

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT

ON THE PROTECTION OF ANIMALS

INTRODUCTION

The protection of animals is a matter of political importance. The European Parliament has repeatedly stressed its desire to see the Community adopt effective measures on the subject.

The Community has always taken account of the protection of animals, particularly when drawing up the common agricultural policy, and Community provisions have been in force since 1974 concerning the protection of animals on farms, during transport and at the time of slaughter.

When the internal market was established, particular attention was paid to achieving a high standard of animal health in accordance with the Single Act. In addition, the reform of the common agricultural policy has placed particular emphasis on the encouragement of extensive stockfarming, which is more conducive to the protection of the environment and of animals.

The Intergovernmental Conference at Maastricht confirmed this approach when, in Declaration No. 24 on the Protection of Animals, annexed to the final Act, it called upon the European Parliament, the Council and the Commission, as well as the Member States, when drafting and implementing Community legislation on the common agricultural policy, transport, the internal market and research, to pay full regard to the welfare requirements of animals.

However, the protection of animals is not the exclusive preserve of the Community; all European countries have firmly committed themselves to it within the Council of Europe, where there is a broad consensus on the need for a high and uniform level of protection.

For many years, the Council of Europe and the Community have been acting in parallel to improve the protection of animals in the fields of farming, transport and slaughter. Despite this parallel action there are discrepancies between the areas covered and the level of detail in the rules introduced. The existing rules and current proposals of the Council of Europe and the Community are described in Annex 1. A chart of signatures and ratifications, by the Member States and the Community, of the Council of Europe Conventions, is given in Annex 2.

The purpose of this Communication is to examine existing legislation concerning the protection of animals in greater detail and to draw the necessary conclusions for Community action in this area.

1. THE LEGAL SITUATION

1. Council of Europe Conventions and Recommendations.

a) The Conventions and Recommendations of the Council of Europe are based on ethical concepts common to all the participating countries. The Conventions, to which all contracting parties must give effect, establish certain general principles; Recommendations set out more detailed rules based on scientific knowledge. In both cases, the underlying aim is to avoid the infliction of unnecessary suffering or injury, and to provide conditions for animals in accordance with their specific biological needs.

b) The European Convention for the protection of animals kept for farming purposes has established a Standing Committee, which is responsible for drawing up and adopting Recommendations addressed to the contracting parties. These Recommendations contain detailed rules for applying the principles of the Convention to the different types of farm animal. They are not mandatory, in that each contracting party must, after a period of 6 months (or longer if the Committee so decides), either implement the Recommendation or inform the Standing Committee of its reasons for not, or no longer, doing so. If two or more contracting parties or the Community notify their decision not to, or no longer to, apply a Recommendation, it ceases to have effect.

c) The European Conventions for the protection of animals during international transport and animals for slaughter do not have Standing Committees. Recommendations on transport and slaughter have been adopted by the Committee of Ministers of the Council of Europe. These are not legally linked to the Conventions.

d) The Community as such is currently a contracting party only to the Convention for the protection of animals kept for farming purposes. Within the Standing Committee the Community exercises its right to vote with the number of votes equal to the number of its Member States which are also contracting parties. The Community does not use its vote in cases where its Member States use theirs, and vice versa (internal rules of the Standing Committee).

2. Community law

a) Community competence

(i) The common agricultural policy

The protection of animals, being part of the common agricultural policy, is a matter of exclusive Community competence*. Live animals are listed as agricultural products in Annex II to the Treaty and the protection of animals during rearing, transport and slaughter helps to achieve the objectives set out in Article 39 of the Treaty, in particular the objective in paragraph 1(a) "to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production".

(ii) Removal of barriers to the free movement of goods

Community rules on the protection of animals also help to ensure freedom of trade and to prevent distortion of competition, both of which objectives are an integral part of the common agricultural policy.

The removal of barriers to the free movement of goods, and the general rules of competition ensuring equal treatment of operators, are among the exclusive competences of the Community. They do not, therefore, come within the scope of the 2nd paragraph of Article 3B of the Treaty on European Union. In these areas the Community has an obligation as to the results to be achieved: to guarantee free movement of goods on the one hand and the equal treatment of operators on the other.

In particular, Community legislation on the protection of animals during transport is necessary for the achievement of the single market. Given that Article 36 of the Treaty of Rome allows Member States the possibility to impose restrictions on trade "justified on grounds of the protection of health and life of animals", free trade within the Community can only be ensured by harmonizing legislation on the protection of animals during transport. The White Book already arrived at this conclusion and provided for a proposal on the subject.

* See judgment of the Court in the "laying hens" case: judgment of 23.2.1988, cases 68/86 and 131/86.

(III) **General rules on competition**

Freedom of movement must, however, be accompanied by equal conditions of competition. Rules on the protection of animals cannot be limited to transport; if rearing conditions, and treatment before slaughter, differ significantly from one Member State to another considerable distortion of competition may result (e.g. cage area for laying hens). Such distortion of competition may put the effective functioning of the market organisations at risk. A uniform basic approach in all Member States is, therefore, imperative.

b) Legislative principles

(I) It follows from the above considerations that Community legislation on the protection of animals is necessary and that it has three objectives:

- to improve the protection of animals;
- to contribute to the implementation of the common agricultural policy, in particular;
- to guarantee free movement of animals and products in the single market and the equal treatment of producers.

In accordance with the 3rd paragraph of Article 3B of the Treaty on European Union, action by the Community must not go beyond what is necessary to achieve these objectives.

(II) Article 228 of the Treaty of Rome lays down conditions for the conclusion of agreements between the Community and international organizations such as the Council of Europe. It states that agreements concluded under these conditions are binding on the institutions of the Community and on Member States. According to the case law of the Court of Justice, the provisions of such an agreement are an integral part of the Community's legal system, as are acts adopted by bodies set up to implement the agreement.

However, in the field of the protection of animals the case law does not go so far as to confer direct applicability of the Council of Europe rules to which the Community adheres. In fact, the contents of the Conventions are too vague to be directly applicable and the Recommendations are not mandatory. To ensure uniform application in the Member States the Community must provide itself with an appropriate legal framework.

(III) Up to the present, the Community has acted by adopting Directives on a case-by-case basis. This Community legislation is entirely autonomous, even in the livestock farming sector where the Community is a contracting party to the Council of Europe Convention, because the Directives in this field were presented to and discussed by the Council at the same time as the Council of Europe was debating its Recommendations on the same subjects.

The Directives currently in force lay down minimum conditions which the Member States may improve on, and correspond roughly to the rules laid down in the Council of Europe Recommendations on the same species. They do not include the whole of those texts, so in general they are less detailed in substance, but in some cases they are more detailed and precise on certain points.

II. THE FUTURE APPROACH

In view of the situation described above, there are three options for future action:

Option 1

The Community limits itself to adhering to the Conventions of the Council of Europe. Given that the rules of the Conventions and the acts adopted by the bodies set up under them are an integral part of the Community's legal system, no other action is required at Community level.

This appears to be the simplest solution in terms of Community legislation as it seems to allow for an economy of legislation on subjects covered by Conventions to which the Community is or will become a contracting party.

Such a conclusion would, however, be mistaken. In reality, experience shows that despite the adhesion of Member States to the rules of the Council of Europe the practical transposition of those rules leaves much to be desired. In any case, the nature and effects of international legal instruments are such that they do not offer the guarantees of legal security and uniform application which result from Community law. Community adhesion to these instruments is insufficient to resolve this problem unless it is accompanied by the means to:

- ensure the application of the content of these instruments throughout the territory of the Member States in the same way as for Community texts;

- make the texts of the international instruments available in all Community languages;
- supplement their provisions to provide any extra detail necessary for Community purposes, e.g. inspection arrangements, Community committee procedures and enforcement provisions.

In view of these requirements, the Community cannot refrain from laying down supplementary rules.

Option 2

The Community adheres to the Conventions, thus accepting their rules into the Community's legal system; it also adopts the instruments needed to ensure the application of those provisions throughout the territory of the Member States and to supplement them where necessary. It therefore legislates, but without repeating the content of the Council of Europe texts.

Option 2 would appear to solve the problems outlined above for option 1 while making it possible to reduce the volume of Community legislation. However, this conclusion would also be mistaken, because:

- the Conventions and Recommendations of the Council of Europe are, from a Community point of view, sometimes inadequate in scope. For example, the scope of the transport Convention is restricted to international transport; as far as the Community is concerned this means transport between the EC and third countries. However, as stated above, the establishment of the single market requires harmonized rules on the transport of animals within the Community;
- in the case of Recommendations, although parts of them could be transposed into binding legislation, other parts consist of advice, or codes of practice, and their transposition into binding legislation would be unrealistic, unenforceable and contrary to their original objective;
- in the case of the Recommendations adopted under the Convention for the protection of farm animals, their application in Community law would risk being followed by their ceasing to have effect at the level of the Council of Europe, as a result of notification of their non-application by two contracting parties who are not Member States of the Community, or even of the Council of Europe.

These three problems would cause legal insecurity and would, therefore, prevent the attainment of the objectives of the Community, as set out in this Communication.

Option 3

It follows from the above discussion that if the Community is to achieve the objectives of improving the protection of animals, thus contributing to the implementation of the CAP, and of guaranteeing freedom of movement in the single market and the equal treatment of producers, it must not only participate in the work of the Council of Europe but also adopt autonomous Community legislation on the protection of animals.

Under option 3, therefore, the Community, as a contracting party to a Convention, complies with the rules laid down by the Council of Europe by transposing them into autonomous Community law through specific legal instruments containing the Convention and its secondary acts, or the appropriate parts of those acts, and including other provisions deemed necessary.

To overcome the difficulties raised by options 1 and 2, option 3 allows for the rules of the Council of Europe to be adopted in the manner and detail necessary for the purposes of Community law, in accordance with the 3rd paragraph of Article 3B of the Treaty on European Union. Under this option, the Community reserves the right to decide which legal instrument is the most appropriate for the transposition of the Council of Europe rules.

The Community act would also include any necessary additional provisions, for example with a view to ensuring free circulation and preventing distortion of competition, as well as other provisions needed for the application of the rules within the Community. The Commission should also participate fully on behalf of the Community within the Council of Europe and its committees, in the preparation of Conventions and Recommendations, acting on the basis of negotiating guidelines adopted by the Council. In addition, the Council act should provide a legal basis for the Commission, acting in accordance with a Regulatory Committee procedure, to adopt implementing rules of a technical nature.

Summary

Option 3 is the only solution which:

- achieves the objectives set out in this communication;
- enables the Community to comply with its international obligations, and;
- allows for the degree of flexibility necessary for the adoption at Community level of the provisions of the Council of Europe.

III. CONCLUSIONS

1. Consequences for legislation in force

- a) **Laying hens:** since the current Directive on the protection of laying hens kept in battery cages was introduced at the request of the Council, it would not appear to be a candidate for review in terms of Article 3B of the Treaty on European Union. In addition, this Directive has been in force since 1988, with a transitional period for its full application until 1995. More than half of the producers involved have already made the investments necessary to comply with its requirements and others are in the process of doing so. Were the Directive to be repealed, those producers who have made little or no progress towards its implementation would be in an artificially favourable position and serious difficulties would arise with regard to freedom of movement and distortion of competition.
- b) **Calves and pigs:** The Directives on the protection of calves and pigs are a response partly to a request from Parliament and partly to pressure from Member States. The deadline for their transposition is 1 January 1994; one Member State has notified transposition and procedures are at an advanced stage in at least five other Member States.

For reasons of legal security and economic certainty, the abovementioned Directives should be retained.

2. Consequences for the future

a) Protection of animals kept for farming purposes

- The Council is invited to authorise, without delay, the deposition of the Community instrument of approval of the Protocol of Amendment to the European Convention for the protection of animals kept for farming purposes;
- Discussions in the Council on the Commission proposal for a Regulation on the protection of animals kept for farming purposes should resume, with a view to its early adoption;
- Following the adoption of the abovementioned text, measures should be taken to transpose the Recommendations of the Standing Committee on those animals not already covered by the Directives referred to in III.1. (above).

b) Protection of animals during transport

- A communication and proposal in accordance with Article 13 of Council Directive 91/628/EEC is being sent to the Council;
- A proposal for Community accession to the European Convention for the protection of animals during international transport, and its additional protocol, will be sent to the Council along with an invitation to authorise, without delay, the deposition of the Community instrument of approval.

c) Protection of animals for slaughter

- The Council is invited to authorise, without delay, the deposition of the Community instrument of approval of the European Convention for the protection of animals for slaughter;
- Discussions in the Council on the Commission proposal for a Regulation on the protection of animals at the time of slaughter or killing should continue, with a view to its early adoption.

ANNEX 1

EXISTING RULES AND PROPOSALS

1. Farming

a) The Council of Europe has adopted the European Convention for the protection of animals kept for farming purposes which lays down general principles as well as implementation procedures.

This Convention has been put into practice by a series of recommendations drawn up by the Standing Committee of the Convention, laying down specific and detailed rules on:

- poultry (adopted on 21 November 1986)
- pigs (adopted on 21 November 1986)
- cattle (adopted on 21 October 1988)
- fur animals (adopted on 19 October 1990)
- goats (adopted on 6 November 1992)
- sheep (adopted on 6 November 1992)
- calves (adopted on 6 June 1993).

The Convention has been ratified by all Community Member States. The Recommendations have been accepted unanimously by all Member States, with the exception of two abstentions of a formal character by Denmark.

b) The Community has been a party, since 1988, to the European Convention for the protection of animals kept for farming purposes (Decision 78/923/EEC of 19 June 1978 - OJ No L 323, 17.11.1978, p.12). The Council has also approved a Protocol of Amendment to the Convention (Decision 92/583/EEC - OJ No L 395, 31.12.1992, p.21); the instrument approving the Protocol has not yet been deposited because the Council has decided to await ratification by all the Member States.

At Community level, Directives also exist covering:

- laying hens kept in battery cages (Council Directive 88/166/EEC of 7 March 1988 - OJ No L 74, 19.3.1988, p.83);
- calves (Directive 91/629/EEC of 19 November 1991 - OJ No L 340, 11.12.1991, p.28).
- pigs (Directive 91/630/EEC of 19 November 1991 - OJ No L 340, 11.12.1991, p.33).

In addition, on 18 May 1992 the Commission presented a proposal for a Council Directive on Community rules covering the general aspects of livestock rearing (OJ No C 156, 13.6.1992, p.11).

2. Transport

a) The Council of Europe has adopted a European Convention for the protection of animals during international transport, supplemented by a Protocol (now entered into force) permitting, in particular, accession by the Community.

Unlike the Convention on animals kept for farming purposes, no provisions have been included for implementation, but the Committee of Ministers has issued recommendations concerning:

- horses (adopted on 17 September 1987)
- pigs (adopted on 12 September 1988)
- cattle (adopted on 15 January 1990)
- sheep and goats (adopted on 21 February 1990)
- poultry (adopted on 21 February 1990).

These recommendations take the form of codes of conduct and are not directly linked to the Convention from a legal point of view. They have all been adopted unanimously by the Committee of Ministers.

b) The Community is not a contracting party. To date the Commission has not presented a proposal to the Council with a view to acceding to the Convention. Preparatory work is underway.

However, a Community Directive (91/628/EEC of 19 November 1991 - OJ No L 340, 11.12.1991, p.17) applies to the transport of animals between and within Member States. This Directive was included in the White Paper on the single market. Importation, transit and the transport in and through Community territory of live animals coming from third countries is not allowed unless the exporter and/or importer undertake in writing to abide by the requirements of the Directive and have taken measures to do so.

Under Article 13 of the Directive the Commission was to submit a report before 1 July 1992, accompanied if necessary by proposals for the introduction of more detailed rules. These proposals were delayed pending the adoption of this Communication by the Commission.

3. Slaughter

a) The Council of Europe has adopted the European Convention for the protection of animals for slaughter, as well as a recommendation by the Committee of Ministers (adopted unanimously on 17 June 1991) on the slaughter of animals, the legal status of which is the same as that of the recommendations concerning the transport of animals.

b) The Community has approved the Convention (by Council Decision of 16 May 1988 - OJ No L 137, 2.6.1988, p.25), but the instrument of approval has not yet been deposited, pending ratification by the Member States. The Commission has, however, made a declaration expressing its disagreement with that position.

There is also a Community Directive (74/577/EEC of 18 November 1974 - OJ No L 316, 26.11.1974, p.10) on the stunning of animals before slaughter.

On 25 November, the Council was presented with a proposal for a Regulation on the protection of animals at the time of slaughter or killing (OJ No C 314, 5.12.1991, p.14), amended to take account of the changes proposed by Parliament (COM(92) 460 final of 16 November 1992). This proposal is currently being studied by the Council. It covers a number of topics not included in the Convention or the recommendation of the Council of Europe (welfare outside slaughterhouses, animals kept for their fur, etc.), as well as taking up certain other aspects covered in those texts.

ANNEX 2

European Treaty Series	I	II	III		IV	
Member States	Ratification Accession (A)	Ratification Accession (A)	Signature	Ratification Accession (A)	Signature	Ratification Accession (A)
Belgium	21/11/73 D	13/09/79	10/05/79		06/02/92	
Denmark	24/06/69 T	28/01/80 T	20/06/79	23/02/81 T	06/02/92	20/01/93
France	09/01/74 D	10/01/78	10/05/79		25/02/92	
Germany	09/01/74 D	09/03/78	10/05/79	24/02/84	10/06/92	
Greece	25/05/78	12/11/84	12/11/84	12/11/84	29/04/92	
Ireland	14/03/75 R	07/04/76	06/10/80	10/12/81		
Italy	03/05/74 D	07/02/86	19/02/80	07/02/86		
Luxembourg	13/04/72	19/01/79	10/05/79	24/07/80	06/02/92	
Netherlands	04/09/80 T	21/04/81 D/T	25/02/81	27/06/86 T		
Portugal	01/06/82	20/04/82	18/12/79	03/11/81	06/02/92	
Spain	(A) 02/08/74	05/05/88				
United Kingdom	09/01/74 D/T	08/01/79 T	10/05/79			
EEC		18/10/88				

- I : European Convention for the protection of animals during international transport (Paris, 13/12/68)
 II : European Convention for the protection of animals kept for farming purposes (Strasbourg, 10/03/76)
 III : European Convention for the protection of animals for slaughter (Strasbourg, 10/05/79)
 IV : Protocol of Amendment to the European Convention for the protection of animals kept for farming purposes (Strasbourg, 06/02/92)

T : Territorial declaration

R : Reservation

D : Declaration

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