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Welfare of farmed animals in European Union law: the challenging protection of sentient beings in the agricultural sector

**Dobrostan zwierząt hodowlanych w prawie Unii Europejskiej:
wyzwania dla ochrony istot czujących w sektorze rolnictwa**

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Abstract: This paper examines the protection of farmed animals under European Union law, considering the tension between their formal recognition as sentient beings in Article 13 of the Treaty on the Functioning of the European Union and their concurrent classification as agricultural products under the same Treaty. This dual status raises the central question of how law attempts to reconcile economic interests of the agriculture system driven by productivity and our ethical duty to ensure good welfare of animals in human care. To address this, historical and analytical legal methods alongside an interdisciplinary approach are employed to explore the evolution of farmed animal protection in primary and secondary law and to assess the practical implications of this legal framework on the lives of billions of animals farmed within the EU. The findings indicate that the current legislative framework is outdated from a scientific point of view, and its drafting hinders effective enforcement at the Member State level. Furthermore, the Common Agricultural Policy's persistent support for intensification limits progress in animal welfare and pushes it lower on the list of political priorities. Set against the backdrop of the Farm to Fork Strategy, the paper provides insights into the political and legislative processes shaping the planned revision of the animal welfare legislation and offers a legal perspective on the structural obstacles to a meaningful reform.

Keywords: animal law, animal welfare, Common Agricultural Policy

Abstrakt: Niniejszy artykuł porusza problem traktowania ochrony zwierząt hodowlanych w prawie Unii Europejskiej z uwagi na kontrowersję wynikającą z formalnego uznania tych zwierząt za istoty czujące w art. 13 Traktatu o funkcjonowaniu Unii Europejskiej oraz ich jednoczesnego zakwalifikowania jako produktów rolnych w tym samym dokumencie. Ten dwoisty status podnosi kluczową kwestię dotyczącą tego, w jaki sposób prawo próbuje pogodzić interes ekonomiczny sektora rolnego, napędzanego produktywnością, z obowiązkiem etycznym zapewnienia dobrostanu zwierząt pozostających pod opieką ludzi. W artykule obok podejścia interdyscyplinarnego wykorzystano historyczno-analityczne metody nauk prawnych w celu zbadania ewolucji, jaką ochrona zwierząt hodowlanych przeszła w prawie pierwotnym i wtórnym oraz oceny implikacji praktycznych, jakie to prawne ujęcie przynosi w przypadku zwierząt hodowlanych w UE. Rezultaty przeprowadzonego badania wskazują, że obecne ujęcie legislacyjne jest przestarzałe z naukowego punktu widzenia, a jego brzmienie hamuje skuteczną egzekucję na poziomie państwa członkowskiego. Co więcej, stałe popieranie intensyfikacji produkcji, forsowane w ramach Wspólnej Polityki Rolnej, ogranicza postęp w podnoszeniu dobrostanu zwierząt, spychając tę kwestię na koniec listy politycznych priorytetów. Na tle podejścia „Od pola do stołu” artykuł dokonuje wglądu w polityczne i legislacyjne procesy kształtujące zaplanowaną rewizję ustawodawstwa dotyczącego dobrostanu zwierząt oraz przedstawia prawną perspektywę strukturalnych przeszkód na drodze do skutecznej reformy w tym obszarze.

Słowa kluczowe: prawa zwierząt, dobrostan zwierząt, Wspólna Polityka Rolna

1. From then to now: a brief look at the history of animal welfare in EU law

1.1. Animals in the primary law of the EU

On 13 December 2007, the Lisbon Treaty was signed, introducing the first stand-alone article on animal welfare¹ in the founding treaties under Article 13 of the Treaty on the Functioning of the European Union (TFEU). The article refers to animals as “sentient beings” and compels that “full regard” should be paid to the welfare requirements of animals while formulating and implementing EU policies in certain areas, including agriculture. This step followed up on the prior developments, namely the non-binding Declaration on the Protection of Animals appended to the Maastricht Treaty of 1992 and, later, the legally binding Protocol on Protection and Welfare of Animals annexed to

¹ There is no definition of ‘animal welfare’ in EU law. For the purpose of this paper, the term animal welfare is understood as “the physical and mental state of an animal in relation to the conditions in which it lives and dies”, in line with the universally accepted definition used by the World Organisation for Animal Health. See: World Organisation for Animal Health (2019). Terrestrial Animal Health Code. 28th edition, Paris, France.

the Amsterdam Treaty of 1997, which was the first to acknowledge animals' sentience in the primary law of the EU. This step was not motivated by economic considerations for the market but stemmed from a humanitarian idea of protecting beings capable of suffering and feeling pain and the need to address this fact in law and policymaking (Szymańska 2020: 180). The significance of Article 13 is undisputable – it lies in the fact that animal welfare has been included among the articles listing the principles of the European Union, such as the elimination of inequalities and the promotion of equality between men and women (Article 8), the combat against discrimination (Article 10), the protection of the environment (Article 11) or consumer protection (Article 12). This in itself puts animal welfare “in the spotlight” and thus, provides a good basis for further negotiations on improving the conditions in which animals are kept, transported or slaughtered, anchoring possible future progress. At the same time, its practical effect on the legislation should not be overestimated as little has changed regarding farmed animals since the Lisbon Treaty.

There is certain ambiguity accompanying the article (what exactly are the “welfare requirements of animals”? Are, for example, animals' emotions considered as well? Or what does “full regard” mean? What weight should be given to these requirements?) and it is limited by “the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage”, which might include especially cruel practices (e.g., force-feeding of ducks and geese to produce a traditional French dish, *foie gras*, translated as “fatty liver”). Most importantly, the TFEU, while acknowledging animals' ability to feel pain and suffer, also considers them to be agricultural goods through Article 38(3). Hence, their legal status is inextricably linked to their economic value for agriculture, and they are almost never seen in any other way than through the prism of being agricultural products, creating an almost schizophrenic state. As a result, the EU continues to legalise practices that undoubtedly cause animals great pain and suffering, despite more humane alternatives being in place, completely disregarding that they are indeed endowed with the ability to feel pain and suffer. This is typical of the welfare paradigm (Wahlberg 2021: 14), meaning that the legislation considers animals to be objects and aims to protect them against harm, but the degree of such protection is determined by how society uses animals and, thus, tends to be the lowest for farmed animals, in whose case the exploitation is most intense.

However, it also needs to be noted that Article 13 gains in strength with society's ever-increasing awareness about animal welfare, along with the shifting perception of what constitutes ethically acceptable treatment of animals. This was also noted by the Court of Justice of the European Union (CJEU)

in C-336/19 (*Centraal Israëlitisch Consistorie van België and Others v Vlaamse Regering*), in which a ban on slaughtering animals without prior stunning in the Flemish Region of Belgium was disputed. The CJEU was weighing the interest in the protection of animal welfare against freedom of religion enshrined in Article 10 of the Charter of Fundamental Rights of the European Union. The Court recognised that “animal welfare, as a value to which contemporary democratic societies have attached increasing importance for a number of years, may, in the light of changes in society, be taken into account to a greater extent in the context of ritual slaughter and thus help to justify the proportionality of legislation such as that at issue in the main proceedings.”

1.2. The development of farmed animal protection under secondary law

The first European Communities act on the welfare of farmed animals was Council Directive 74/577/EEC, which also introduced the requirement to stun animals before slaughter, followed by Council Directive 77/489/EEC on the protection of animals during international transport and species-specific directives starting from the 1980s. The legal protection of farmed animals in the EU began to evolve primarily with a practical aim of protecting the internal market and fair competition by harmonising standards, as acknowledged in the recitals of the relevant legal acts, rather than ethical concerns about the wellbeing of animals. This was also confirmed by the CJEU in case C-131/86 (*United Kingdom of Great Britain and Northern Ireland v Council of the European Communities*), which concerned Directive 86/113/EEC laying down minimum standards for the protection of laying hens. According to the CJEU, “the decision to harmonize the standards applicable to animals kept for farming purposes was made essentially with a view to eliminating unequal conditions of competition in that field,” although it added that “it is true that the preparatory documents show that the directive was also conceived with a view to ensuring better treatment for laying hens.” At the turn of the millennium, the EU achieved important milestones by abolishing housing methods which have prevailed globally up to this day. These included the adoption of a ban on traditional veal crates for calves (Council Directive 97/2/EC), on unenriched cages for laying hens (Articles 4-6 of Council Directive 1999/74/EC) and on the use of individual cages for sows and gilts starting four weeks after service (Article 1(4)(a) of Council Directive 2001/88/EC).

The cornerstone of the protection of farmed animals in the EU were the conventions adopted by the Council of Europe, i.e., the European Convention for the Protection of Animals during International Transport adopted in

Paris in 1968, the European Convention for the Protection of Animals kept for Farming Purposes adopted in Strasbourg in 1976 and the European Convention for the Protection of Animals for Slaughter adopted in Strasbourg in 1979. Together, they laid the groundwork for the legal protection of farmed animals in the EU, and the currently applicable legislation continues to refer to their legacy. The 1976 Convention was signed and ratified by the EU in the late 1970s, noting that “the protection of animals is not in itself one of the objectives of the Community,” but that differences in animal protection at the Member State level could create unequal conditions of competition and jeopardize the functioning of the common market (Council Decision 78/923/EEC). Unlike the other two conventions listed above, it only provides a general framework on animal husbandry, with specific requirements to be fleshed out through recommendations adopted by the Standing Committee as per Article 9 of the Convention. Twelve sets of recommendations were adopted between 1988 and 2005, focusing on fish, geese, ducks, turkeys, sheep, goats and other species which fill in the gaps of the general structure of the Convention but often employ vague wording (<https://www.coe.int/en/web/cdcj/farming>). As the European Commission (hereby only referred to as ‘the Commission’) states, the Convention and its Recommendations “have been ratified by the EU and thus form part of Union law” (https://food.ec.europa.eu/animals/animal-welfare/eu-animal-welfare-legislation/animal-welfare-farm/other-animals_en) but they do not appear to have been given much weight by the Member States. The Convention was transposed into EU law through Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes (hereby referred to as the “Farmed Animal Directive”), which borrows its ambiguous language.

The Farmed Animal Directive is the oldest piece of the currently applicable animal welfare *acquis*, which also includes Council Directive 1999/74/EC (hereby referred to as the “Laying Hen Directive”), Council Directive 2007/43/EC (hereby referred to as the “Broiler Directive”), Council Directive 2008/120/EC (hereby referred to as the “Pig Directive”), Council Directive 2008/119/EC (hereby referred to as the “Calf Directive”), Council Regulation (EC) No. 1/2005 (hereby referred to as the “Transport Regulation”) and Council Regulation (EC) No. 1099/2009 (hereby referred to as the “Slaughter Regulation”). After the adoption of the Slaughter Regulation in 2009, animal welfare law and policy in the EU went into a sort of hibernation. Among the modest number of actions to improve the lives of farmed animals, the Commission presented its European Union Strategy for the Protection and Welfare of Animals 2012-2015. The strategy built on and further developed the work of the preceding Community Action Plan on Animal Welfare and Protection 2006-2010. In the Strategy,

the Commission identified major factors that influence animal welfare in the EU: a lack of enforcement of the legislation in the Member States, a lack of consumer awareness, a lack of stakeholder knowledge on animal welfare, and unclear rules on animal welfare. Two priorities that the Strategy envisaged were simplifying animal welfare legislation and reinforcing those measures already implemented by the Commission. In an Annex to the Strategy, the Commission specified 20 planned actions, some of which related to improving the enforceability of the existing EU rules, e.g., the development of guidelines on protection of pigs, animals during transport and animals at slaughter, or measures to ensure proper enforcement of the Laying Hen Directive, particularly given the ban on unenriched cages (which led to several infringement procedures initiated by the Commission under Article 258 of the TFEU). Some, on the other hand, concerned possible future legislation, e.g., on the protection of fish. The Strategy was finalised in 2018, three years later than envisaged, as most of the planned measures were delivered by the Commission after the deadline. The Strategy did not achieve much success; although certain goals, such as the implementation of the aforementioned ban, were achieved, many problems have remained to this day. These include routine tail-docking of most pigs (a practice to prevent pigs from biting each other's tails out of boredom or stress), despite the Pig Directive allowing this mutilation only as a last resort; the lack of compliance with the Transport Regulation; or the lack of synergy with the Common Agricultural Policy (CAP) (European Commission, SWD(2021) 76 final). The Strategy failed to effectively address the aforementioned factors and considering the gargantuan industry farmed animals are part of, its positive impact was limited, to say the least.

1.3. The post-2020 animal welfare legislation

In May 2020, the Commission adopted the “Farm to Fork Strategy” for a fair, healthy and environmentally-friendly food system, which sets out the key role of a sustainable food system for the European Green Deal and does not overlook the importance of animal health and welfare and the fight against antibiotic resistance in this concept. The Strategy anticipates a number of sustainability objectives that can have an indirect positive impact on the protection of farmed animals. These include reducing meat consumption and moving towards more plant-rich diets and avoiding marketing campaigns that promote meat at very low prices. What can be mentioned as well is the objective of achieving 25% of the EU farmland under organic farming by 2030 and expanding organic aquaculture, as organic farming establishes stricter requirements for keeping of animals than conventional farming. The crucial measure foreseen by the Strategy

was the evaluation and revision of the existing animal welfare legislation in EU law. For that purpose, the Commission gave mandates to its scientific advisory body, the European Food Safety Authority (EFSA), which delivered several scientific opinions on the welfare of different species as well as animal transport. The revision brought high hopes that the legislation would be properly aligned with the scientific knowledge we possess today and that legal gaps which had crystalised over the years would be remedied. The hopes fell through, however, when the Commission did not adhere to its envisaged timeline, with 2023 seeing only the proposal revising the Transport Regulation. There is currently no clear timeline for the other three proposals which were originally planned under the legislative package (European Commission, 2022a: 5).

This development raises serious concerns, underlined by the fact that following a successful European Citizens' Initiative (ECI) "End the Cage Age", the Commission committed to proposing a legislative ban on the use of cages for all species listed in this ECI by 2023 – therefore, as a part of the revision under the Farm to Fork Strategy (European Commission, C(2021) 4747 final). As it is the only ECI with a clear commitment to fully comply with organizers' demands, it does not reflect well on the idea of participatory democracy in the EU that the promised ban was not proposed. Even more so, considering that none of the ECIs which have managed to pass the 1 million signature threshold have led to a legislative change requested by the citizens in over a decade of the existence of this mechanism. In 2023, another ECI on farmed animals called "Fur Free Europe" aiming to end the keeping and killing of animals for the purpose of fur production, as well as the sale of such fur products on the EU market, succeeded in gaining the third biggest number of signatures overall (1.5 million). In its reply to this ECI, the Commission pushed the decision into the following term by committing to "communicate whether it considers it appropriate to propose a prohibition" by March 2026, following a scientific opinion by EFSA (European Commission, C(2023) 8362 final). As of now, the fate of animal welfare in the EU remains in the wind and will be shaped by the priorities of the new legislature in the 2024-2029 term.

2. Under the magnifying glass: the good idea but bad execution of animal welfare legislation in the EU

In 2022, the population of farmed animals in the EU reached 134 million pigs, 75 million bovine animals, 59 million sheep and 11 million goats (Eurostat, 2023). Moreover, several billion broilers are slaughtered for meat each year (European Commission, 2023c) and nearly 400 million laying hens are kept for egg production (European Commission, 2023a). The number of

fish farmed in aquaculture is estimated to reach up to a billion (Mood, Lara, Boyland & Brooke, 2023). The animal welfare *acquis*, i.e., the aforementioned five Directives and two Regulations, sets minimum standards across the EU for the rearing, transport and slaughter of these animals. While the Member States can adopt stricter standards, concerns about the competitiveness of their own producers due to higher production costs linked to better animal welfare and rules pertaining to trade restrictions on the internal market often prevent this. This tension was evident in the CJEU case C-1/96 (*The Queen v Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming Ltd*), which confirmed that a Member State that had banned traditional veal crates could not ban the export of live calves to other Member States to prevent calves being housed in such systems based on Article 36 of the TFEU. As a result of the competitive pressure and constraints imposed by the internal market rules, animal welfare in the EU remains a race to the bottom. Of course, compared to the low global standard of animal welfare in agriculture, the EU undeniably belongs among the leaders, alongside non-EU European countries such as Switzerland or Norway. Despite this very relative success, though, the EU does not shy away from allowing animal products made under lower standards to be imported from third countries or exporting live animals to countries where they are confronted with poor or even non-existent protection in law. Notable exceptions include, for example, rules on imported meat (Article 12 of the Slaughter Regulation), but this is far from the expectations of the citizens who believe that agricultural imports should be allowed only if the production complies with the EU's environmental and animal welfare standards (European Commission, 2020a). The EU has long been suffering from the so-called “chilling effect” and concerns over a clash with the World Trade Organization (WTO) rules further undermine efforts to restrict trade in order to protect animals, which would also contribute towards a level playing field for EU producers (Offor, 2020: 25-27), even though the dispute over EU Seal Regime confirmed that restricting trade on the basis of public moral concerns about animal welfare is justifiable before WTO (European Communities – *Measures Prohibiting the Importation and Marketing of Seal Products*, Appellate Body Report, WTO Doc. WT/DS400/AB/R, WT/DS/401/AB/R, 22 May 2014).

2.1. Farmed Animal Directive (98/58/EC)

The “umbrella” act for on-farm animal welfare is the Farmed Animal Directive, which has not been revised since its adoption in 1998. Using a vague language, it provides for a few very general principles of animal care rather than specific and quantified technical standards, opening the doors to various

interpretations by leaning towards unclear words such as “suitable” or “necessary”. Due to its very general nature, the Directive fails to ensure a good level of protection to species without any additional protection through “their own” directives; for example, cattle (except for calves), rabbits, fish, turkeys, ducks, geese, quail, parent flocks of poultry, sheep, goats, or horses. Unless a Member State adopts species-specific rules in its jurisdiction, these animals are essentially at the mercy of standards and practices created by the industry itself, which are not tailored around the needs of the animals but those of production. Invertebrates are completely excluded from the scope of the Directive through Article 1(2)(d), again reflecting that it is an outdated piece of legislation and does not keep up with decades of research on the sentience of cephalopods, decapods, or even insects. In light of the growing use of insects as novel foods (Commission Implementing Regulation (EU) 2017/2470) and as feed (Chapters I and II or Annex IV of Regulation (EC) No 999/2001), along with plans to open the first octopus farm on EU territory – despite clear scientific evidence that such farming would inevitably compromise their welfare (Compassion in World Farming, 2021) – there are reasons for concern. As a result, the positive impact of the Farmed Animal Directive on animal welfare is very limited, especially considering that EU law explicitly allows practices that breach the Directive. One glaring example is the requirement to provide animals with “the freedom of movement” which “must not be restricted in such a way as to cause [them] unnecessary suffering or injury” in point 7 of the Annex of the Directive. However, this freedom is clearly denied to animals confined in cages or pens, where law sets low minimum standards for space allowance (Article 6 of the Laying Hen Directive, Article 3 of the Calf Directive). Housing animals in narrow cages leads to intense suffering, as confirmed by a large body of science, including the recent scientific opinions by EFSA recommending the replacement of cages with alternative cage-free systems (European Food Safety Authority 2022; European Food Safety Authority 2023b).

2.2. Species-specific directives

Although species-specific directives provide for more detailed requirements, mostly on housing, it does not mean that the protection of laying hens, chickens kept for meat, pigs or calves is well-secured. Just like the rest of the animal welfare legislation, the four Directives are built on a concept of animal welfare which focuses on suffering but overlooks positive experiences of animals that are equally crucial to ensure good welfare. Even the efforts to eliminate suffering are not very successful, though, as the requirements often do not reach the bare minimum that should be provided to animals to fulfil their physiological

and behavioural needs. Despite containing quantified standards for cage dimensions or stocking density, many other requirements remain rather vague, and their implementation is thus difficult, e.g., the requirement to provide pigs with a “sufficient quantity” of enrichment material (point 4 of Chapter I of Annex I of the Pig Directive). If we take a brief look at these four Directives in the context of a modern animal welfare assessment model, the “Five Domains” (Mellor and Beausoleil 2015: 243) – these being nutrition, environment, health, behaviour and mental state – we find out that not a single one of these domains is properly protected in the species-specific legislation. To name a few examples from a very long list:

- Calves can be legally fed in low frequencies leading to hunger and their diets do not have to contain sufficient iron (compare points 11 and 12 of Annex I of the Calf Directive with European Food Safety Authority 2006: 22, European Food Safety Authority 2012: 102);

- Laying hens can be kept in cages with space allowance so low that it does not allow them to spread or flap their wings (compare point 1(a) of Article 6 of the Laying Hen Directive with Dawkins and Hardie, 1989: 413);

- Broiler chickens can be kept in high stocking densities leading to a plethora of welfare problems (compare Article 3(4) and (5) of the Broiler Directive with European Food Safety Authority, 2023a: 161);

- The legislation fails to regulate damaging selective breeding practices which cripple fast-growing breeds of broiler chickens, who nowadays reach 2.2 kg in mere 32-35 days (European Food Safety Authority, 2010: 126).

- Pigs can be painfully mutilated (i.e., have their tails docked and teeth clipped or ground and be castrated) without any medication (analgesics and/or anaesthetics) (point 8 of Chapter I of Annex I of the Pig Directive);

The EU animal welfare legislation thus legalises animal husbandry that leads to hunger, discomfort, pain, exhaustion, aggression, boredom, loneliness, frustration, fear, or anxiety. These are not incidental and short-term experiences, but intensive and long-term states stemming from the environment in which the animals live and the practices to which they are subjected. Although negative experiences are to some extent part of every being's life, EU law does not prevent suffering from being a continuous part of a farmed animal's life. The fundamental principle rooted in Article 3 of the Farmed Animal Directive to prevent “unnecessary pain, suffering or injury”, on which the animal welfare legislation is built, is interpreted in a strongly anthropocentric fashion. As V. Kurki explains, “human interests weigh much more than animal interests, and even relatively trivial human interests may justify the affliction of animals with suffering” (Kurki 2024: 12). This is clear from law allowing practices that

merely facilitate intensive animal farming and enable a “shortcut” to high yields without prioritising even the basic needs of animals.

2.3. Transport and slaughter regulations

Both the Transport and Slaughter Regulations repeat the same pattern of a very lenient approach to what constitutes “unnecessary suffering”. As an example, the Slaughter Regulation continues to allow stunning methods against which EFSA has been warning for more than two decades due to a high risk of seriously compromising animal welfare (European Food Safety Authority 2004). Particularly, these include high-concentration CO₂ stunning of pigs and electrical water-bath stunning of poultry, which are prevalent methods of stunning despite the requirement of Article 3(1) of the Regulation to spare animals “any avoidable pain, distress or suffering during their killing”. While there are feeble encouragements to move towards more welfare-friendly systems present in both Regulations, e.g., to move to more humane methods of animal slaughter (Recital 6 of the Slaughter Regulation) or to reduce long-distance transport (Recital 5 of the Transport Regulation), they fail to set the path for these transitions to happen. As a result, substantial systemic reforms appear to be wishful thinking rather than an actual policy objective.

Although more detailed and technical than directives, the Regulations still lean towards a lack of certainty (e.g., a poor definition of “fitness for transport” in Chapter I of Annex I of the Transport Regulation, a key aspect to reducing suffering during transport) and fail to harmonise procedures across the EU (e.g., to authorise the exception from an obligation to stun animals before slaughter for religious purposes as per Article 4(4) of the Slaughter Regulation). Consequently, both acts seem rather detached from the realities in which they operate, leading to large-scale non-compliance – both by persons bearing the obligations stemming from these acts, as well as by competent authorities that fail to properly monitor and ensure compliance (European Court of Auditors, 2018). One infamous example is the systemic non-compliance with the Transport Regulation, which is even more evident in the case of live animal exports. Every year, the European Union exports around 4.5 million cattle, sheep and goats (European Court of Auditors, 2023) to non-EU countries with low or even virtually non-existent animal welfare protection (see the list of 18 high-risk countries for live animal exports published by the Bavarian State Ministry for the Environment: https://www.stmuv.bayern.de/themen/tiergesundheit_tierschutz/tierschutz/tiertransporte_drittstaaten/index.htm), with journeys lasting days or even weeks. Although in the *Zuchtvieh-Export GmbH v Stadt Kempten* case (C-424/13) of 2015, the CJEU ruled that

the Transport Regulation applies to the entirety of the transport, “including the stages of the journey which are to take place in the territory of third countries,” it is very difficult or even impossible to enforce in reality, as Commission reports show (European Commission, 2020c; European Commission, 2022d). While exporting meat, carcasses and genetic material seems to be a more sustainable option – reducing animal suffering and being more environmentally friendly and possibly even more economical (Human Behaviour Change for Life, 2023) – the Commission has been rather idle in addressing this issue, relying more soft law instruments that do not have the potential to solve problems of such magnitude.

2.4. The failure of animal welfare legislation in practice

Given the above, it is not surprising that the overall level of enforcement of the animal welfare legislation at the Member State level is unsatisfactory. Certainly, many provisions are very ambiguous, so if national legislation simply copies the vague wording without any specifications, the competent authorities are not clear about what exactly to enforce (and practice certainly does not speak in favour of the principle of *in dubio pro animale*). However, the low political will and low priority given to the protection of farmed animals compared to the interest in maintaining the competitiveness of farmers undeniably play a significant role, as the whole system and its actors are not motivated to introduce and apply measures that would promote better enforcement of EU rules, such as through stricter and more frequent checks or effective and dissuasive sanctions. Moreover, there are major differences between the Member States in this respect, which only exacerbate the problem, as confirmed by the Fitness Check of the EU Animal Welfare legislation presented in 2022 (European Commission, SWD(2022) 329 final). After all, the Commission admitted that a challenge of properly monitoring animal welfare is “the risk of revealing situations that are widely not satisfactory, hence leading to put into question some farming models of production (and consumption) that are, technically, financially and culturally difficult to change” (European Commission, 2022c). As rearing animals in the so-called “factory farms” emerged about 60 years ago, agricultural production became dependent on suppressing animals’ needs to increase production (Kruk 2021: 186-187). As a result, the animal agriculture sector is not only allowed to operate in a kind of legal vacuum, especially with species that lack any specific legislative standards, but also to often operate outside the established legal boundaries, pointing to its somewhat privileged position in the political sphere given the economic importance of the sector.

3. Setting the system up for failure: animal welfare as the forgotten child of the EU policy

The protection of animals does not fall under the competencies of the Union listed in Articles 3-6 of the TFEU. It is regulated within the limits of other policies and subordinated to them. For farmed animals, the EU's competence to regulate agriculture provides a legal basis for adopting relevant legislation, with Article 13 setting certain boundaries for policies that affect animals. Since animal welfare is a horizontal issue, it interacts with a range of other EU policies, namely on food safety, human health, environment, trade or fisheries. Some of them can be seen as "allies" by pursuing objectives which could have a positive impact on the welfare of farmed animals, e.g., reduction of antimicrobial resistance through adopting welfare-friendly practices which minimise the need for medication under the concept of "One Health" (European Commission, COM(2017) 339 final) or encouraging a switch to more plant-based diets to promote more climate-friendly consumption in the Farm to Fork Strategy, which would also alleviate the pressure intensive farming systems put on animals. However, agriculture, as the main policy area influencing farmed animals, aims primarily at boosting production and competitiveness, often through unsustainable practices that come largely at the expense of animal welfare.

3.1. Common Agricultural Policy and its coherence with animal welfare legislation

Pursuant to Article 6(1)(i) of Regulation 2021/2115 establishing rules on support for strategic plans to be drawn up by Member States (hereby referred to as the "Strategic Plans Regulation"), improving the welfare of farmed animals, alongside the combat against antimicrobial resistance, is listed as one of the objectives of the CAP (albeit at the very end of the list). The CAP operates with a third of the EU's overall budget (European Court of Auditors 2024: 4) and thus, holds great potential to improve – or doom – animal welfare in the Union. Animal farming is a major beneficiary as it receives 82% of the EU's agricultural subsidies, including 44% dedicated to animal feed (Kortleve et al., 2024). Considering the trend of EU farms shrinking in numbers (Eurostat, 2022) but growing in livestock density (Eurostat, 2017), the CAP is allocating much of its funds to intensive animal farming, which is inevitably linked to poor welfare conditions.

Under the CAP's first pillar, cattle, sheep and goat farms benefit from direct payments which are mostly decoupled from the production and calculated on the basis of eligible hectares of agricultural land (Article 21(2) of the Strategic

Plans Regulation); in contrast, most poultry and a large number of pig farms are “landless”. This system favours big agricultural holdings as EU farms whose output exceeds €500,000 represent only 8% of commercial farms but receive 37% of direct payments (Greenpeace 2024: 5). Apart from hectare-based payments, the animal farming sector largely benefits from the coupled income support that is not linked to eligible land but may be granted to certain sectors and productions listed in Article 33 of the Strategic Plans Regulation. Beef and veal, milk and milk products and sheep meat and goat combined receive 75% of its budget (European Commission, 2020b: 2). Animal welfare is to be ensured by linking payments under the first pillar to certain minimum rules which farmers must comply with in order to receive support from the European Agriculture Guarantee Fund, and violation of which means a reduction or even withdrawal of support (“conditionality”, formerly known as “cross-compliance”). These include the Farmed Animal, Pig and Calf Directives (Annex III of the Strategic Plans Regulation), with poultry standards noticeably missing. As the European Court of Auditors (ECA) found in 2018, cross-compliance with regard to animal welfare was severely lacking, mainly due to ineffective control mechanisms and the absence of adequate sanctions for cross-compliance breaches in some Member States (European Court of Auditors, 2018). To promote sustainability, the 2023-2027 CAP introduced the so-called “eco-schemes” in Article 31 of the Strategic Plans Regulation to “reward” certain agricultural practices that benefit the climate, the environment, and animals. Their inclusion in a national strategic plan is mandatory, but each Member State could choose which eco-scheme to support. For animal welfare specifically, only eight Member States have made use of this tool, representing 9% of the overall budget for eco-schemes (European Commission, 2023b: 807).

Under the second pillar, i.e., support for rural development, the Member States can offer additional funding to farmers who seek to improve animal welfare and go beyond the minimum legal requirements. Most notably, they may use the environmental, climate and other management commitments under Article 70 of the Strategic Plans Regulation, but farmers can also benefit from investments under Article 73 (e.g., for the conversion of cage housing to cage-free systems). M14 (the “animal welfare” measure) was severely under-used under the 2014-2020 CAP, as it was included in only 34 out of 118 rural development programmes (mostly for dairy cattle and pigs) and 10 Member States did not make use of it at all (European Commission, 2022b: 3). Moreover, those that did include it did not spend enough on this measure – only 1.5% of the second pillar funds, i.e., about €1.5 billion (European Court of Auditors, 2018: 13). In its 2018 report, ECA stated that funding was also granted to farmers who had breached cross-compliance. For example, they docked pigs’

tails without taking alternative measures first, even though Pillar II payments are only intended for farmers who exceed the minimum requirements, not for those who do not even meet them. Under the current CAP, 20 Member States included measures targeting better animal welfare pursuant to Article 70 of the Strategic Plans Regulation in their national plans (European Commission, 2023b: 799-803).

3.2. The future of agricultural policy: one step forward and three steps backward?

The EU, originally established as a purely economic entity, is still very cautious about taking decisive steps to set agricultural production and trade on a path towards sustainability, as such steps are seen as short-term economic losses rather than long-term gains. This is evident in the fate of the Farm to Fork Strategy, which aimed to initiate a shift towards a sustainable food system. Some of the key legislative measures were ultimately abandoned, such as a regulation to reduce the risk and use of pesticides, or postponed indefinitely, such as revision of the animal welfare directives and the Slaughter Regulation. Moreover, following farmers' protests in Brussels and the Member States, the policymaker succumbed to the pressure. A derogation from good agricultural and environmental conditions (GAEC) standard 8, which mandates that a certain portion of arable land is kept unproductive to protect biodiversity, was allowed for the year 2024, and the rules on GAEC 5, 6 and 7 focused on soil prevention were relaxed (Regulation (EU) 2024/1468). This step confirmed that the initial strongly progressive and sustainable tone of the first Von der Leyen Commission was in the past.

There is a symbiotic relationship between a sustainable food system and better animal welfare (with the latter often considered a prerequisite for the former), which makes it an avenue for future positive developments in favour of farmed animals. However, although the concept of sustainability is intensely discussed in Brussels, it has yet to be thoroughly implemented in agricultural policy, especially in CAP. Until this occurs, EU agriculture's strong focus on production – often at the expense of the environment and animal welfare – will remain a major obstacle to progress for animals.

4. Conclusion

The animal welfare legislation has undergone fifty years of development, culminating in one of the most progressive systems of legislative protection for farmed animals. During these decades, some milestones have been reached,

including bans on housing methods which are still prevalent in the rest of the world. Although these achievements are impressive on a global scale, where standards for farmed animal welfare remain poor, one cannot automatically assume that the EU legislation ensures an acceptable level of animal welfare. While animals are considered sentient beings according to Article 13 of the TFEU, this recognition does not adequately translate into reality for farmed animals. As the animal welfare *acquis* is based on an outdated scientific basis, and the legal drafting opts for an ambiguous language where precise, quantifiable standards are needed, the potential of the current laws to achieve a good level of animal welfare is low. Consequently, the level and manner of enforcement vary significantly among the Member States, leading to the legislation failing in its primary task: supporting the functioning of the internal market. In summary, the animal welfare legislation in the EU does not protect animals from intense and long-term negative experiences, including emotional suffering. The legislation is grounded in a guiding principle of avoiding “unnecessary pain and suffering” in animals; however, the vagueness of this wording has resulted in a situation where its interpretation is nearly unlimited.

Animal welfare legislation in EU law stems from the objective of harmonising the EU market with agricultural products by unifying standards under which animals are kept, transported, and slaughtered. This makes the protection of farmed animals relative to the goals pursued by agricultural policy, which focuses on boosting productivity and maintaining the competitiveness of EU producers. In this equation, animal welfare has traditionally been pushed to the sidelines, and intensive farming systems based on suppressing animals’ physiological and behavioural needs have flourished as a result. However, participatory democracy tools are increasingly used to demand stronger protection for farmed animals and the concept of a sustainable food system is getting more traction, bringing the potential to disrupt the long-standing status quo. The most glaring example is the Farm to Fork Strategy, which acknowledges that animal welfare and a sustainable food system are inherently interlinked and envisages a complete revision of the animal welfare legislation.

Nevertheless, the initial ambition of this Strategy slowly waned, and the final months of the 2019-2024 Parliamentary term were characterised by a departure from the envisaged objectives for achieving sustainable farming, hardly an ideal atmosphere for substantial progress in animal welfare. It is difficult to predict what the future holds for farmed animals in the EU, especially in light of an ever-increasing number of environmental and societal challenges. What is clear is that to achieve a real and tangible change in practice, a systemic transformation of our food system is in order, with a thorough revision of the

animal welfare legislation that will align it with science being only one – albeit crucial – piece of the puzzle.

Abbreviations

CAP – Common Agricultural Policy
CJEU – Court of Justice of the European Union
ECA – European Court of Auditors
ECI – European Citizens' Initiative
EFSA – European Food Safety Authority
EU – European Union
GAEC – good agricultural and environmental conditions
TFEU – Treaty on the Functioning of the European Union
WTO – World Trade Organization

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