

## WELCOME NOTE

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There are a number of indications that the enforcement of European animal welfare related legislation needs to be improved. Over the years the reports from inspections carried out by the Food and Veterinary Office to check compliance with the requirements of EU legislation on animal welfare have shown that the level of enforcement varies considerably between Member States, and that there is a lack of enforcement measures in a number of areas. Recently the Commission has concluded in its report on the impact of Regulation (EC) No. 1/2005 on the protection of animals during transport that enforcement of the Regulation remains a major challenge. Better enforcement can be achieved through a number of different actions.

This conference addresses a variety of important issues, which hopefully can contribute to an improved situation in the future.



## The experience from FVO inspections

### Terence Cassidy

Head of Sector (Animal Welfare), Food and Veterinary Office, European Commission

Since its inception in 1998, the Food and Veterinary Office of the European Commission's Directorate General for Health and Consumers has carried out inspections/audits of animal welfare controls carried out by the Competent Authorities (CA) in the Member States. There has been major progress over the intervening years, especially in those Member States who gave almost no priority to animal welfare issues at the time of the first FVO inspections. Nevertheless there are still many obstacles to obtaining an overall good level of compliance with animal welfare requirements.

Insufficient ownership of welfare requirements by the operators charged with their implementation is a major issue. In Member States where commercial concerns have already been a driver for animal welfare, it has been easier to obtain compliance and effectively phase out un-enriched cages for laying hens and ensure the introduction of group housing of sows, as operators have taken greater responsibility for meeting the standards. The more integrated farming sectors, such as the veal meat sector, also facilitated a more straightforward move to more welfare-friendly production systems.

The level of funding provided under programmes such as rural development has been another incentive to encourage the move to better housing systems in the intensive livestock sectors. The possibility to reduce funding, such as the amount of single farm payment through cross-compliance rules, has also helped resolve some perennial problems. The best way to make continued progress should certainly involve further engagement with the livestock sectors so that they recognise and are fully involved in solving animal welfare problems.

Competent Authority resources have a major implication for enforcement, but it is often the organisation of the official services that presents a more important obstacle to enforcement action. Inspectors working in a well organised control system can expect to find model letters for notifying operators of infringements and standardised procedures

to inform other services involved in enforcement actions. Where inspectors do not have recourse to proper enforcement measures, this can give rise to a general malaise in official controls, as staff feel frustrated or tolerate deficiencies. The application of penalties is necessary for those operators who cannot be encouraged to comply by other means. It is necessary therefore to ensure that prosecution officials are well briefed on the impact of the legal breaches on animal welfare, and the higher level of the CA needs to have clear policies so that those at the local level of the CA are clear that they are supported in following certain actions.

## Classification of Animals as goods or sentient beings – a legal historical indicator for Animal Welfare enforcement

### Tereza Gimenez-Candela

Law Professor, Initiator of the Master Study “Animals in Law and Society”, Free University of Barcelona, Spain

In recent years, legal reflection on animals has been making its way around the world. There is proof of this in the changes that the traditional legal status of animals as goods (“animal-things”), dominant in civil law countries, has experienced in some countries in our immediate neighbourhood. It is known that since Austria introduced a change to its Treaty of Property of the Civil Code (ABGB) to the effect that animals “are not things” and are governed by special laws, the imprint of this change had an immediate impact in Germany, which amended its own Civil Code (BGB) in the same direction, and the same happened a little later with the Swiss Civil Code. Therefore, in the 1990s there was a major change, which came to call into question the continued existence of a category which came from Roman law: animals as things in property, as goods.

Science has recognised for quite some time that animals are “sentient beings”. Only one legal text, programmatic in nature, has incorporated this scientific term, so expressive in content and respectful of the status of animals as beings that share our ability to feel and suffer. I refer to the Treaty of Lisbon, which is not a Constitution for Europe (though improperly, it should be named such) but is the framework that Member States have accepted as inspiration for our own laws.

The aim of this presentation is to rethink the importance of these legal categories applied to animals. Above all, it is to suggest some questions that remain open and can facilitate the enforcement of new strategies in EU animal protection.



## Legal qualification of cruelty against animals as a crime – a social and cultural indicator for Animal Welfare enforcement

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Generally speaking, criminal law in continental Europe regards the statutory criminalisation of citizens' behaviour as the "ultima ratio" of legislation. In all national constitutions, the state seeks to protect the freedoms of the citizen whenever it takes action. Priority within the EU is additionally given to the freedom of economic activity. Within these systems, animals are ultimately objects of trade and commerce or goods in the field of production – articles of property. Ethical laws protecting animals were not laid down until the 1930s.

After the Second World War the mechanisation and automation of agriculture led to intensive farming conditions for animals, and this was tolerated. In 1965 the Brambell Report for the first time established minimum conditions for keeping animals (the five freedoms). Subsequently, legislation was developed that protected animals according to ethical principles, and its standards were based on the results of scientific investigations into animal behaviour.

This development reveals that animal welfare law (and hence the criminal law on this subject) is intimately connected to advances in scientific knowledge. Modern animal protection law is formative in nature, insofar as it demands conduct which

goes against the prevailing social notions – some of which have existed for centuries.

Such legal developments are clearly visible in decisions of the supreme courts of justice in countries with advanced animal welfare legislation. For example, in Switzerland in 2009 the Federal Court confirmed the ban on using monkeys for experiments, and in Austria in 2011 the Constitutional Court confirmed the ban on using wild animals in circuses. The German Federal Constitutional Court delivered its so called “Laying Hens decision” in 1999, dealing with issues such as the right of hens to scratch, to have sand baths, protected egg trays as well as sleeping and feeding conditions.

Therefore the dynamic development of animal welfare law is indeed an indicator of the social and cultural situation in a community and a state.

National animal welfare legislation in Europe does not offer a consistent picture. Although there is a certain acceptance that animals are capable of suffering and that protection of animals is necessary, there is often no recognition of an animal’s right to life. One often finds an almost excessive number of regulations relating to specific offences of keeping animals.

In view of this, the EU animal welfare legislation envisaged in 2014 is necessary. The EU Commission has approved the review “of a revised EU legal framework on the basis of a uniform concept”, (i.e. the establishment of general principles in a consolidated, revised legal framework) in the form of a strategic measure.

It is planned that the legal framework will contain a small number of severe provisions and call on Member States to introduce strict criminal rules in the case of breach. The legislation will apply to animals kept for agricultural purposes and wild animals and should in any case include companion animals.

It appears impossible to prevent a conflict with the economic interests of industrial animal owners. However, if standards are passed which enable a humane quality of life for animals (as is already provided for in EU rules), then

enforcement cannot simply be left to administrative law, and officials but must also be encouraged by the sanctions of criminal law.

In particular, the effective enforcement of animal welfare depends on the “inclusion of domestic animals” as referred to in the strategy. This rule can be incorporated in the EU legal framework since it also affects economic concerns, which are inseparable from animal welfare.

This is how I understand the demand of the “Committee for Agriculture and Rural Development” of the European Parliament for a strategy which advocates the extension of Directive 95/58 by “transforming it into a framework law” for all animals whether they be owned, abandoned or strays (nos. 16 and 17).

On the other hand, we disagree with the Committee’s decision to refer to the OIE definition of animal protection, and ask for a contemporary animal welfare definition which includes not only the condition of animals but also and particularly the manner in which they are treated and kept. This comprehensive definition should form the basis of the envisaged legislation; and only by ensuring consistent and comprehensive compliance can there be harmonised standards which will thereby create economic equality.

Criminal sanctions applied in accordance with the aims of the statute become accepted by citizens as basic rules governing their lives. Such acceptance generally improves enforcement. For this reason, it is necessary to have criminal sanctions against cruelty to animals throughout Europe.



## Animal Welfare as an ethical constitutional aim of a state and its impact on the judiciary – selected examples

### Gieri Bolliger

Executive Director, Stiftung für das Tier im Recht (TIR), Switzerland

More and more countries are going to consider animal welfare an important part of their legal framework. In some states the judicial protection of animals is deeply rooted, while other countries gradually introduce single regulations concerning the husbandry and handling of animals. The following remarks focus on societies showing a long tradition of legislative animal welfare but still facing the challenge of implementation. In that connection, the constitutional anchoring of ethical aims constitutes a major contribution to the enforcement of animal welfare regulations.

The particular constitutions of Germany, Austria and Switzerland not only empower but obligate the respective federations to enact provisions concerning the welfare of animals. In Switzerland, some animal welfare aspects have already been anchored in the Federal Constitution for nearly 120 years. In 1973 a special article was adopted declaring animal welfare in general to be a state matter. Since 1992, the article has been strongly augmented by a constitutional provision warranting the protection of the “dignity of creatures”, explicitly according esteem to all non-human living beings, namely animals, at the highest legal level. The principle encompasses all legal aspects of human-animal interrelations and is supposed to restrict treatment of animals that compromises their interests.

Constitutionalising the protection of animals – as well as their dignity, as prescribed in Switzerland – has a far-reaching significance. It represents a considerable revaluation, since animal welfare becomes an interest protected by law with constitutional standing and a state goal that as a matter of principle is accorded the same status as other state

goals. It becomes an important part of the national legal system and must therefore be taken into consideration in all other areas of governmental or private activity.

In Switzerland, the constitutional status of animal welfare as an essential principle for society resulted in an Animal Welfare Act which is based upon the dignity and well-being of animals and which prohibits both cruelty to animals and disrespect for their dignity. Harsh punishment is described and the respective enforcement is getting better year by year. The protection of animals' dignity has also found its way into other orders, such as the Act on Genetic Engineering.

To be mentioned as a showcase for the implementation of the basic principle of the protection of animals' dignity is the prohibition of zoophilia (sexuality with animals) in the Animal Welfare Act in 2008. First judgements are already available in which the subject of conviction is not the physical harm of animals but disregard for their dignity. In 2009 the Federal Supreme Court decided in favour of the dignity of primates instrumentalised in fundamental research experiments. As a further example, the recent resolution on the ban on the import of dolphins is noted, which is possible because constitutional basic rights such as economic freedom are not given more weight than animal welfare aspects. Other issues are in progress: worth mentioning as examples are so-called torture breeding as well as the dehorning of cows and calves.

A constitution always reflects the overall values of a nation. The inclusion of animal welfare measures does not indicate a revolution in human-animal interrelations, but is rather an official and clear acknowledgement at the highest level of law that people cannot deal with animals at will and with no limitations set. Animals must be respected as sentient beings with a great capacity for suffering.

## Indicators for Enforcement – A Global Perspective

### Carla Brown

Legislative Affairs Manager, World Society for the Protection of Animals (WSPA)

One of the primary goals when working to improve animal welfare standards worldwide is for countries to have comprehensive, well-enforced animal welfare legislation in place. Such laws provide a framework to ensure animals are adequately protected. However, although more countries are developing animal welfare legislation, effective enforcement remains a major challenge. This presentation outlines the main issues surrounding enforcement and proposes recommendations for ‘best practice’ which will ensure proper implementation of animal laws.

The lack of adequate laws protecting animals is often cited as one of the root causes of animal welfare problems. However, the existence of legislation alone is not sufficient to improve animal welfare – it needs to be properly implemented and robustly enforced. Legislators are motivated to see laws implemented, not only for the purpose for which they were created, but also because failure to ensure legislation is followed undermines its role in society. However, the practicalities of effective enforcement are often overlooked and poorly monitored.

At the World Society for the Protection of Animals, the Policy and External Affairs department manages an ongoing project looking at the content of animal protection legislation across the world, using indicators to monitor the existence and quality of formal safeguards for animals. It shows that the content and structure of laws regarding animal welfare vary greatly between countries. However, even if thorough legislation exists, without enforcement there will not be an associated improvement in the welfare of animals. At present we are considering a system of monitoring enforcement on a global scale which would work in conjunction with the current legislation research project.

In researching the area of enforcement, the following ten factors have been identified as necessary for effective enforcement of animal welfare legislation: the adoption of suitable legislation; relevant government structure and supportive government; appropriate consequences for breaching or abiding by the law; clear responsibility for enforcement; education of animal welfare issues and the law; allocation of sufficient resources; cultural appropriateness and relevance; societal support for the legislation; mechanisms to monitor enforcement and process for amending policy instruments.

This presentation will consider these factors in detail and draw out recommendations which can be created for Governments seeking advice to create new animal welfare legislation, or for those countries wishing to improve enforcement of their current animal protection laws.

## Communication and cooperation on the juridical and veterinary level – key element for effective enforcement

### Jan Vaarten

Executive Director, Federation of Veterinarians of Europe (FVE), Belgium

For an effective implementation of rules and standards in society, it is essential that these rules are known and understood and that they have the support of large groups of people – people who can be persuaded to follow these rules by means of the proverbial carrot. However, generally speaking, the carrot needs to be backed up with a stick, the stick of enforcement. If no such measures are taken, people ignoring the rules will continue to do so, and their numbers will be likely to increase.

The effectiveness of enforcement measures is closely related to the chances of offenders being caught, the chances that this will be followed by a successful legal action against them, and the severity of the measures taken. The quality of the legislation, together with the quantity and quality of the resources available for supervising, are critical factors in the effectiveness of the legislation.

Looking more closely at animal welfare related legislation, the situation is further complicated by what one could call language and interpretation issues. Public concerns, legal texts, scientific articles, the interpretation of welfare related symptoms and the assessment of an animal's well-being are not easy to translate from one into another. The facts needed for clear and convincing proof in a juridical procedure have to be extracted from observations made of the animals and the circumstances in which they live. In particular, the assessment of animal related welfare criteria can be very challenging.

Special juridical knowledge and expertise are needed to develop, draft and use legal provisions for the protection of animal welfare. At the same time, other specific knowledge and skills are required to assess how animals cope with the situations and

conditions they face and how much these affect their well-being. Since the combination of both fields of expertise in one person is extremely rare, it is obvious that communication and collaboration between legal and veterinary professionals is indispensable.

During each step of the whole process, from the early stages of development of animal welfare legislation through to the application of relevant articles on individual cases, communication and cooperation between the two fields is indispensable.

Veterinary practitioners, who work at the interface between the interests of the animals, their owners and society, are in a key position to explain and communicate these different interests – to diagnose the welfare status of the animals, to speak with the owners about the animals' needs, to explain and advise on the implementation of relevant legislation, to report back on practical experiences regarding the implementation of the legislation, as well as on animal welfare problems and infringements of the legislation in force.

Changing societal expectations with regard to the roles and responsibilities of the veterinary profession require a clear and up-to-date legal framework for the veterinary profession, its responsibilities and the mandate necessary to fulfil these. In particular, in cases where the public interest prevails over the interest of an individual animal or individual client, the mandate should be clear, recognised and supported by the authorities.

## Strengthening enforcement by governmental, legal and civic tools

### Madeleine Martin

Commissioner of Animal Welfare in the State of Hessen, Ministry for Environment, Energy, Agriculture and Consumer Protection, Germany

First of all, we have to look at the different reasons for lack of compliance or unsatisfactory compliance with animal welfare related European legislation in the Member States. These include clearly missing formulated directives and regulations at the EU level, financial or personnel capacities at the respective local, regional and national offices in the Member States, lack of knowledge in the Member States, lack of preparedness to manage and resolve conflicts on the part of the relevant responsible person at the local level.

Regarding solution strategies, there are various possibilities for solving these problems. Some examples include applying new management tools like Quality Management within the administrative bodies, establishing expert departments for animal welfare in the prosecution area, specific chambers in the courts of justice, establishing a class action lawsuit in the interests of animals – of the kind that has successfully existed for many years in Germany in the field of environmental law and enforcement – or regional Animal Welfare commissioners.

Nevertheless, enforcement can only be implemented successfully if there are politically responsible people active at these different levels – people who actually want the enforcement to be effective.



## Consumers' decision on visible animal friendly products as enforcement support

### Marijke de Jong

Senior Policy Adviser – Livestock, Dutch Society for the Protection of Animals, The Netherlands

In 2007 the Dutch Society for the Protection of Animals ('Dierenbescherming') launched a label to appear on more animal welfare friendly products. It is called the 'Better Life' label, and is based on three levels of animal welfare, indicated with one, two or three stars. The more stars, the better the welfare of the animals. One star means a significant improvement of animal welfare, above minimum legal requirements: the most important specific welfare problems are tackled. Two stars mean free range and that some other further improvements are made. Three stars are for organic products or products from animals with a comparable level of welfare. An example of the latter is the Roundel stable for laying hens, which is not organic but nevertheless has been granted three stars.

The aim of the Dierenbescherming in introducing the Better Life label is to improve the welfare of a large number of animals. In order to reach that goal, it was necessary to introduce a segment in the market between regular livestock products with the minimum animal welfare level, and organic with the highest animal welfare level. The price difference between regular and organic meat and eggs is large, especially for chicken meat. For a lot of consumers and farmers this gap is too large, and so the percentage of organic products on the market is relatively small. By substantially broadening the range in supermarkets of more animal-friendly livestock products which are recognisable and reliable, more consumers become aware of the animal welfare issues and will be willing to pay more. Increasingly the welfare-friendlier products should replace the regular products. With a label on the package from a well-known organisation which is trusted by the public – as the Dierenbescherming has proved to be – indicating in a simple way the level of animal welfare, the label can substantially increase the consumption of more animal-friendly products.

The standards of the Better Life label are based on scientific research, expert opinions, other animal welfare labels and legislation, and were set up in consultation with farmers, the industry and supermarkets. The standards of the Better Life label are audited by independent, accredited inspection bodies. The inspections are carried out on the farms and through the whole chain – such as slaughterhouses, egg packing stations, processing plants – up to the moment when the Better Life label is put on the package. New farms get an entrance inspection before they are allowed to produce for the label, and receive a certificate for one year. Every year they are audited. This is combined with the audit which takes place every year for an acknowledged quality assurance system, like IKB (Dutch) or KAT (German). The organisation of the authorisation procedure for the Better Life label is performed by a separate organisation. This organisation takes in new applications for the label and sees to it that the inspection organisations perform the audits, provide certificates and impose sanctions where necessary. The Better Life organisation manages a database with the addresses of all the farmers, businesses and supermarkets and all the inspection reports. Based on these reports, risk-based shadow inspections can be performed.

Five years after the introduction of the Better Life label to the market, the label has proved to be a success. Every year the number of animals with a better life has (more than) doubled, as has the turnover. Many farmers keep animals according to the Better Life standards and many businesses sell products with the Better Life label. In most supermarkets in the Netherlands a broad range of products with the label are on sale.

The Better Life label is now well accepted by farmers, companies, supermarkets and consumers, and there has been a lot of attention in the media. Different studies amongst consumers show that they recognise and understand the Better Life logo. About 50% of consumers in the Netherlands say that they are willing to pay more for more animal-friendly products.

## Information, Education and Training on Animal Welfare – Towards a common EU-wide concept of responsibility for sentient beings

### Silvia d'Albenzio

Senior Training Manager, Istituto G. Caporale Teramo, Italy

Animal Welfare represents one of the most relevant scientific areas Istituto G. Caporale is focused on. An Animal Welfare programme was formally established in 2003, when the Animal Welfare Research Centre was set up. Since the adoption of that strategy, Istituto G. Caporale has spread animal welfare culture mainly through research and training, but also through mass dissemination to the public at large and different stakeholders.

The highest international acknowledgement of Istituto G. Caporale's Animal Welfare programme came in 2004, when the OIE awarded it the mandate of Collaborating Centre for Veterinary Training, Epidemiology, Food Safety and Animal Welfare.

In the last two decades, Istituto G. Caporale has invested consistently in testing innovative training methods, developing learning programmes and validating training management models capable of responding to the ever-changing and constantly increasing demand for veterinary training at the international level, mainly focusing on official veterinary services. Animal Welfare is one of the main focuses of interest, not only aiming to satisfy the assessed and known learning demands of official veterinarians, but also trying to address solutions to anticipate future needs.

Nowadays, all practicable solutions should be adopted to enhance the spreading of knowledge and sharing of expertise not only at the European level, but worldwide. Traditional training methods such as courses, workshops, seminars and conferences represent unique opportunities for knowledge sharing, but they also show a number of undeniable weaknesses that have to be taken into account when/if a mass approach has to be adopted.

New training methodologies based on Information & Communication Technologies (ICT) – such as e-learning – might overcome some of these relevant shortcomings: access of limited number of final beneficiaries, logistics barriers and costs.

Innovation also offers a significant contribution to learning processes through social networks, scientifically applied for facilitating web-based knowledge transfer within peer-to-peer collaborative communities.

A combined approach to information, education and training on Animal Welfare issues probably represents the most appropriate strategy, in which different classic and modern methodologies are blended.

## The Legislative Procedure and the Laying Hens Decision of the German Federal constitutional court

### Christoph Maisack

President

German Juridical Association for Animal Welfare Law (DJGT); State Veterinary  
Officer Baden-Württemberg, Germany

In Germany there is a long history of legal discussion of the animal welfare conditions of laying hens, starting in the 1970s. In several civil and criminal court decisions, the keeping of laying hens in standard battery cages was defined as cruelty towards animals: however due to a lack evidence of criminal guilt, was no keeper sentenced.

In 1987 Germany's Laying Hens Regulation was established, and in 1990 the State of North Rhine-Westphalia made an application to the Federal Constitutional Court against the keeping conditions laid down in that Regulation. In 1999 the judgement of the German Federal Constitutional Court confirmed that the Laying Hens Regulation of 1987 was unconstitutional regarding the keeping standards, infringing Art. 2 No. 1 German Animal Welfare Law, whose content was close to the text of Directive 98/58/EEG Annex 7, Sentence 2. The principles developed by the German Federal Constitutional Court for interpretation of Art. 2 No. 1 German Animal protection law should also be applied for the interpretation of Annex No. 7. However, this decision could be taken exclusively by the European Court of Justice.

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Based on a political change at the federal level, the Laying Hens Regulation was revised in 2002.

In 2006 a new type of cage – the so-called “Kleingruppenhaltung” (“small-group cage”) – was permitted by a new adaptation of the German Animal Welfare Farm Animals Regulation, and conventional cages were permitted only until 31 December 2008. Again, one federal state, this time Rhineland-Palatinate, filed a claim to declare these keeping conditions unconstitutional. The court decision in 2010 was based on the infringement of formal proceedings, since the animal welfare committee had not been consulted correctly and the result had already been decided. This meant that the German constitution’s goal of animal welfare (Art. 20a Grundgesetz), whereby the balance of interests must be discussed in an open way, had not been considered properly.

In February 2011 the German Agriculture minister announced the ban on the Kleingruppenhaltung, and in May 2011 this ban was legally implemented – however with a transition period until 2035. The second chamber of the Parliament applied for a reduction of the transition period to 2023, but the Agriculture minister has not yielded to this demand.

The current legal situation is as follows: permission for the Kleingruppenhaltung ended formally in 31 March 2012. New farms with Kleingruppenhaltung are not permitted, but existing farms can be maintained – which currently means 14% of all laying-hen farms in Germany.

The critical aspect – beyond the ethical animal welfare concerns – is the legal uncertainty prevailing in Germany, as each court of justice within the 16 federal states can decide independently whether or not a farm can continue farming with the Kleingruppenhaltung, under what conditions and for how long.

Member States need clear formulation of EU directions and regulations and specific enforcement conditions.

## The enforcement preparation of the EU Commission after the laying hens experience

### Andrea Gavinelli

Head of Unit Animal Welfare, DG SANCO G2, European Commission, Belgium

The political decision to ban battery cages was taken in 1999 on the basis of strong scientific evidence proving that the welfare of laying hens is severely compromised in these cages. It was a decision taken jointly by the Member States, the Commission and the Parliament. To enable farmers to adapt and to invest in new housing systems, a transitional period of 12 years was granted.

This transition to enriched cages or alternative housing systems represents a milestone for animal welfare. The phasing out of un-enriched cages was also a result of pressure from concerned citizens/consumers. The ban on un-enriched cages represents the first major step to higher animal welfare standards, and it is important to show that the Commission takes the issue seriously. It is furthermore important to maintain consumer confidence in EU decision-making and to ensure that those farmers who have invested in time are not disadvantaged.

However, despite the long transitional period provided it was noticeable by 2010 that sufficient progress had not been made by a number of Member States. Today, almost half a year after the ban came into force, around one third of the Member States have yet to completely phase out un-enriched cages. Infringement procedures are therefore still ongoing.

There are lessons to be learned from the laying hen experience:

In cases where the transitional period lasts for many years, a step-by-step implementation plan with set deadlines for each step should exist. The Commission should be granted powers to monitor current status or progress made by each Member State and to ask for data.

Additionally, to facilitate Member States' work, there should be tools to disseminate information on the new requirements to the farmers who have to make the change. Training programmes could perhaps be made available as well, which would include information on the different alternative systems that they need to invest in for the future.

Also, an advantage existed and still exists with regard to laying hens, as it is possible to trace eggs due to the mandatory labelling of eggs. Thus all eggs must be marked according to housing system and since 1 January 2012 eggs marked with the number 3 should derive from legal cages. This labelling scheme also enables Member States to trace eggs and egg products and to remove illegal eggs from the internal market. In this manner it is possible to ensure that farmers who have not made the transition do not profit by undercutting those farmers who have invested in new systems. However, this labelling system for eggs is unique, and no other labelling system pertaining to animal welfare exists. How the mandatory labelling scheme could be used to advantage in others cases is for this reason difficult to assess.

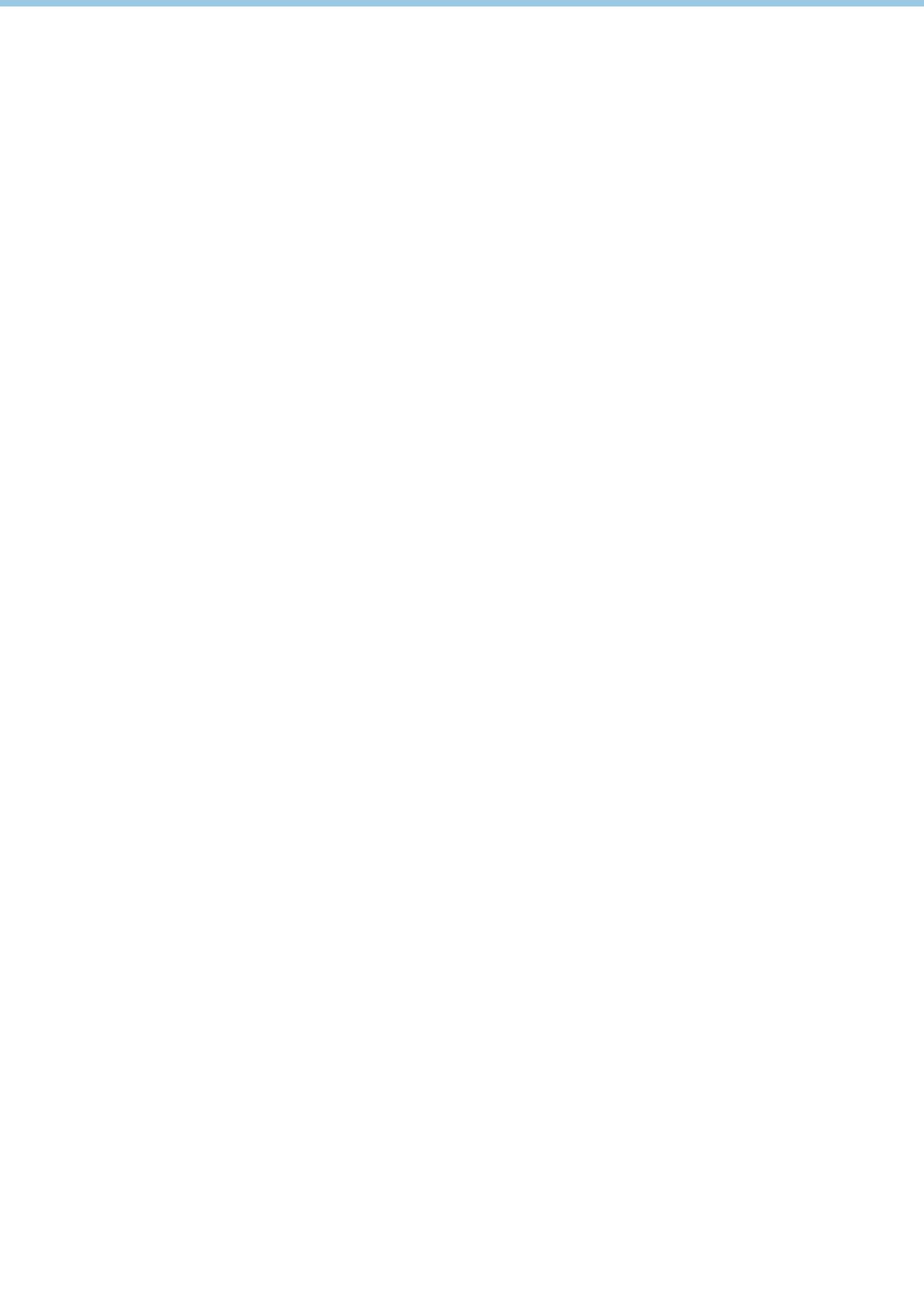
The Commission has assessed whether some of the experiences gained on laying hens may be used to develop a strategy for the proper implementation of the up-coming ban on individual sow stalls. Given some of the differences and the fact that the bans are relatively close in time, only a few elements have proved useful. Throughout 2012 the Commission is asking the Member States for continual updates on the degree of implementation and on actions they are taking to introduce group housing of sows. The Commission has furthermore stated that infringement proceedings will be launched in January 2013 against non-compliant Member States.

## The infringement procedures - Fines for non compliance

### Günter Wilms

Legal Service, European Commission, Belgium

The rule of law requires that legislation is respected. In order to ensure compliance of Member States with EU legislation, the European Commission disposes of a powerful tool: it can ask the European Court of Justice to impose financial sanctions on non-compliant Member States. The presentation will concentrate on the main aspects of the procedure, the different types of sanctions and how they are calculated.



## Financial incentives to facilitate enforcement

### Véronique Schmit

Executive Policy Officer, Eurogroup for Animals, Belgium

The EU Common Agricultural Policy (CAP) includes several mechanisms which can be used to improve enforcement with legal standards on animal welfare. Some of the measures aim at helping farmers to adapt to new standards, while others provide support for farmers who decide to implement animal welfare commitments going further than the minimum legal provisions, thereby ensuring that these are respected in the first place. Through rural development, farmers have the possibility to participate in training or to receive advice on how to improve their understanding and skills in relation to respecting the minimum legal standards of animal welfare included in cross-compliance, or concerning national animal welfare standards. Support can also be given for investments made to modernise a farm with the purpose of improving animal welfare.

In addition, through cross-compliance, farmers who do not respect the minimum legal requirements of the pigs, the calves and the general farm directives run the risk of seeing their CAP subsidies reduced partially or totally withdrawn. This mechanism of conditionality is thus providing an incentive, albeit negative, for farmers to respect the law.



## Specific problem of enforcement: Illegal eggs and the Kleingruppenhaltung (small group housing)

### Gabriel Paun

Director of Campaigns, VIER PFOTEN International, Austria

For the husbandry of laying hens, there are three types of rearing system:

- non-enriched cages
- enriched cages
- non-cage systems

The non-enriched cages, so-called “conventional cages”, provide each laying hen with 550 cm<sup>2</sup> of space. This type of husbandry has been banned in all EU Member States since 1 January 2012. In the so-called “enriched cages”, a laying hen is given a living space of 750 cm<sup>2</sup>. The third way of keeping laying hens is the non-cage systems like barn or free-range husbandry.

There are two major problems that occur with Council Directive 1999/74/EC: the delay in the implementation and the escape of the hidden eggs.

The delay in the implementation of the Directive might lead to a negative precedent for other Animal Welfare initiatives. Furthermore, farmers who have made efforts to comply with the ban by investing in alternative systems in time have to face unfair competition and price disruption, and therefore severe market disadvantage, as against farmers who still illegally trade using battery cages. What is more, it leads to confusion among consumers.

Eggs are part of the ingredients in a lot of products. About 30% of the EU production of eggs is consumed as processed egg products in the form of egg powder, liquid eggs or

whole eggs. These hidden eggs may be found in pasta, sauces, mayonnaise, sweets, liqueurs or as coloured Easter eggs. Producers of processed food do not have to disclose the origin of the eggs. Thus, consumers do not have an overview of which type of husbandry they are supporting when buying certain food products.

The above-mentioned problems show that Council Directive 1999/74/EC is made and implemented in a way that gives space for confusion and enforcement problems. It is incomplete.

In order to solve these problems, the existing labelling system should be extended to reach full compliance and correct the enforcement of Council Directive 1999/74 EC. At the moment, eggs are labelled with the numbers 0 (organic), 1 (free-range), 2 (barn) and 3 (cage). Consumers should be able to find out the type of husbandry in all products containing processed eggs. This would increase the speed of implementation of the ban on conventional cages for laying hens and satisfy the freedom of choice for consumers. From the animal welfare point of view, the advantage would be seen in reduced production of eggs in cage systems, which would mean a better life for millions of laying hens. And furthermore it would reduce the import of eggs from third countries.

FOUR PAWS conducted an opinion poll on the labelling of eggs in food products in 15 European Countries. Considering the results of this opinion poll, it cannot be denied that most consumers want an extended labelling system.

## Austria – the implementation of the cage ban by an integrated conception

### Claudia Wöhry

Jurist for animal welfare affairs, Austrian Federal Ministry of Health, Department II/B/10 -  
Veterinary legislation, animal health and trade in live animals

In Austria, the ban on cages for laying hens already entered into force on 1 January 2009,  
three years before Council Directive 1999/74/EC became effective for all EU Member  
States.

Overview of the relevant Austrian legislation pertaining to laying hens:

- § 18 (3) Animal Protection Act
- Annex 6 of the 1st Regulation on the Keeping of Animals (*1. Tierhaltungsverordnung*)
- For amendments concerning farm animals, the Austrian Ministry of Health has to achieve an agreement with the Federal Ministry of Agriculture, Forestry, Environment and Water Management

Concept for the implementation of the ban before 2009:

- The ban was already legally stipulated in the Animal Protection Act 2005
- 2005-2008: the food store chains abandoned eggs from hens in battery cages
- 2008: CCA discussed the issue during its regular meetings with the heads of provincial veterinary services several times, based on surveys in the provinces
- A common approach was adopted with regard to the enforcement measures to be taken in the case of farmers not keeping to the ban

- Aids paid by the Federal Ministry of Agriculture to promote the changeover
- Before the deadline for the phasing-out of un-enriched cages ended, all laying hen establishments with cage systems which were registered in the central database of the CA responsible for keeping the laying hen register (*Qualitätgeflügelvereinigung – QGV*) were checked and the animal keepers informed of the deadline
- After 1 January 2009, inspections of all farms which used to have un-enriched cages were performed, and two farms (one in Carinthia and one in Lower Austria) required subsequent enforcement action on behalf of the CA
- At the end of 2011, there were 1,856 farms with laying hens in Austria. 782 (42%) were free-range, 747 (40%) were barn, 17 (1%) were farms with enriched cages and the remaining 310 (17%) were organic farms. Since 2005 national legislation requires that no new farms with enriched cages can be put in operation and those already in operation may continue to operate for up to 15 years after they had been put in operation, but no later than 2020

In 2010 the Animal Welfare Council was reorganised. In addition to the Animal Welfare Council (*Tierschutzrat*), two other advisory bodies to the Minister of Health have been established: the Animal Welfare Commission (*Tierschutzkommission*) and the Advisory Committee on Enforcement (*Vollzugsbeirat*). The Animal Welfare Commission comprises two experts appointed by the Ministry of Health, two experts appointed by the Ministry of Agriculture and one representative from each of the parties represented in the Austrian Parliament.

The Advisory Committee on Enforcement comprises one representative from the Ministry of Health, one representative from the Ministry of Agriculture, the heads of the provincial veterinary services and the animal welfare ombudsman of the respective province which is chairing the conference of provincial governors. The Animal Welfare Council is the committee of scientific experts.

## Dog movement and trade in the EU – new legal perspectives

### Sophie Duthoit

EU Legal Research Officer, VIER PFOTEN – Stiftung für Tierschutz, Belgium

48.5 million is the number of dogs owned in European households. To this number should be added the 120 million stray and abandoned dogs living in Europe. Among this canine population, a significant proportion of them will have to cross intra-European borders to accompany their owners, or to be sold or adopted.

Facing the health risks which might occur due to these movements, and in order to simplify the movement of European citizens – the owners of these dogs – the European Commission adopted an “EU Pet Passport Regulation”, No. 998/2003 in 2003.

Following the rules of this regulation, every EU citizen moving within the EU with their own dog for non-commercial purposes has to present a Pet Passport, which certifies a valid rabies vaccination and identification by chipping. Concerning the commercial movement – trade – of animals, Regulation 998/2003 has briefly amended some older texts, related to trade of farm animals, to make them apply to trade of cats and dogs.

After several years it was evident that the enforcement of the Regulation was not satisfactory. The EU Commission, informed by Member States and by animal welfare organisations, recognised that the non-commercial movement of dogs in the EU has not been simplified: on the contrary, the legal situation is on the one hand too complex for EU citizens, and also leads to legal uncertainty, for example, in the differentiation between commercial and non-commercial purposes of transport. Finally the need for the registration of dogs is being intensively discussed, and the market with its traffic, and in consequence the illegal dog trade has increased.

Consequently, in 2012 the EU Commission has published a proposal to replace Regulation 998/2003 with another regulation, with the main goals of a better understanding of EU

rules for citizens, stronger sanctions and inspections. There are several positive aspects. Nevertheless, there are also deficiencies to be addressed to make the revision operational – to make progress as compared with the existing regulation... And a Europe-wide system of registration in the EU Member States has to be at least strongly recommended. The political goal is a culture of “Responsible Dog Ownership” – this means an appropriate number of owned dogs, owned by responsible and well informed owners. On the way to this goal, the revision has a chance to be one of the success factors in achieving better enforcement for healthy dogs owned by responsible owners.

## Specific enforcement problems of Regulation 998/2003 in Germany

### Max Walleitner

German Juridical Association for Animal Welfare Law (DJGT), Germany

This presentation wants to point out the specific enforcement problems and the legal uncertainty that exists in relation to the movement of companion animals in the so-called Pet Regulation (EG) 998/2003 in Germany. The problems are caused by an imprecise legal formulation and insufficient level of detail within the Regulation. German animal welfare charities save dogs - and cats - in other Member States or Third Countries and bring them over to Germany, to give them for adoption to other persons in the framework of a specific agreement. Ownership is not transferred in this case, but only the possession and the obligation to care for the animals.

In a recent decision of the Administrative Court of Schleswig Holstein was stated that in the case of transfers from other countries Regulation 998/2003 is not applicable, and that the case has to be examined at the light of the stricter rules both of Directive 92/65/EEC and of Transport Regulation EC 1/2005. This leads to legal incertitude.

The core legal problem is the interpretation of the distinction between private and commercial movements in Regulation 998/2003.

Precise terms, definitions and clauses at the EU level are needed in order to avoid legal uncertainty in the Member States.



## Identification and Registration as enforcement tool

### Paolo Dalla Villa

Head of Animal Welfare Research Laboratory, Istituto G. Caporale, Teramo, Italy

Companion animal population management in Europe is regulated at the national, regional or even municipal level, and dog identification and registration (I&R), often linked to zoonotic surveillance disease programmes and mandatory rabies vaccination, is promoted at the global level as a fundamental part of responsible pet ownership.

Several European countries have adopted the electronic transponder (microchip) as a unique way of dog identification, but a widespread implementation of integrated systems for data recording and management is still lacking. In Italy, the legislative framework regarding companion animal protection and dog I&R started in 1991, when a national law instituted dog regional databases (DRDBs). The dog national database (DNDB) was introduced later on, in 2003, along with the adoption of the microchip as the only system of dog identification and with the computerisation of the DRDBs. Thanks to the enforcement of these laws, dog I&R finally became a practical tool for the implementation of animal health and welfare legislation, yet some areas for improvement remain. Firstly, the communication between the regional and central databases is effected by sending periodic batch files. This organisational model leads to low efficiency and to mismatches between local and national data. Secondly, the amount of information that the DRDBs periodically provide to the DNDB is sparse and does not cover either the vaccinal status or the medical history of animals. These deficiencies lead to an impairment of the whole traceability system and weaken the potential of this tool for disease control and epidemiological purposes.

To further improve and harmonise the existing I&R system, in 2008 the Italian Ministry of Health adopted an “urgent and necessary ordinance” with the aim of strengthening the enforcement of the existing legislation, starting from the interoperability between DRDBs and DNDB. Thanks to its experience in DPM and in the management of livestock national

registers, the Istituto G. Caporale of Teramo (ICT) was asked by the Molise region to develop a tailor-made DRDB. For this purpose, the ICT developed a web-based information system: this easy-to-use infrastructure allows the current operating applications to exchange data via the web, without changing the pre-existing systems. Moreover, it allows the standardising of the operational procedures by obtaining a common and structured dataset, which enables the update of the DNDB, and hence ensures traceability at a national level. Since multiple web services can be connected together to make an integrated and comprehensive system, this approach could be the solution to collecting, storing and managing dog population data even at international level. Furthermore, this real-time interoperability model will allow a better traceability process without considerable effects of the renovation costs, and will offer an efficient tool to companion animal population management programmes.

## Live Feather Plucking: the EFSA report and consequences for enforcement

### Marcus Müller

Expert Campaigns Poultry, VIER PFOTEN International, Austria

Live plucking has been banned in the EU for more than a decade, nevertheless year after year hundreds of thousands of geese are victims of live plucking in several Member States of the European Union. The legislation is not clear, and this is used by parts of the industry to continue this cruel practise. The problem is so-called harvesting (of down). After widespread protests and public outrage in the EU by citizens represented by Animal Welfare organisations over the issue of live plucking in Hungary and Germany, the EU Commission became aware of the problem and mandated the European Food and Agriculture Agency (EFSA) with a report.

EFSA started expert hearings to examine the legal situation. The result was a report which does in fact support the legalising of feather-gathering with brushing methods. Unfortunately, farmers and authorities in goose-producing Member States interpreted the EFSA report as a 'green light' for live plucking. In consequence, after this heavily criticised position, live plucking continues to be common and is even increasing. Clearly documented cases of wounded and seriously injured plucked geese on a mass scale were ignored, using the excuse of the EFSA position and the permission to take feather and down from live animals.

Enforcement is the responsibility of local authorities, and obviously they very often cover up animal cruelty. Inspections of the EU are announced and therefore do not lead to a result. Authorities often have a lack of resources, motivation and knowledge concerning these activities. In consequence, in countries such as Poland, plucking machines created for dead (just slaughtered) animals are used for living birds.

In Germany, to give another example, a live-plucking machine was used for living geese for many years until animal welfare investigators stopped this illegal activity.

Furthermore, the result of the subsequent court case was an extremely low fine for the producer. This was the worst that could have happened for the animals, setting a very bad example for the business sector, motivating illegal activities and ultimately having the effect of inviting other producers to ignore compliance. This court case points out a tremendous lack of will at the juridical level – or a knowledge gap in respect of European Animal Welfare Law principles – to take into consideration Art. 13 TFEU (formerly Protocol No. 21 of the Amsterdam Treaty) and to impose adequate penalties on such producers.

Finally, the controversy on live plucking shows that legal uncertainty created by unclear legislation at the European level, giving more consideration to the interests of the producing industry than the field experience of farmers and animal welfare groups, is leading to enormous suffering in the respective Member States and serious animal welfare problems – not to mention the ignorance of the basic principle of Animal Welfare in the Lisbon Treaty (TFEU). And the solution could be so easy...

## Live transport and enforcement – an NGO perspective

### Peter Stevenson

Chief Policy Advisor, Compassion in World Farming (CIWF), United Kingdom

Regulation 1/2005 and Regulation 882/2004 on official controls provide the instruments needed for effective enforcement of the legislation on the protection of animals during transport but they are poorly used by many Member States. Regulation 882/2004 requires competent authorities (CAs) to carry out controls in accordance with documented procedures. These must contain information and instructions for staff performing controls.

The main non-compliances include: deficient journey logs, often with unrealistically short estimated journey times, no food, water or rest given during long journeys, insufficient floor space and headroom, failure to meet standards for journeys over 8 hours, transport of unfit animals. CAs should give instructions to local officials as to how to check that the requirements of Regulation 1/2005 are being met and the action to be taken in the event of non-compliance. It would be helpful for the Commission to produce model written procedures which Member States could draw on.

The requirement to use satellite navigation systems has not delivered the anticipated improvement in enforcement. Implementing measures are needed to require systems to have the capacity to transmit data in real time to an EU database to which CAs have access. This will help CAs to verify if journeys are being carried out in compliance with the Regulation.

More effective liaison needs to be developed between Member States (MS). Regulation 1/2005 requires MS of transit or destination, when it discovers a breach, to notify the MS of departure, the MS that granted authorisation to transporter, the MS that granted certificate of approval for vehicle, and MS that granted driver's certificate of competence. The purpose of this is to prevent recurrence of breaches.

Penalties for breaches are often far too low. By law they must be “effective, proportionate and dissuasive”. Commission must ensure that penalties are effective and dissuasive.

Many MS are not properly complying with their obligation to submit to the Commission an annual report on their inspection activities together with an analysis of major deficiencies detected and an action plan to address them. These reports, analyses of deficiencies and action plans, if taken seriously by the MS and Commission, would be valuable tools for improving enforcement.

Non-governmental organisations (NGOs) are playing a constructive role. Several NGOs deliver training courses to MS police. NGOs are also working with trade bodies to improve compliance, for example in the production of *Practical guidelines to assess fitness for transport of adult bovines*.

Enforcement would be easier if long journeys were brought to an end. The Federation of Veterinarians of Europe states that “Animals should be reared as close as possible to the premises on which they are born and slaughtered as close as possible to the point of production”. In order to convert this principle into practical reality, a maximum overall limit of 8 hours should be placed on journeys to slaughter or for further fattening.

## Pig Welfare – Ways to Compliance?

### Oscar Dignoes Torres-Quevedo

Veterinary Officer, Animal Welfare Unit of the Ministry for Agriculture, Food and Environment, Spain

Em ist ut et eiciditate rerum endit et am sum facepti squatur ressect urepuditas Spanish pig farmers are, like all their colleagues in the other EU Member States, facing a great challenge this year: the adaptation of their production structures and husbandry practices to the new animal welfare standards that will be obligatory as of 1 January 2013.

The phasing out of individual stalls for pregnant sows is not the only challenge that Directive 2008/120/EC has set, but it is surely the most visible one. Sows and gilts are to be kept in groups during a period starting from four weeks after the service to one week before farrowing. That sentence is not very long on the page and is very impressive when put into a headline, but it implies an extraordinarily big structural and management change if we descend to the real world of an actual pig farm.

We must bear in mind that the aim of this legislation is to improve the welfare of European sows and gilts and to meet the demands of a significant proportion of European citizens. On the other hand, we must also take into account that the adaptation to these requirements has an important economic impact on our farmers, their families and employees, and that unfortunately they are obliged to face this challenge in a context of economic and financial difficulties which nobody predicted in 2002. This process may also have a relevant impact on the market and even on individual consumers, as we are already experiencing in eggs due to the banning of un-enriched cages in laying hens.

The adaptation also implies an extraordinary effort for the public administration in general, and for the veterinary authorities in particular. The Spanish Government, as well as the Spanish regional authorities, is fully engaged in our common objective of ensuring full compliance with Directive 1008/120/EC by the established deadline.

With this clear objective in mind, a complex implementing framework has been established. This framework, embodied in the Road Map for the adaptation of the pig sector to the welfare standards of Directive 2008/120/EC, comprises measures of very different kinds, from legislative instruments to detailed control plans and active dissemination of information among all the stakeholders. A great administrative effort has been made in order to obtain detailed information about the situation of each farm with 10 or more sows. At this moment, the central authority is coordinating with the regional authorities the publication of a legal instrument that would enable compliance while avoiding undesired and undesirable consequences (like for example the culling of pregnant sows in January 2013).

We hope that these measures, the engagement of the Spanish pig producers and the coordination among all competent authorities and stakeholders will get us to the desired result: full compliance by 1 January 2013.

## Protection of Animals Used for Scientific Purposes: Enforcement Consideration

**Mark Jones/Emily McIvor**

Executive Director, Humane Society International (HSI), United Kingdom

Directive 2010/63 EU on the protection of animals used for scientific purposes provides enforcement challenges as well as opportunities. As well as setting out a number of clearly defined requirements, the directive stipulates that ‘the principles of replacement, reduction and refinement should be considered systematically’ (Recital 11), and goes on to identify specific aspects within the scope of the Directive to which these principles must be applied. However, correct application of the 3Rs is necessarily dynamic and responsive to developing scientific and animal welfare knowledge, so the Directive foresees animal breeders, suppliers and users, as well as regulators, committing to the shared objective of minimising harm caused to animals at all stages of their lives, and replacing and reducing their use whenever possible. While this is a laudable aim – backed up by legal requirements – achieving such a culture of compliance is far from easy and monitoring success is almost impossible.

Sound enforcement should be underpinned by regular inspections and measures to ensure transparency. Responses to the Commission’s consultations on revision of Directive 86/609 indicated that animal welfare organisations as well as members of the public lacked confidence in authorities to enforce existing legislation and that this was in part due to excessive secrecy surrounding the use of animals in laboratories. Transposition of Directive 2010/63 EU provides an opportunity for Member States to improve reporting on inspections and levels of compliance.

The inspection regime described in Article 34 of the Directive requires breeders, suppliers and users of non-human primates to be inspected at least once a year, and other establishments to be inspected ‘regularly’ applying a risk-based system with ‘an appropriate proportion’ of the inspections being carried out without prior warning. This minimum requirement is clearly not sufficient to ensure public confidence and it is hoped

that Member States will exceed the minimum wherever possible. The European Commission may undertake ‘controls’ of the ‘infrastructure and operation’ of national inspections when concerns arise (Article 35), and Member States will report to the Commission on inspections and compliance issues (Article 54). It is necessary for the reports to the Commission to be made public, along with details of infringements and penalties applied.

Along with potential for inspections to be sparse and poorly reported, another major problem to be faced is the potential for differing application of severity classifications. A number of measures depend on the severity classification assigned to a project before authorisation is granted, yet systems to ensure uniform interpretation of the upper and lower limits of each classification are needed. It is hoped that the Commission will actively monitor the way in which severity classifications are assigned in the Member States because failure to do this could result in wrongly assigned projects being inadequately regulated.

Application of replacement, reduction and refinement methods as required by Articles 4 and 13 depends to a large extent on good communication, so networks connecting the ‘single contact point’ described in Article 47 to designated veterinarians (Article 25), personell (Article 23), Animal Welfare Bodies (Article 27), National Committees (Article 49) and the Commission will be essential.

## Expectations of veterinarians in the Member States with regard to the FVO inspection system

### Christophe Buhot

President, Federation of Veterinarians in Europe (FVE), Belgium

The Food and Veterinary Office (FVO) was established in Ireland in September 1997, and has been located in Grange since 2002. It is Directorate F of DG SANCO.

The FVO is responsible for monitoring compliance with EU legislation in the fields of food safety, animal health, animal welfare and plant health. Through its audits and missions, it is therefore the “eyes and ears” of the Commission. It also helps EU policies to be developed and refined with the lessons from on-the-ground audit findings. It provides the Commission with an effective and transparent control systems and stimulates enforcement in the fields of food safety, animal health, animal welfare and plant health.

Animal welfare topics are mainly farm animals (laying hens, broilers), transport and slaughter, which are linked with food safety and trade; at present, companion animals are not included (yet).

Animal welfare definitely is a societal issue, and perfectly falls within the field of competence and expertise of the veterinary profession. However, in a number of cases veterinary expertise alone appears to be insufficient to get things right. In these cases, the veterinarian needs the support of the national competent authority to encourage animal owners and keepers to take action. To ensure that national authorities fulfil their role and adhere to EU legislation, the FVO’s missions, expert reports and recommendations are indispensable. Their objective and transparent evaluation of national Veterinary Services, including the quantity and quality of resources, are critical for what can finally be achieved in the field, at the level of the animals.

The 2010 evaluation of the Community Action Plan on the Protection and Welfare of Animals found that the scope of the EU welfare legislation should be extended and other groups of animals could benefit from higher welfare standards. This can be simply achieved by the action of good veterinary services in each country, based on complementarity and collaboration between public and private veterinarians.

## Expectation of academic jurists to the legislative bodies

### Jean-Pierre Marguénaud

Professor, Law and Economical Sciences University, Limoges, Director, Revue Semestrielle du Droit Animalier (RSDA), France

First, this presentation will not give an overview of all academic jurists' expectations on the sensitive topic of animal welfare, as most of them do not really care about the issue. However, the presentation does convey the expectations of a French Law teacher, who is not the only one in France to care about animal welfare, but one who would be very lonely if he had failed to bring together some willing colleagues to create, in 2009, the Biannual Review of Animal Law (Revue Semestrielle de Droit Animalier, RSDA).

Some of these colleagues have shown in their own way, by criticising the concept of animal welfare at the national and European level, that this concept is more considered to be an absence of discomfort, which is not the same as animal welfare. It is necessary, however, to show the importance of the link between the juridical protection of animal welfare and the recognition of animals as sentient beings. In this regard, it should not be forgotten that it is only with the coming into force of the Lisbon Treaty that the European legislative explicitly requires the respect of animal welfare, since animals are sentient beings.

According to this, what we should expect from the legislative body is the implementation of a clear legal status. Otherwise, the recognition of animals as sentient beings will only be a red rag instead of a real social issue which would upset breeders, transporters or scientists using animals for testing.

In the short-term view, and in a more pragmatic way, we can expect from the legislative body a better transposition and implementation of Directive 2010/63 of 22 September



# ENFORCEMENT OF EUROPEAN ANIMAL WELFARE RELATED LEGISLATION



12-13 June 2012  
Brussels



2010 on the protection of animals used for scientific purposes, where the Preamble declares that animal welfare is a value of the European Union.

## Expectations of Lawyers in practice to the EU enforcement system and to Competent Authorities

Noor Evertsen

Legal Consultant, Dier&Recht, The Netherlands

The development of new, simplified legislation for animal welfare is one of the proposed actions in the EU Strategy for the Protection and Welfare of Animals 2012-2015. Lack of enforcement of *existing* EU legislation, however, is considered one of the main problems compromising the welfare status of animals in the EU. The establishment of general principles in a revised EU legislative framework “may ultimately facilitate enforcement”, but it will probably take more time for this framework to take shape than the urgency of strengthening enforcement allows. What can be done in the short term?

The development of a network of reference centres for animal welfare, which aim to support the competent authorities with information, is a promising point of departure – if the offer is expanded beyond technical information.

The experience and expertise gathered by practising lawyers, especially those associated with non-governmental organisations (NGOs), might be part of the solution. Yet these professionals are not mentioned as possible partners in relation to information centres or education strategies.

They are knowledgeable not only in EU-based welfare legislation but also in the national legislation of the Member States, they routinely track successes and omissions in enforcement, they elicit and study case law, they have long worked for companion animals and they are dedicated to the legal advancement of animal interests.

Some NGOs are ready to share their experience with enforcement officials, others might be unwilling to compromise their independence. But it seems a waste of effort not to cooperate, and the competent authorities should take the initiative to close this communication gap.

Lawyers expect the competent authorities – of course – to pursue transparency and accountability, to pay more attention to animal welfare, to show commitment to permanent education, to retain their independence. They are supposed to work like that, but in the experience of (NGO) lawyers they are not always living up to expectations. And in the not too distant future, we would want them to take part in the rethinking of the position of animals in economics and the legal system.

## Expectations of the European Commission with regard to Member States' structures of enforcement

### Francesca Volpi

Legislative Officer Enforcement, DG SANCO E5, European Commission, Belgium

The responsibility to enforce EU animal welfare legislation lies with Member States, whose authorities monitor and verify that the relevant requirements are effectively implemented, complied with and enforced across the Union. In doing that, Member States verify that operators' activities, animals and goods placed on the EU market are compliant with EU animal welfare standards.

For such a key task to be effectively accomplished, Regulation (EC) No. 882/2004 provides the Member States with a broad range of tools to assist and guide them in the enforcement activities. Proper enforcement of animal welfare rules depends on the capacity of Member States to use the instruments established by EU law, and in particular those laid down in Regulation (EC) No. 882/2004, efficiently and at their full potential.

The main instruments at the disposal of Member States are the preparation of a plan of controls to be carried out at a frequency depending on the risk, a set of enforcement actions that can be taken by competent authorities within their territories and a mechanism for administrative cooperation between Member States in case of cross-border non-compliance.

Article 54 of Regulation (EC) No. 882/2004 provides the Member States with powers and authority to take action in case of non-compliance identified by their competent authorities, with a view to eliminating such non-compliance. The Article lists a number of possible measures that can be taken by competent authorities for that purpose, among which are possible restrictions or prohibition of the marketing of certain products, but also the suspension or withdrawal of the establishment's approval, the suspension or

closure of the business, and any other measure the competent authority deems appropriate.

Ensuring enforcement of animal welfare legislation is extremely challenging because often non-compliances cannot be detected by checking animals and their products. Therefore, particular attention should be paid in taking measures which are appropriate but also proportionate to what is necessary to ensure the enforcement.

Thus, the prohibition of placing on the market products produced through a non-compliant process could be considered an appropriate measure to obtain compliance. The same goes for the suspension or closure of the business.

Considering the purpose of the measure, competent authorities would only be able to issue measures under Article 54 in respect of operators which are subject to their enforcement powers and which are found to be non-compliant. The same applies to sanctions issued in accordance with Article 55 of the same Regulation.

When the authorities of a Member State have reasons to believe that serious non-compliances are ongoing in another Member State which require action from them or from the authorities in that Member State in order to ensure full implementation of the animal welfare rules, they should resort to the mechanisms for administrative cooperation between Member States. In other words, their efforts should focus on apprehending the source of the non-compliance, and on asking the competent authorities in the Member State of origin to take action to terminate it.

## Expectations of EU citizens represented by NGOs to the EU and the Member States

### Sonja van Tichelen

Director, Eurogroup for Animals, Belgium

European citizens expect animals to be treated as sentient beings.

However, minimum legal standards are often not sufficient to ensure that every animal's basic requirements are met. Therefore the enforcement of these minimum rules is not the only answer. Enforcement is only one element of an animal welfare strategy, and it needs to be linked with other measures such as training, information dissemination, sharing of best practice and, where needed, funding to create lasting improvements in animal welfare.

In times when resources are scarce it is also necessary to look at new approaches, new partnerships between authorities, NGOs and the production sector involved. It is vital that new technology and alternative solutions which involve and mobilise the producers and the broader industry are adopted and encouraged.

In this respect, NGOs have an important role to play in highlighting non-compliance and gathering evidence, but also in delivering expertise, training and assistance to authorities.

In other EU policy areas, such as the environment<sup>i</sup> and consumer<sup>ii</sup> protection and the fisheries<sup>iii</sup> policy, some interesting examples are already in place which can be used as a basis for a much-needed animal welfare enforcement strategy.

<sup>i</sup> Environment IMPEL European Network for the implementation and enforcement of environmental law

<sup>ii</sup> [http://ec.europa.eu/consumers/enforcement/docs/Communication\\_en.pdf](http://ec.europa.eu/consumers/enforcement/docs/Communication_en.pdf)

Communication Com 2009 (330 final) on the enforcement of the consumer acquis

<sup>iii</sup> Council Regulation 1224/2009 establishing a Community Control system for ensuring compliance