directive 98/58/EC defines minimum standards for the protection of farm animals, and it has significantly contributed to the establishment of a common framework concerning animal welfare on-farm. Its rules are based on the European Convention for the Protection of Animals kept for Farming Purposes.

The Directive addresses all animals “bred or kept for farming purposes” (Art. 1), which encompasses “all species kept for the production of food, wool, skin or fur or for other farming purposes, including fish, reptiles of amphibians” (Art. 2, Para. 1). Therefore, wild animals, laboratory animals, animals intended for use in sporting or cultural event, invertebrate animals, are excluded by the field of application of the Directive.

Although this Directive represents a milestone in the mainstreaming of the farm animal welfare, it presents a weakness in its philosophical underpinning that does not intend to challenge animal exploitation; indeed, animal welfare is not promoted and protected for itself, but rather it is reconciled with economic interests, as clearly highlighted in Recitals 11 and 12:

*“there is [...] a need to establish common minimum standards for the protection of animals kept for farming purposes in order to ensure rational development of production and to facilitate the organization of the market in animals”.*

*.... “a comparative examination of animal welfare provisions applicable in the Community and in certain non-member countries together with the appraisal thereof should be undertaken with a view to determining the nature of future Community initiatives aimed at eliminating distortion of competition”.*

The core disposition of Directive 98/58/EC 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”. Therefore, owners or keepers are obliged to take all appropriate measures to avoid unnecessary pain, suffering or injury to their animals. Such duty of care of owners or keepers of farm animals implies, therefore, the obligation to provide to the animals under their custody a suitable environment and diet, housing with other animals and to relieve their pain when possible<sup>53</sup>.

However, some scholars have criticized the ‘vagueness’ of the wording of the Directive through the use of an unspecific language which leaves open the door to a wide margin of discretion in the implementation process<sup>54</sup>. This problem was also

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<sup>53</sup> B.M.J. VAN DER MEULEN, A.A. FRERIKS, ‘Livestock and Legislation’, in: Livestock Production and Society (R. Geers, F. Madec), Wageningen Academic Publishers, 2006, pp. 79-98.

<sup>54</sup> A. MASSARO, «How Christian Animal Ethics Could Inform EU Legislation on Farm Animals», *RELATIONS*, 2017, pp. 47-56.

raised by the European Union Strategy for the Protection and Welfare of Animals 2012-2015 (its provisions “*are too general to have practical effects*”; Para. 4).

In practical terms, these rules does not prohibit pain, suffering, or injury, but pose the threshold of ‘unnecessary pain, suffering, or injury’; therefore, animal suffering is not at the same level with the human interest not to suffer, but rather implies a huge discretionality upon the human being in determining what is considered as unnecessary and necessary pain.

More detailed rules on staffing, inspection<sup>55</sup>, record keeping, freedom of movement, buildings and accommodation, feed, water, are envisaged in Annex I. Also in this case, a general wording is used: “*The freedom of movement of an animal [...] must not be restricted in such a way as to cause it unnecessary suffering or injury*” (Annex I, Para. 7); “*All animals must have access to feed at intervals appropriate to their physiological needs*” (Annex I, Para. 15).

### 3. The EU regulation on the Protection of Animals at the Time of Killing

Council Regulation (EC) No. 1099/2009 lays down a minimum level of protection that must be guaranteed to animals at the moment of slaughtering. In particular, any avoidable pain, distress, or suffering during their killing shall be avoided (Art. 3). To this aim, the Regulation contains a list of methods under which animals may be stunned until their slaughtering (Art. 4 and Annex I). The Regulation mainly applies to animals killed in slaughterhouses, but it also covers farmed fish, reptiles and amphibians. It does not apply to hunting, bullfighting and killing of animals related to veterinary practices and experiments on animals.

This Regulation was adopted in order to revise the former Directive on animal welfare at slaughter (1993)<sup>56</sup>, since “*large discrepancies have been observed between the Member States in implementing that Directive and major welfare concerns and differences susceptible to affect competitiveness between business operators have been pointed out*” (Recital 3) and “*European citizens expect a minimum of welfare rules to be respected during the slaughter of animals*” (Recital 57).

The particular attention to the affliction of the animals was already foreseen in the previous Directive 75/577/CEE<sup>57</sup>, whereas it requested Member States to

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<sup>55</sup> Each Member State must ensure that animal welfare inspections are performed in line with the rules on official controls laid down in Regulation (EC) No 882/2004 of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. A new regulation on official controls was adopted in 2017: Regulation (EU) 2017/625 of the European Parliament and of the Council 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, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation).

<sup>56</sup> *Supra*, note 22.

<sup>57</sup> Council Directive 74/577/EEC of 18 November 1974 on stunning of animals before slaughter.

*“ensure that suitable measures are taken to induce death as rapidly as possible after stunning, in accordance with appropriate procedures”* (Art. 1).

The Regulation is based on former Art. 37 TEC (now Article 43 TFEU), related to the implementation of the Common Agricultural Policy, and it tries therefore to find a balance between the different interests involved: indeed, the interests of farmers (or business operators) in fair market conditions and harmonised European standards must be counterbalanced by the respect of animal welfare<sup>58</sup>. The particular attention to the economic interests of the farmers and to the correct functioning of the Common Market is evident in Recital 10 inasmuch as it states *“Conditions under which animals kept for farming purposes are killed have a direct or indirect impact on the market for food, feed or other products and on the competitiveness of the business operators concerned”*. On the other hand, the welfarist imprinting of Regulation No. 1099 is evident from the recognition of the necessity to avoid pain and minimise the distress and suffering of animals.

Regulation No. 1099 has provided measurable parameters of animal welfare and has envisaged substantial novelties with reference to the former Directive, in order to adapt the specific requirements for stunning, slaughter, and other slaughterhouse procedures to recent scientific and technological developments. Since all EU abattoirs must meet the same animal welfare standards, the EU Regulation has introduced the role of the animal welfare officer, as the organ in charge of ensuring that animal welfare dispositions are properly implemented at the moment of slaughtering (Art. 17).<sup>59</sup> Therefore, business operators have the duty to designate a person responsible for animal welfare with the task of ensuring compliance with the provisions of the laws. The animal welfare officer, in particular, must evaluate whether Standard Operating Procedures (SOP)<sup>60</sup> – that all abattoirs are required to draw up – are effectively respected by business operators during the stunning phase, and must record every action taken (‘record keeping’)<sup>61</sup>.

As a general requirement, stunning is compulsory before slaughtering to ensure that each animal loses consciousness and reaches a state of apathy, which must be held up until the moment of death (Art. 4, Para. 1)<sup>62</sup>. The requirement for a stunning, prior to slaughter (which takes place through neck cutting) *“is based on the*

<sup>58</sup> <https://www2.gov.scot/Publications/2012/08/9239/3>.

<sup>59</sup> [https://ec.europa.eu/food/sites/food/files/animals/docs/aw\\_prac\\_slaughter\\_owo-brochure\\_24102012\\_en.pdf](https://ec.europa.eu/food/sites/food/files/animals/docs/aw_prac_slaughter_owo-brochure_24102012_en.pdf).

<sup>60</sup> SOPs are detailed instructions regarding each type of operation involving animals carried out in an abattoir. Key stunning parameters, checking the effect of stunning, and maintaining and using restraining and stunning equipment are examples of SOPs which are expressly requested by the slaughtering Regulation.

<sup>61</sup> G. PAOLUCCI, D. CAGNASSO, F. CASSANI, D. PATTONO, «Council Regulation (EC) No. 1099/2009: State of the Art and Its Application in a Local Health Unit in Piedmont, Italy», *ITAL J FOOD SAF.*, 2015, p. 5420.

<sup>62</sup> Art. 4, Para. 1 of the Directive states “Animals shall only be killed *after stunning* in accordance with the methods and specific requirements related to the application of those methods set out in Annex I”. According to article 2 lect. (f) of Regulation 1099/2009, stunning means “any intentionally induced process which causes loss of consciousness and sensibility without pain, including any process resulting in instantaneous death”.

*understanding that (a) animals are sentient beings and (b) neck cutting causes pain and suffering, which can be avoided by pre-slaughter stunning”*.<sup>63</sup>

Recital 20 affirms, in this regard, that “*many killing methods are painful for animals. Stunning is therefore necessary to induce a lack of consciousness and sensibility before, or at the same time as, the animals are killed*”<sup>64</sup>. If a killing method does not result in instantaneous death, operator must adopt another procedure (as soon as possible) ensuring death (bleeding, pithing, electrocution or prolonged exposure to anoxia) (Art. 4, Para. 2). Article 5 then states that “*Business operators shall ensure that persons responsible for stunning or other nominated staff carry out regular checks to ensure that the animals do not present any signs of consciousness or sensibility in the period between the end of the stunning process and death*”.

The requirement of stunning can only be derogated in case of ritual slaughtering, protected under Art. 13 TFEU<sup>65</sup>; indeed, Art. 4, Para. 4, of the EU Regulation, states that “*in the case of animal subject to particular methods of slaughter prescribed by religious rites, the requirements of paragraph 1 shall not apply provided that the slaughter takes place in a slaughterhouse*”. Therefore, the exemption from the stunning is only allowed if the killing takes place in a slaughterhouse. Abattoirs, in particular, according to Art. 2 (k), of Regulation No. 853/2004<sup>66</sup>, must respect specific rules on the hygiene of food of animal origin for food business operators<sup>67</sup>.

Ritual slaughtering is allowed despite scientific evidence has demonstrated that slaughtering without stunning exposes the animal to unnecessary pain and suffering<sup>68</sup>. Certain Member States, however, under Art. 26, Para. 2, (c) of Regulation No. 1099 (‘stricter domestic regulations’), no longer authorize ritual slaughtering without pre-stunning<sup>69</sup>.

In a pivotal case brought before the ECJ challenging the decision of the Flemish Minister responsible for animal welfare to prohibit ritual slaughtering without previous stunning in temporary abattoirs, the Grand Chamber has reiterated that Art. 4, Para. 4, of the EU Regulation, is in line with both freedom of religion (Art. 10 EU

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<sup>63</sup> C. BERG, M. RAJ, «A Review of Different Stunning Methods for Poultry—Animal Welfare Aspects (Stunning Methods for Poultry)», ANIMALS, 2015, pp. 1207-1219, cit., p. 1207.

<sup>64</sup> Stunning as a prerequisite for slaughtering farm animals was, however, already envisaged by Council Directive No. 74/577/EEC.

<sup>65</sup> Derogation from stunning in case of religious slaughter taking place in slaughterhouses was already granted by Directive No. 93/119/EC, which recognized the necessity “to take account of the particular requirements of certain religious rites.

<sup>66</sup> Council Regulation (EC) 853/2004 of 29 April 2004 laying down specific hygiene rules for on the hygiene of foodstuffs.

<sup>67</sup> Art. 2, (k) of the Regulation states “‘slaughterhouse’ means any establishment used for slaughtering terrestrial animals which falls within the scope of Regulation (EC) No 853/2004”.

<sup>68</sup> “Slaughter without stunning increases the time to loss of consciousness, sometimes up to several minutes. During this period of consciousness the animal can be exposed to unnecessary pain and suffering due to: exposed wound surfaces; the possible aspiration of blood and, in the case of ruminants, rumen content; the possible suffering from asphyxia after severing the *n. phrenicus* and *n. vagus*” (Federation of Veterinarians of Europe, Position Paper 02/104, 2006).

<sup>69</sup> These countries are Kingdom of Denmark, Republic of Slovenia and Kingdom of Sweden. See Report of the Global Legal Research Center, «Legal Restrictions on Religious Slaughter in Europe», March 2018, available at <<https://www.loc.gov/law/help/religious-slaughter/europe.php>>.

Charter of Fundamental Rights) and animal welfare (Art. 13 TFEU)<sup>70</sup>. In fact, the Court has recognized in its judgment of 28 May 2018 that ritual slaughter without stunning must be allowed since it protects freedom of religion. It has posed as unique condition that it must take place only in an approved slaughterhouse (which respects, therefore, specific technical requirements envisaged by Regulation No 853/2004 with particular reference to construction, layout and equipment). As established by Regulation No 1099/2009, it is only in this type of slaughterhouse that it is possible, to 'individually and mechanically' restrain those animals and take account of 'scientific and technical progress' made in that regard, to minimise their suffering as far as possible (Recitals 43 and 44).

In another judgment of 26 February 2019 concerning halal slaughter, the ECJ has, however, stated that the EU organic farming logo cannot be borne by halal meat<sup>71</sup>. The Court has, in particular, argued that slaughter without pre-stunning – as opposed to slaughter with pre-stunning – “*does not allow the animal's suffering to be kept to a minimum*” (Para. 49).

Regulation No. 1099 contains a list of the stunning methodologies currently allowed in the EU, together with the related conditions under which those interventions can be implemented (Annex I).

The stunning methods regulated under Regulation No. 1099 (Annex I) are mechanical (i.e. penetrative captive bolt device, non-penetrative captive bolt device, maceration, cervical dislocation), electrical (i.e. head-only electrical stunning, head-to-body electrical stunning, electrical waterbath) or gas based (i.e. carbon dioxide at high concentration); none of these methods is banned, although limitations to use certain methods have been set<sup>72</sup>.

The lack of prohibition of some controversial stunning methods has raised concern. First, both frontal stunning and occipital stunning are methods allowed under the EU Regulation, although EFSA underlined that the latter entails a risk of misdirection (while frontal stunning induces reliably effective stunning)<sup>73</sup>. Other

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<sup>70</sup> *Supra*, note 12. A. PETERS, « De-humanisation? CJEU, Liga van Moskeeën en islamitische Organisaties Provincie Antwerpen on Religious Slaughter », EJIL Talk, 26 June 2018, <<https://www.ejiltalk.org/de-humanisation-cjeu-liga-van-moskeeen-en-islamitische-organisaties-provincie-antwerpen-on-religious-slaughter/>>.

<sup>71</sup> Judgment of the European Union Court of Justice (26 February 2019) - Case C-497/17: *Oeuvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture et de l'Alimentation and Others*. The Court ruled that “Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91, in particular Article 3 and Article 14(1)(b)(viii) thereof, read in the light of Article 13 TFEU, must be interpreted *as not authorising* the placing of the organic production logo of the European Union, referred to in the first paragraph of Article 57 of Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Regulation No 834/2007, as amended by Regulation (EU) No 271/2010 of 24 March 2010, on products derived from animals which have been slaughtered in accordance with religious rites without first being stunned, where such slaughter is conducted in accordance with the requirements laid down by Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, in particular Article 4(4) thereof.”

<sup>72</sup> Slaughter can only be performed by persons with appropriate competences (Art. 7). Art. 7 of Regulation states “Killing and related operations shall only be carried out by persons with the appropriate level of competence to do so without causing the animals avoidable pain, distress or suffering”.

<sup>73</sup> Opinion of the Scientific Panel on Animal Health and Welfare on a request from the Commission related to welfare aspects of the main systems of stunning and killing the main commercial species of animals, *EFSA J.*, 2004, pp. 1-29.



matters have been raised with reference to chickens; the methods of stunning and slaughtering of these birds are paramount to maintaining welfare on a large scale. Usually chickens are slaughtered through a mechanical method (maceration), gas method (atmosphere stunning) or an electrical method (water bath stunning). The latter is used for the vast majority of chickens in the EU<sup>74</sup>. However, a novel pre-slaughter stunning method for chickens has been developed since EFSA adopted a favourable opinion on the use of low atmospheric pressure system for the stunning of broiler chickens (chickens kept for meat production), as a valid substitute of the electrical method<sup>75</sup>. Indeed, water bath stunning by the use of very high frequencies may result in ineffective stunning in many cases. As underlined by an EFSA scientific opinion on electrical requirements for waterbath stunning (2012) “*unless the problems...for all existing waterbath stunning methods can be resolved, other stunning methods should be used*”.<sup>76</sup> As a consequence, Annexes I and II to Council Regulation (EU) No 1099/2009 have been amended by Commission Implementing Regulation (EU) No 723/2018 as regards the approval of low atmospheric pressure stunning.

A further issue is related to the shackling of live poultry, because their butchery differs from that of other animals, such as cows or pigs. Indeed, the birds are hung upside down in shackles prior to slaughter, raising therefore welfare issues<sup>77</sup>. Also exposure to CO<sub>2</sub> at high concentration is a much debated stunning method in pigs<sup>78</sup>.

Then, there is another gap still in place related to the killing of male chicks of laying hens, one of the cruelest practices related to the egg-producing industry. Indeed, males are slaughtered as soon as they hatch since they are not a source of profit for the poultry business (while females are reared and farmed for their meat or eggs). This controversial practice is allowed under Regulation No. 1099, under the heading of ‘maceration’<sup>79</sup>, with the threshold of 72 hours from the birth of the baby chickens.

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<sup>74</sup> Report by the Association of Poultry Processors and Poultry Trade in the EU Countries, «Comparison of the Regulatory Framework and Key Practices in the Poultry Meat Supply Chain in the EU and USA», 2016, at 34, available at <http://www.avec-poultry.eu/wp-content/uploads/2018/06/Etude-ADAS-Final-Low-res..pdf>.

<sup>75</sup> LAPS (Low Atmospheric Pressure Stunning) is a recent methodology which aims to induce unconsciousness in chicken before slaughtering in the following manner: chicken are placed in a sealed chamber where the atmospheric pressure is progressively reduced using controlled slow decompression with a vacuum pump.

<sup>76</sup> EFSA, «Scientific Opinion on electrical requirements for poultry waterbath stunning equipment», *EFSA J.*, 2014, <https://www.efsa.europa.eu/it/efsajournal/pub/3745>.

<sup>77</sup> J.M. SPARREY, P.J. KETTLEWELL, «Shackling of poultry: is it a welfare problem?», *WORLD POUL SCI J*, 1994, pp. 167-176.

<sup>78</sup> M.VERHOEVEN, M. GERRITZEN, A. VELARDE, L. HELLEBREKERS, B. KEMP, «Time to Loss of Consciousness and Its Relation to Behavior in Slaughter Pigs during Stunning with 80 or 95% Carbon Dioxide», *FRONT VET SCI.*, 2016, pp. 3-38.

<sup>79</sup> Annex I, List of Stunning Methods and Related Dispositions, Maceration No. 4, ‘Chicks up to 72 hours and egg embryos’.

## 4. Single Species Protection

### 4.1 Pigs

The Pigs Directive (Directive of 18 December 2008 laying down minimum standards for the protection of pigs)<sup>80</sup> recognizes the economic value of pigs whereas it establishes that

*“the keeping of pigs is an integral part of agriculture. It constitutes a source of revenue for part of the agricultural population”, affirming at the same time that “there is therefore a need to establish common minimum standards for the protection of pigs kept for rearing and fattening in order to ensure rational development of production” (Recital 7).*

Particular care to the welfare of pigs is referred to in Recital 8 (*“The welfare of pigs appears to be compromised by severe restrictions of space”*) and 9 (*“When pigs are kept in groups, appropriate management measures for their protection should be taken to improve their welfare”*).

The Directive lays down minimum standards for their protection, recognizing that all pigs be provided with environment enrichment. In particular, *“they 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”* (Para. 4 of Chapter I of Annex I).

The Directive then recognizes that painful mutilations, such as tail-docking, tooth-clipping and tooth-grinding are practices *“detrimental to the welfare of pigs”*, that must not be performed on a routine basis, but only if *“there is evidence that injuries to sows’ teats or to other pigs’ ears or tails have occurred”* (Para. 8, Annex I). Commission Recommendation (EU) 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 was adopted in response to a scientific opinion of EFSA<sup>81</sup>.

Furthermore, the tethering of sows and the use of sow stalls – which are widely considered amongst the most inhumane aspects of industrial livestock production – are now prohibited<sup>82</sup>. Therefore, pregnant sows must be kept in groups

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<sup>80</sup> The Pigs Directive replaces previous EU rules on pigs, namely: Council Directive 91/630/EEC of 19 November 1991 laying down minimum standards for the protection of pigs, later amended through Council Directive 2001/88/EC, Commission Directive 2001/93/EC, and Council Regulation (EC) No 806/2003.

<sup>81</sup> The European Food Safety Authority has provided scientific opinions on the risks associated with the tail-biting in pigs and possible means to reduce the need for tail-docking. EFSA, «The risks associated with tail biting in pigs and possible means to reduce the need for tail docking considering the different housing and husbandry systems - Scientific Opinion of the Panel on Animal Health and Welfare», *EFSA Journal*, 20 December 2007, <<https://www.efsa.europa.eu/it/efsajournal/pub/611>>.

<sup>82</sup> Art. 3, Para. 3 states “Member States shall ensure that the construction of or conversion to installations in which sows and gilts are tethered is prohibited. From 1 January 2006 the use of tethers for sows and gilts shall be prohibited”; and Art. 3, Para. 4 affirms that “Member States shall ensure that sows and gilts are

instead of individual stalls during part of their pregnancy (with the exception of the first four weeks of their pregnancy) and must be provided with bulky or high-fibre food to prevent hunger (Art. 7, Para. 3).

As outlined by a FVO Report, the lack of enforcement of Art. 8 of Regulation No. 882/2004<sup>83</sup> is at the basis of the incomplete implementation of the Directive.<sup>84</sup> Indeed, it has emerged that the Central Competent Authorities in several cases have failed to provide appropriate information and instructions to the officials who inspect pigs.

#### 4.2 Calves

The main problem concerning the welfare of calves raised for veal (bovine animals of up to 6 months old) was mainly related to the veal crate system. It is a housing system according to which calves are confined in small crates soon after birth and cannot move properly and receive the milk from their mother. The goal of the crate is that of atrophying the calves' muscles, thus producing the tender veal appreciated by gourmets. Furthermore, a milk substitute short of iron and other essential nutrients are generally administered to calves<sup>85</sup>, in order to maintain the young animal anemic and to create the pale pink or white colour desired in the finished product.

The prohibition of the veal crate system is envisaged in the Calves Directive, which provides that calves must be kept in group from the age of eight weeks, unless a veterinary does not request isolation for a specific case due to behavioural or health reasons<sup>86</sup>. In particular, the dimension of the pen must allow each calve to turn around (to lie down, to rest, to stand up and to groom itself without difficulty).

Indeed, the Directive recognizes that

*“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. Calves, both group-housed and individually penned, should have sufficient space*

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kept in groups during a period starting from four weeks after the service to one week before the expected time of farrowing. The pen where the group is kept must have sides greater than 2,8 m in length. When fewer than six individuals are kept in a group the pen where the group is kept must have sides greater than 2,4 m in length. By way of derogation from the first subparagraph, sows and gilts raised on holdings with fewer than 10 sows may be kept individually during the period mentioned in that subparagraph, provided that they can turn around easily in their boxes”.

<sup>83</sup> Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

<sup>84</sup> « <https://www.ciwf.org.uk/media/3818868/fvo-reports-on-failure-to-enforce-pigs-directive.pdf> ».

<sup>85</sup> P. LE NEINDRE, « Evaluating housing systems for veal calves », *J ANIM SCI.*, 1993, pp. 1345-1354.

<sup>86</sup> Art. 3, Para. 1, of the Calves Directive states “no calf shall be confined in an individual pen after the age of eight weeks, unless a veterinarian certifies that its health or behaviour requires it to be isolated in order to receive treatment. 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”.

*for exercise, for contact with other cattle and for normal movements when standing up or lying down” (Recital 7).*

However, as highlighted by a Report of ‘Compassion in World Farming’, the Directive still allows isolation in single pens before the age of eight weeks<sup>87</sup>; indeed, in the EU, around 60% of dairy calves are reared individually during their first eight weeks of life, with acknowledged negative effects on their future behaviour and growth<sup>88</sup>.

As to the specific diet requirements of calves, Annex X, Para. 11, of the Directive, states that

*“All calves must be provided with an appropriate diet adapted to their age, weight and behavioural and physiological needs, to promote good health and welfare. To this end, their food must contain sufficient iron to ensure an average blood haemoglobin level of at least 4,5 mmol/litre, and a minimum daily ration of fibrous food must be provided for each calf over two weeks old, the quantity being raised from 50 g to 250 g per day for calves from eight to 20 weeks old. Calves shall not be muzzled”.*

In this regard, EFSA, in a Scientific Opinion of 2012 has reiterated that iron-deficiency anaemia which affects calves is a direct consequence of “*dietary iron restriction*”<sup>89</sup>.

#### 4.3 Chicken

Broiler farming is an important part of the EU agricultural economy: the EU is amongst the world’s leading broilers producers, covering 11.3 % of total production. Within the EU, the broiler chicken industry is mainly developed in France, Germany, Italy, the Netherlands, Poland, Spain and United Kingdom<sup>90</sup>. The broiler production is constantly increasing in the EU (18.6% from 2009 to 2014, which means about 6.5 billion birds a years). Indeed, chicken is the second largest consumed meat after pig-meat. Poultry meat, if compared to red meat, has lower production costs, minor health risks, minor impact on the environment and climate change and has no religious restrictions.

The key act on chicken is represented by the Broiler Directive (2007). It establishes specific welfare requirements concerning houses where chickens are kept

<sup>87</sup> P. STEVENSON, «European Union Legislation on the Welfare of Farm Animals», Report by Compassion in World Farming, 2012, pp. 1-23, at 10.

<sup>88</sup> S. L. BOLT, N. K. BOYLAND, D.T. MLYNSKI, R. JAMES, D. P. CROFT, «Pair Housing of Dairy Calves and Age at Pairing: Effects on Weaning Stress, Health, Production and Social Networks», *PLoS ONE*, 2017, 12 (1), «<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0166926>».

<sup>89</sup> EFSA, «Scientific Opinion on the welfare of cattle kept for beef production and the welfare in intensive calf farming systems», EFSA JOURNAL, 15 May 2012, «<http://www.efsa.europa.eu/en/efsajournal/pub/2669>».

<sup>90</sup> European Commission – Directorate General Agriculture and Rural Development, «[http://ec.europa.eu/agriculture/poultry/index\\_en.htm](http://ec.europa.eu/agriculture/poultry/index_en.htm)».

(Annex I)<sup>91</sup>, maximum stocking densities with additional requirements for keepers operating at the higher stocking densities (Art. 3 and 4). Other important dispositions are related to inspection regimes that must be set up (Art. 7)<sup>92</sup>.

Art. 3, Para. 2, of the Directive establishes – as a general rule – the maximum density for the keeping of broilers of 33 kg/m<sup>2</sup>. Member States, however, as an exception, can foresee to keep the birds at a higher stocking density provided that the owner or keeper complies with specific requirements set out in Annex II (Art. 3, Para. 3)<sup>93</sup>. The maximum stocking density in a holding or a house of a holding, should not exceed 39 kg/m<sup>2</sup> (Art. 3, Para. 4). By way of further derogation another increase above 39 kg/m<sup>2</sup> up to 42 kg/m<sup>2</sup> ('highest stocking density') is, however, allowed under strict circumstances, namely whereas low mortality rates and good management practices have been recorded by monitoring<sup>94</sup>.

According to the Study of the European Commission on the implementation of the Broiler Directive,<sup>95</sup> management and housing for broilers has been improved by Member States, determining an enhancement of chickens' living conditions and welfare. Despite these advancements, only Germany amongst EU Member State has set up higher housing requirement than those envisaged by the Directive, while Austria, Denmark, Sweden and United Kingdom have adopted housings that are below 33 kg/m<sup>2</sup>. The highest stocking density, although is theoretically a derogation to the general rule, employs, however, more than a quarter of EU production (26%), with the highest concentration in France (55%), Netherlands (18%), Belgium (9%). In the United Kingdom<sup>96</sup>, in particular, the decision to opt for a lower stocking density was based on evidence that welfare could be compromised at higher stocking densities<sup>97</sup>.

Directive No. 43/2007 is the first EU rule which envisages animal-based indicators as an instrument to monitor animal welfare in slaughterhouses. Indeed, there is a strict interaction between animal welfare, animal health, and food safety,

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<sup>91</sup> Specific requirements of houses are set up in Annex I: "Drinkers shall be positioned and maintained in such a way that spillage is minimised" (Para. 1); "Feed shall be either continuously available or be meal fed" (Para. 2); "Ventilation shall be sufficient to avoid overheating and, where necessary, in combination with heating systems to remove excessive moisture."

<sup>92</sup> Art. 7 of the Directive states 1. "The competent authority shall carry out non-discriminatory inspections to verify compliance with the requirements of this Directive. Such inspections shall be carried out on an adequate proportion of animals kept within each Member State, in accordance with the relevant provisions of Regulation (EC) No 882/2004, and may be carried out at the same time as checks for other purposes. Member States shall put in place appropriate procedures for determining the stocking density. 2. Member States shall submit to the Commission by 30 June each year an annual report for the previous year on the inspections provided for in paragraph 1. The report shall be accompanied by a list of the most relevant actions taken by the competent authority to address the main welfare problems detected."

<sup>93</sup> Additional requirements specified in Annex II are related to the respect of specified maximum levels of temperature, humidity, ammonia and concentration of carbon dioxide.

<sup>94</sup> H.J. BLOKHUIS, «Recent developments in European and international welfare regulations», *WORLD'S POULTRY SCIENCE JOURNAL*, 60, 2004, pp. 469-477, at 471.

<sup>95</sup> European Commission, *Study on the Application of the Broiler Directive (Dir 2007/43/EC) and Development of Welfare*, February 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007L0043>.

<sup>96</sup> The Welfare of Farmed Animals (England) (Amendment) Regulations 2010, para. 3 ("the stocking density must not exceed 33 kilograms per m<sup>2</sup> of usable area").

<sup>97</sup> C. BARKLAY, «Broiler Chicken and Poultry Meat», Parliament UK, Note SN/SC/1386, 8 June 2012.

and it is the main reasons why control and monitoring programs at farm level through specific indicators have been set up. Monitoring at slaughterhouses is additional to non-discriminatory farms inspections, and in certain cases should result in farm investigations to follow-up post mortem findings.

European Parliament Resolution of 25 October 2018 on animal welfare, antimicrobial use and the environmental impact of industrial broiler farming<sup>98</sup> has highlighted the detrimental impacts of intensive broiler chicken farming on animal welfare and human health.

This Resolution recognizes the linkages between the improvement of animal welfare and human health. Indeed, it is based on the recognition of the negative role of the overuse of antimicrobial veterinary medicines (mainly used for the growth of the birds and for metaphylaxis and prophylaxis, it has been one of the major factors influencing the development of antibacterial resistance) (Para. E). Therefore, poor welfare conditions of birds and chickens often housed in high stock density facilities, with a greater risk of contracting diseases, improves their necessity to receive antimicrobial veterinary medicines to keep them healthy. In this regard, the Resolution recognizes that “25 % of the breast poultry meat consumed in the EU is imported from third countries with less strict legislation on animal welfare” (Para. K).

In particular, the overuse of antimicrobial veterinary medicines has a negative impact on human health, since EFSA has affirmed that the presence of drug-resistant strains of *Campylobacter spp.* and *Salmonella spp.* in broiler farms and in broiler meat poses “an increasing threat to public health” (para. F)<sup>99</sup>. In fact, these zoonoses cause campylobacteriosis and salmonellosis, which are the two most reported food-borne diseases in humans<sup>100</sup>.

The Resolution underlines existing gaps in the enforcement of the broiler Directive, represented by the fact that only two thirds of Member States have properly implemented the directive and by the predominance, as demonstrated in the report, of higher stocking densities in many places than the general rule of 33 kg/m<sup>2</sup> (Art. 1).

In the light of the above-mentioned concerns, the European Parliament urged the European Commission to address the major health challenges caused by intensive broiler farming.

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Our model of food consumption, too focused as it is on livestock products, has a negative impact on the environment, animal welfare and human health. As

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<sup>98</sup> European Parliament resolution of 25 October 2018 on animal welfare, antimicrobial use and the environmental impact of industrial broiler farming (2018/2858(RSP)).

<sup>99</sup> Scientific Report, European Food Safety Authority, European Centre for Disease Prevention and Control, «The European Union summary report on antimicrobial resistance in zoonotic and indicator bacteria from humans, animals and food in 2015», The EFSA Journal, 23 February 2017, <<https://www.efsa.europa.eu/it/efsajournal/pub/4694>>.

<sup>100</sup> A. CHLEBICZ, K. ŚLIŻEWSKA, «Campylobacteriosis, Salmonellosis, Yersiniosis, and Listeriosis as Zoonotic Foodborne Diseases: A Review», *INT J ENVIRON RES PUBLIC HEALTH*, 2018, PP. 863-869.

recognized by Regulation (EU) 2017/625<sup>101</sup>, the respect of animal welfare is a prerequisite to protect human health, and animal owners and animal keepers have a specific duty to respect EU rules on this topic (Recital 7).

EU efforts have banned some of the worst aspects of intensive livestock production (veal crates, barren battery cages for egg-laying hens and sow stalls), although regrettably sow stalls (or gestation crates) continue to be used in intensive pig farming during the first four weeks of pregnancy<sup>102</sup>.

In this regard, the EU institutions should broaden the scope of directives and regulations on farm animals, including for instance, the issue of the killing of male baby chicken – also known ‘one-day chicks’ – which is still allowed under Regulation No. 1099/2009<sup>103</sup>, or better regulating the fur farm industry (a specific act covering this sector is still lacking). Other shortcomings regard the transport of animal towards third countries (where EU standards do not apply), and legal gaps at the moment of killing related to inadequate stunning<sup>104</sup>. Indeed, it is worth underlying that the legislation on slaughtering is mainly oriented towards sanitary and hygienic issues that guarantee food safety and high quality of the meat, but a deep reflection on animal welfare at the moment of killing is still missing. At the same time, legal developments at European level have improved protection standards with reference to conditions of transportation towards abattoirs, stunning methods, and basic requirements for slaughterhouses. However, as underlined by the Italian Bioethics Veterinary Committee, the current legislation has not yet taken into account modalities through which to reset in the animals the perception of the events that lead to the moment of slaughtering. In fact, the stunning process in itself causes a trauma to the animal and it does not guarantee an adequate and complete loss of consciousness<sup>105</sup>.

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<sup>101</sup> 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, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation). Recital 7 states “Union legislation on animal welfare requires animal owners, animal keepers and competent authorities to respect welfare requirements of animals to ensure their humane treatment and avoid causing them unnecessary pain and suffering. Those rules are based on scientific evidence and may improve the quality and safety of food of animal origin”.

<sup>102</sup> One might also add to this list the cruel practice of *foie gras*, which should be banned in the light of Council Directive 98/58/EC (“No animal shall be provided with food or liquid in a manner (...) which may cause unnecessary suffering or injury”).

<sup>103</sup> See the Report of Compassion in World Farming, *The Life of: Broiler Chickens*, 5 May 2013, <<https://www.ciwf.org.uk/media/5235306/The-life-of-Broiler-chickens.pdf>>.

<sup>104</sup> See Report, *Analysis of Animal Welfare Issues in the European Union. Areas of Concern. Eurogroup for Animals* (2010), <<http://www.animalwelfareintergroup.eu/wp-content/uploads/2011/10/EurogroupForAnimals>>.

<sup>105</sup> G. VESCE, «La macellazione inconsapevole: aspetti scientifici e applicativi», *BIOETICA*, 2014, pp. 507-518.

To this aim, the Committee has proposed – as a possible solution to improve animal welfare at the moment of killing – the concept of ‘unaware slaughtering’<sup>106</sup>. It would, first, imply to slaughter the animal where it has been reared (therefore, avoiding it the stress related to the transport towards the abattoir) and, second, to induce in the animal a condition of complete lack of awareness through the administration of specific drugs<sup>107</sup>.

More in general, the problem related to the advancement of farm animals’ condition and to the complete implementation of EU rules mainly lies in the strong opposition to further improvements by the meat and poultry industry, which is the largest segment of EU agriculture. In Germany, for instance, although consumers show major interest towards sustainable livestock production, they have not yet changed their consumption habits in a significant manner (which would mean less consumption of meat or veganism).

The economic interests of the farmers still prevail over animal welfare concerns (i.e. the Bundestag has decided in 2016 against a ban of the slaughter of newly-hatched chicks, giving more weight to the farmers’ position)<sup>108</sup>, despite Germany has one of the most advanced legislation on animal welfare in Europe.

Another issue concerning the protection of farm animals lies in the fact that animals products (meat, milk) are considered as ‘agricultural products’, at the same level of crop products<sup>109</sup>, and animals themselves as ‘livestock products’; therefore their exploitation is not questioned.

Notwithstanding the ‘proliferation’ of rules addressed to farm animal welfare (as well as lab animals and wild animals), in fact, millions of animals are still over-exploited in and outside Europe. This is not only a regional problem, but it affects animals worldwide. Globalization and international trade of meat products complicate the issue, since animals are for instance transported towards third countries where minimum standards of protection are not applied, and they are routinely subjected to abuse and inhumane slaughter.

In fact, a regional legislation on animal welfare is not sufficient to protect animals. In this regard, a global animal law would be necessary, in order to adequately advance animal welfare, since animals are tradable products that are shipped worldwide. A jeopardized protection implies that some practices that are for instance banned in Europe can be easily performed in third countries. Ideal measures would imply the ban of the practices that directly damage the environment, such as intensive farming, or are useless barbaric, such as the slaughter of male chickens, or lambs or calves, ritual slaughter, and sport hunting and sport fishing.

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<sup>106</sup> Comitato Bioetico per la Veterinaria, Parere del 20 novembre 2017, «Macellazione inconsapevole», available at <https://scienceandethics.fondazioneveronesi.it/wp-content/uploads/2018/03/fse-4-macellazione-inconsapevole.pdf>.

<sup>107</sup> On ‘unaware slaughtering’, see I.R. PAVONE, «Nota al documento del Comitato Bioetico per la Veterinaria in materia di macellazione inconsapevole», *THE FUTURE OF SCIENCE AND ETHICS*, 2018, pp. 164-165; P. SANTORI, «La macellazione consapevole: una necessità realizzabile», *BIOETICA*, 2014, pp. 518-528.

<sup>108</sup> N. SAGENER, *No end in sight for slaughter of newborn male chickens*, *EURACTIV.DE*, 1<sup>st</sup> April 2016, <<https://www.euractiv.com/section/agriculture-food/news/no-end-in-sight-for-slaughter-of-newborn-chickens/>>.

<sup>109</sup> <[http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural\\_products](http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_products)>.