



Animal Protection Index (API) 2020

Republic of Austria: ranking B

Executive summary

The Animal Welfare Act 2004, amended in 2017, is the main animal protection legislation in Austria. This Act defines animals as 'fellow creatures' to humans and is largely applicable to all vertebrates, cephalopods and decapod crustaceans. The Animal Welfare Act 2004 prohibits the infliction of unjustified pain, suffering or injury to an animal, or exposing the animal to 'extreme anxiety', which illustrates that the mental wellbeing of animals is taken into consideration. In 2013, the Austrian Constitution was amended to include animal protection as one of its objectives. With regards to farm animals, Austrian legislation goes beyond EU requirements in some instances, notably through: mandating a phase-out of the use of farrowing crates by 2033; limiting the stocking density of broiler chickens to 30kg/m²; and banning the tethering of dairy cattle and calves. Austria should also be commended for outlawing fur farming and foie gras production. The use of wild animals in circuses is forbidden. Since the API was first published, Austria has banned the tattooing and the dying of an animal's skin, fur or feathers. In 2017, the online advertising of pets for sale was banned. On 16 May 2017, the Minister for Hunting and Rural Affairs in the Austrian province of Lower Austria announced a ban on the hunting of captive-bred wild animals in enclosures.

However, there is still room for improvement in many areas related to animal welfare. Austria still allows animals to be slaughtered without prior stunning on religious grounds. Furthermore, the stunning of pigs using CO₂ is carried out, which causes acute animal suffering. In addition, entertainment events causing animal cruelty such as horse and dog racing are allowed. Though animal protection is legislated at the federal level since 2004, hunting is still regulated at the state level, which creates some disparities in hunting seasons and hunting methods allowed. Some of the cruellest forms of hunting, such as hunting with dogs, are still allowed in Austria.

The Federal Ministry of Health is responsible for animal welfare in Austria and cooperates with the Federal Ministry of Agriculture, Forestry, Environment and Water Management to work on animal welfare issues concerning farm animals. Each of the nine Austrian states appoints an Animal Protection Ombudsperson to act as independent, non-governmental representative of the interests of animal welfare. Furthermore, there are three animal welfare bodies at the federal level: the Animal Protection Commission directly advises the Ministry of Health on animal welfare issues, in particular with regards to its animal welfare working plan; the Animal Protection Council drafts position papers using the latest scientific evidence available; and the Animal Protection Enforcement Advisory Board monitors compliance with animal welfare legislation.

The Government of Austria is urged to ban the confinement of farm animals – for instance, in sow stalls for pigs, and in cages for egg-laying hens – and the Government is urged to mandate the humane slaughter of all farm animals, with stunning prior to slaughter. The Government of Austria is also encouraged to ban all piglet mutilations conducted without anaesthesia. The Government of Austria is furthermore urged to outlaw entertainment events which cause animal suffering, such as horse and dog



rating. Further legal and policy recommendations are associated with each Animal Protection Index (API) indicator and contained in the relevant sections of this report.

Animal Protection Index Indicators

Goal 1: Recognition of animal sentience and prohibition of animal suffering

1. Animal sentience is formally recognised in legislation

Analysis of the legislation	
Ranking	B
<p>At the European Union (EU) level, based on the 1997 Treaty of Amsterdam, Article 13 forms part of the Lisbon Treaty, signed in 2007, which subsequently became the Treaty on the Functioning of the European Union (TFEU).¹ Article 13 of the TFEU explicitly recognises animal sentience and requires that Member States 'pay full regard to the welfare requirements of animals' in formulating and implementing European Union policies on agriculture, fisheries, transport, research and technological development.</p> <p>Article 1 of the main animal welfare legislation in Austria, the Animal Welfare Act 2004² (amended in 2017³) states that the aim of the Act is 'the protection of the life and well-being of animals based on man's special responsibility for the animal as a fellow creature'. Article 3 states that the Act is applicable to all vertebrates, cephalopods and decapods, with the exceptions of Article 32 (mandating humane slaughter) and the exception of animals used for hunting and fishing. Whilst the concept of sentience is not explicitly acknowledged in legislation, the Animal Welfare Act 2004 does recognise physical and mental aspects of animal sentience by prohibiting the infliction of unjustified pain, suffering or injury to animals and exposure of animals to 'extreme anxiety' (Article 5). Additionally, Article 13 requires animals to be kept in ways that correspond to their physiological and behavioural needs, including satisfying the need for social contact. Article 13(1) also states that no animal may be kept unless it can be reasonably expected 'on the basis of its genotype or phenotype, that it can be kept according to the state of the art of scientific knowledge without detrimental effect on its well-being'.</p> <p>In 2013, the Austrian Constitution was amended to include that 'the state protects the life and well-being of animals due to the special responsibility humans have for their fellow creatures'.⁴</p> <p>In addition, the Civil Code of Austria declares in Article 285a that 'Animals are not things; they are protected by special laws. The provisions in force for the things apply to animals only if no contrary regulation exists'.⁵</p> <p>Further confirmation of Austria's commitment to Animal Welfare is given by BGBl. I NR. 111/2013</p>	

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

² https://ris.bka.gv.at/Dokumente/Erw/ERV_2004_1_118/ERV_2004_1_118.pdf

³ <http://extwprlegs1.fao.org/docs/pdf/aut167364.pdf>

⁴ <https://vgt.at/en/work-constitution.php>

⁵ <https://www.jusline.at/gesetz/abgb/paragraf/285a>



of the Federal Constitutional Law on Sustainability and Animal Welfare,⁶ which declares that the Republic of Austria is committed to animal welfare.

Analysis

Article 13 of the TFEU is a fundamentally important principle, providing a legal recognition of sentience and requirement for member states to pay full regard to the welfare requirements of animals when formulating and implementing European policy. However, it is important to note that whilst Article 13 represents a minimum standard to which any government must commit, its scope and impact for animals is limited.

Whilst positive that Article 13 explicitly acknowledges animal sentience, the requirement that member states pay 'full regard' to animal welfare is vague and does not create a precise and enforceable duty.

Article 13 does not cover every type of new law, and applies only to **'agriculture, fisheries, transport, internal market, research and technological development and space policies.**

Additionally, currently there is a derogation in Article 13 for 'cultural practices'. Whilst Austria has no history of utilising the cultural derogation, this clause does allow other countries such as Spain and France to continue unacceptable practices of bullfighting and foie production, under the protection of Article 13.

It is positive that the Animal Welfare Act 2004 recognises humans' responsibility towards animals as 'fellow creatures'. This suggests some equivalence between humans and animals, and therefore implicitly recognises the concept of sentience. The idea that animals are fellows of humans is reiterated in the Austrian Constitution. The Civil Code also recognises the special status of animals – though it would have been positive if the Civil Code could have explicitly defined animals as sentient, rather than implicitly stating that animals 'are not things'.

The scope of application of the Animal Welfare Act 2004 is wide-reaching, since it applies to vertebrates, cephalopods and decapod crustaceans. However, the Act appears to exclude wild animals used for hunting and fishing. The scope of application should be extended to all animals, including all wild vertebrates, cephalopods and decapod crustaceans. Furthermore, it is unclear from Article 32, mandating humane slaughter, to which category of animals this provision applies.

Upon its introduction, the Animal Welfare Act 2004 represented some of the world's strongest animal protection legislation and was introduced with the unanimous support of the main political parties in Austria.⁷ The Government is committed to protect animal welfare and the dissemination of this aim through society is promoted by the fact that each state is required to appoint an Animal Protection Ombudsperson. Three advisory animal welfare committees have been established and these

⁶<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008504&ShowPrintPreview=True>

⁷ http://www.nbcnews.com/id/5077350/ns/health-pet_health/t/tough-animal-rights-laws-enacted-austria/#.U8O7vBbGcf0

committees submit proposals to the Federal Minister of Health regarding establishment of multi-year workplans for all aspects of animal welfare.

Enforcement mechanisms

There are enforcement mechanisms for the legal protection that arises out of the recognition of sentience in the Animal Welfare Act 2004: fines and imprisonment (Article 38), prohibition on keeping animals (Article 39) and confiscation (Article 40).

Key recommendations

- **The Government of Austria should be recognised for defining animals as ‘fellow creatures’ to humans in its main piece of animal welfare legislation, the Animal Welfare Act 2004, as well as in the Austrian Constitution. It is also commendable that the Animal Welfare Act 2004 is applicable to all vertebrates, cephalopods and decapod crustaceans. The Government of Austria is strongly encouraged to explicitly define vertebrates, cephalopods and decapod crustaceans as sentient in the Austrian Civil Code.**

2. There are animal protection laws that prohibit causing animal suffering either by a deliberate act of cruelty or by a failure to act

Analysis of the legislation

Ranking

B

Article 222 of the Penal Code⁸ states it is an offence to cause cruelty to animals. It is prohibited to mistreat an animal or inflict unnecessary pain. The term ‘animal’ is not defined but Article 222(3) specifically prohibits the wanton killing of vertebrates.

The Animal Welfare Act 2004 forms the basis of animal welfare legislation in the nine individual states of Austria. Article 5(1) prohibits the infliction of unjustified pain, suffering or injury to an animal, or exposing an animal to ‘extreme anxiety’. This applies to all animals (Article 3(1)), but there is an exemption for hunting and fishing (Article 3(4)). Article 5(2) gives particular examples of acts which amount to violations of 5(1), including negligence with regards to accommodation, feeding and care (Article 5(2)(13)). A failure to act that would cause animal cruelty is therefore prohibited. Article 6 forbids the killing of animals ‘without proper reason’. Article 7 prohibits intervention performed on animals for other than therapeutic or diagnostic purposes. Article 9 requires anyone who has clearly injured an animal or placed the animal in danger, so far as reasonable, to provide or obtain necessary assistance for the animal (this applies to vertebrates, cephalopods and decapods (Article 3(2)). Article 13 creates a wider duty of care, requiring that anyone who keeps an animal must provide for his/her

⁸ <https://www.refworld.org/docid/3ae6b5bf0.html>



space, freedom of movement, accommodation, climate, care and nutrition, and possibility of social contact, taking into account the physiological and behavioural needs of the animal.

However, Article 32(3) allows for religious slaughter to be performed without pre-slaughter stunning. In such circumstances, the slaughter is to be performed 'in a way avoiding to inflict unnecessary pain, suffering, injury or extreme anxiety on the animal'.

In 2013, the Constitutional principle was added stating that 'the Republic of Austria is committed to animal protection'.

Analysis

The legislation deals with animal welfare as an independent issue and gives a detailed range of examples of prohibited acts of cruelty, deliberate or otherwise. The existing legislation exceeds the baseline requirements of European Union legislation and is detailed in its scope, with a definition of cruelty that encompasses conduct such as breeding animals where it is foreseeable that pain, suffering, injury or fear will result (Article 5(2)(1)). The provisions of the Animal Welfare Act 2004 are detailed and comprehensive. The main anti-cruelty provision covers all categories of animals and reflects the norms articulated in the OIE Code Commission on animal welfare.

However, the fact that Austria still allows for the slaughter of non-stunned animals for religious purposes reflects badly on Austria's progressive stance on animal welfare. Moreover, the anti-cruelty provisions in legislation do not apply to wild animals who are hunted or fished.

Chapter 3 of the Animal Welfare Act 2004 outlines a range of powers available to specific regulatory bodies in Austria to enforce the provisions of the Act. District administrations have responsibility for the implementation and enforcement of the Animal Welfare Act (Article 33(1)). They are required to take action to end any contravention of Articles 5 to 7 of the Act. Each province is also required to appoint an Animal Protection Ombudsperson (Animal Welfare Act, Article 41).

Furthermore, though it is positive that animal protection is recognised as a constitutional principle, Article 5 of the Austrian Constitution also acknowledges that 'the Republic of Austria is committed to ensuring the supply of high-quality animal and plant origin'. There is a need for greater protection for some animals used in farming and animals used in hunting and fishing to ensure their Five Freedoms.

Enforcement mechanisms

Breach of the anti-cruelty provision in Article 222 of the Penal Code is a criminal offence punishable with imprisonment of up to one year or a fine.

Articles 38 to 48 of the Animal Welfare Act 2004 contain provisions relating to offences and penalties and create certain regulatory bodies, including an Animal Protection Ombudsperson for each state, and an Animal Protection Council consisting of those Ombudspersons, representatives from several government divisions, university representatives, a zoo representative and a member of the Central Federation of Animal Protection Associations. Animal Protection Ombudsperson have legal standing in administrative legal proceedings and can appeal in front of Administrative Courts at the state level.

Ombudspersons also have access to records in criminal animal cruelty cases (Article 222 of the Austrian Criminal Code). They are not subject to any instruction.

The Animal Protection Enforcement Council includes the heads of various enforcement bodies, government officials and the animal welfare ombudsmen. In addition, Article 42(7) specifies that the Animal Protection Council is responsible for issuing guidelines for the implementation of measures in the Act.

Article 38 provides that contravention of the anti-cruelty and duty of care provisions in Article 5 of the Act is an administrative offence punishable by fine. Article 39 states that anyone who has been found guilty of cruelty to animals may be prohibited from keeping animals, and anyone who has breached Articles 5, 6, 7 or 8 of the Act more than once may be prohibited from keeping animals.

Key recommendations

- The Government of Austria has enacted extensive anti-cruelty legislation, which prohibits mistreating animals, as well as a failure to act in case of animal abuse. The Government of Austria should lead by example and encourage countries to enact detailed animal protection legislation, protecting the Five Freedoms of animals. However, the Animal Welfare Act 2004 does not apply to animals used for hunting and fishing. The Government of Austria is therefore strongly encouraged to extend the scope of application of the Act, so that it is applicable to all vertebrates, cephalopods and decapod crustaceans, including those used for hunting and fishing.
- The Government of Austria is highly encouraged to mandate the humane slaughter of all farm animals. The exemption to humane slaughter for religious purposes should be removed from legislation. Animals should be instantaneously rendered unconscious and insensible to pain and distress prior to slaughter. Where technology does not allow for pre-slaughter stunning, animals should be killed instantaneously. Animals should be unconscious before being bled, and no further processing should occur until irreversible loss of consciousness is confirmed. No animal should be forced to witness other animals being slaughtered as this is inherently distressing.

Goal 2: Presence of animal welfare legislations

3. There are laws that apply to animals used in farming including rearing, transport and slaughter

Analysis of legislation	
Ranking	B

Rearing

At the EU level, the 1976 European Convention for the Protection of Animals kept for Farming Purposes⁹ lays out general conditions for all the species of animals kept for the production of food, wool, skin, fur or for other farming purposes. Article 3 mandates that 'animals shall be housed and provided with food, water and care [...] appropriate to their physiological and ethological needs'. Article 4 protects the freedom of movement of animals and Article 5 regulates the lighting, temperature, humidity, air circulation, ventilation and other environmental conditions.

Based on this European Convention, Council Directive 98/58/EC¹⁰ gives general rules for the protection of animals of all species kept for the production of food, wool, skin or fur or for other farming purposes, including fish, reptiles or amphibians. Article 2 mandates that all animals whose welfare depends on frequent human attention shall be inspected at least once a day. Article 7 protects the animals' freedom of movement, and Article 10 requires that breeding procedures (natural or artificial) likely to cause suffering or injury must not be practised, though there are exceptions to this. Article 21 further states that no animal shall be kept for farming purposes unless it can reasonably be expected, on the basis of its genotype or phenotype, that it can be kept without detrimental effect on its health or welfare.

The general anti-cruelty law in Article 222 of the Penal Code and the anti-cruelty and duty of care provisions of the Animal Welfare Act 2004 apply to animals used in farming.

The Government of Austria has also produced various provisions specifically relevant to the protection of animals in farming, which include the implementation of EU legislative requirements.

Article 7(1) of the Animal Welfare Act 2004 prohibits surgical interventions other than for therapeutic or diagnostic purposes, including tail docking and beak trimming; however, such operations are allowed if the intervention is 'indispensable for the intended use of the animal'. Article 12 requires that animal keepers comply with the provisions of the Act and its associated regulations regarding the keeping of animals, and to have the required knowledge and skills to properly take care of animals. Articles 13 to 23 contain further specific provisions relating to the keeping of animals, such as space, freedom of movement, floor material, design and equipping of the accommodation, temperature, nourishment, social contact and care during illness. Article 20 provides that animals kept in enclosures whose welfare is particularly dependent on human beings must be inspected at least once each day. Article 31 provides that welfare requirements must be met when keeping animals for commercial purposes, for breeding or sale.

The First Regulation on Keeping Animals 2004,¹¹ which is secondary legislation made under the Animal Welfare Act 2004, sets minimum standards for the keeping of horses and other equids, pigs, cattle, sheep, goats, hoofed game, lamas, rabbits, poultry, ostriches and farmed fish. There are also specific provisions relating to the keeping of poultry, including the design of accommodation, access

⁹<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680076da6>

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0058&from=EN>

¹¹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003820&FassungVom=2020-01-02>

to food and water, cleaning, and record keeping.

The Animal Welfare Monitoring Regulation 2004 provides that inspections must be carried out to check compliance with animal welfare legislation. Article 2 provides that where breaches of animal welfare legislation have taken place, follow-up inspections must be carried out for the next three years. Article 6 states that those carrying out inspections shall be veterinarians either employed by the authorities or officially designated by the authorities. Article 3 provides that at least 2% of agricultural holdings keeping animals must be subject to checks to ensure that animal welfare legislation is being complied with.

Austria has also banned the production of foie gras.¹²

Rearing – pigs

At the EU level, welfare provisions for pigs are laid out in Council Directive 2008/120/EC.¹³ Among animal welfare provisions, Article 3 prohibits the tethering of sows or gilt (female pig after puberty and before farrowing). The ban of individual sow stalls was decided in 2001 and a phase-out period of 12 years was allowed to adapt to the new systems. From 1 January 2013, sows will have to be kept in groups rather than in individual stalls. However, stalls may still be used for the first 28 days of gestation, and one week before the expected time of birth (Article 3.4).

Article 8 mandates inspections of pigs' rearing conditions and Article 12 provides that Member States may apply, within their territories, stricter provisions for the protection of pigs than the ones laid down in this Directive.

Chapter I of the Annex of the Directive provides that 'all procedures intended as an intervention carried out for other than therapeutic or diagnostic purposes or for the identification of the pigs in accordance with relevant legislation and resulting in damage to or the loss of a sensitive part of the body, or the alteration of bone structure, shall be prohibited'. However, there are exemptions to this general prohibition for:

- teeth grinding or clipping (before 7 days old)
- tail-docking
- castration of male pigs by other means than tearing of tissues
- nose-ripping only when the animals are kept in outdoor husbandry systems and in compliance with national legislation.

Tail-docking and teeth grinding/clipping must not be carried out routinely 'but only where there is evidence that injuries to sows' teats or to other pigs' ears or tails have occurred'. There is no requirement to use anaesthetic for castration, except if the procedure is carried out after the 7th day of life.

Chapter II mandates that no piglets shall be weaned from the sow at less than 28 days of age, though piglets may be weaned up to seven days earlier if they are moved into 'specialised housings'.

¹² <http://www.fondation-droit-animal.org/proceedingsaw/legal-standards-and-animal-welfare-in-european-countries/>

¹³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0120&from=EN>

The First Regulation on Keeping Animals 2004 mandates the phase out of farrowing crates to be completed by 2033.

Since the API was first published, a Pig Health Ordinance¹⁴ was published by the Federal Minister of Health in 2016. This Ordinance lays down provisions relating to biosafety measures, hygiene requirements and health monitoring in pig farms. This ordinance does not directly address animal welfare as it focuses on animal health (animal health is indeed only a component of animal welfare).¹⁵

Rearing - broiler chickens

At the EU level, welfare provisions for broiler chickens are laid out in Council Directive 2007/43/EC.¹⁶ Notably, Article 3.2 requires that the maximum stocking density is 33kg/m². However, Article 3.3 allows for derogation to this general rule: a derogation to allow an increase above 33kg/m² up to 39kg/m² can be given when additional documented details for each house are kept and the house achieves certain climatic parameters. In addition, the documentation accompanying the flock at the slaughterhouse shall include the daily mortality rate and the cumulative daily mortality rate. A further increase above 39kg/m² up to 42kg/m² is allowed where, in addition to the conditions mentioned in the previous point being met, monitoring by the authorities confirms records of low mortality rates and good management practices.

Article 4.2 requires that the training courses for people dealing with chickens focus on 'welfare aspects'. Article 7 requires inspections to be carried out.

Annex I to this Directive provides detailed conditions with regards to the drinkers, feeding, litter, ventilation, heating, noise and light requirements. Annex I also mandates that inspections shall be carried out twice a day. Similar to the wording of the Council Directive 2008/120/EC for pigs, all surgical interventions 'carried out for reasons other than therapeutic or diagnostic purposes which result in damage to or the loss of a sensitive part of the body or the alteration of bone structure shall be prohibited'. However, two exemptions exist to this prohibition:

- beak trimming, which may be carried out when other measures to prevent feather pecking and cannibalism are exhausted. Beak trimming shall be carried out by qualified staff on chickens that are less than 10-days-old.
- castration of chickens, which shall only be carried out under veterinary supervision by personnel who have received a specific training.

Annex 6 of the First Regulation on Keeping Animals 2004 lays down the minimum requirements for the rearing of poultry and broiler chickens. The stocking density of broiler chickens is limited to 30kg/m² in Article 5.3.

Article 7 of the Austrian Animal Protection Act 2004 explicitly prohibits beak trimming.

Rearing - egg-laying hens

¹⁴ <http://extwprlegs1.fao.org/docs/pdf/aut162659.pdf>

¹⁵ <http://www.oie.int/doc/ged/d5517.pdf>

¹⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007L0043>

At the EU level, welfare provisions for egg-laying hens are laid out in Council Directive 1999/74/EC.¹⁷ Non-enriched cage systems have been prohibited since 1st January 2012 (Article 5.2). Two cage systems are now in use:

- enriched cages where laying hens have at least 750 cm² of cage area per hen
- alternative systems where the stocking density does not exceed nine egg-laying hens per m² usable area, with at least one nest for every seven hens and adequate perches.

In both systems, all hens must have a nest, perching space, litter to allow pecking and scratching and unrestricted access to a feed trough.

Article 8 mandates inspections of the systems of rearing for egg-laying hens.

The Annex to the Directive specifies that all hens must be inspected by the owner or the person responsible for the hens at least once a day (Article 1). Sound level must be minimised (Article 2) and light levels shall allow hens to show 'normal levels of activity'. Article 8 prohibits all mutilations except beak trimming, provided it is carried out on egg-laying hens less than 10 days old.

The Laying Hen Ordinance of 2004¹⁸ implements Council Directive 1999/74/EC. Article 18 of the Animal Welfare Act 2004 reiterates the provisions laid out in Council Directive 1999/74/EC.

Article 7 of the Austrian Animal Protection Act 2004 explicitly prohibits beak trimming. The use of cage systems for laying hens has been prohibited for unenriched cages since January 2009 and for enriched cages since January 2020.

Rearing - dairy cattle and calves

There is no EU legislation dedicated to dairy cattle.

Council Directive 2008/119/EC¹⁹ lays down the minimum standards for the protection of calves. Article 3 prohibits the use of confined individual pens after the age of eight weeks, except if required by a veterinarian. Individual pens must have perforated walls, allowing the calves to have direct visual and tactile contact. Article 3 further sets out minimum dimensions for individual pens and for calves kept in group. Inspections of facilities should be carried out (Article 7). Annex I of the Directive lays down specific conditions for the rearing of calves. Notably, calves must not be kept permanently in darkness: Member States make provisions for 'appropriate natural or artificial lighting'. Moreover, all housed calves must be inspected by the owner or the person responsible for the animals at least twice daily and calves kept outside must be inspected at least once daily. The accommodation for calves must allow them to lie down, rest, stand up and groom for themselves without difficulty. Importantly,

¹⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0074&from=EN>

¹⁸ <http://extwprlegs1.fao.org/docs/pdf/aut52553.pdf>

¹⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0119&from=EN>

calves must not be tethered, with the exception of group-housed calves which may be tethered for periods of not more than one hour at the time of feeding milk or milk substitute.

Since the API was first published in 2014, the board of Animal Protection Ombudspersons declared the tethering of cattle unlawful.²⁰ The tethering of calves is also prohibited in Annex 2 of the First Regulation on the Keeping of Animals 2004 (Article 3.1).

Transport

At the EU level, welfare provisions for animal transport are laid out in Council Directive EC 1/2005.²¹ This Directive defines the responsibilities of all actors involved in the transport chain of live animals entering or leaving the EU. Article 3 (General Conditions) provides that 'no person shall transport animals or cause animals to be transported in a way likely to cause injury or undue suffering to them'. Article 7 forbids long journeys (i.e. exceeding 8 hours) unless the means of transport has been inspected and approved under Article 18(1).

The Animal Transportation Act 2007²² implements the Council Directive EC 1/2005 and provides that transport inspectors must perform certain duties, such as checking transport of animals on departure and arrival and during transport. The Act sets out minimum standards regarding feeding, space, travelling speed, fitting out of means of transport and skills of those dealing with animals during transport, and sets maximum journey durations. Article 18 states that animals sent for slaughter within Austria may be transported for maximum 4.5 hours. If it is necessary for 'geographical, structural reasons' the duration of the journey may be extended to 8 hours, or 8.5 hours in the case of transports in which drivers have to take breaks due to motor vehicle regulations. During such breaks, the welfare of animals must be 'taken into account in the best possible way'.

Moreover, the Austrian Government issued a Decree that orders Austrian local veterinary authorities to consider the heat conditions at the border crossing between Bulgaria and Turkey.²³ The Order entered into force from 14 August 2018 and ensures that consignments of animal transport do not take place when the temperature in the Bulgarian city Svilengrad is 30 degrees Celsius or more.

Slaughter

At the EU level, welfare provisions for animals at the time of slaughter are laid out in Council Directive EC No 1099/2009.²⁴ Article 3 states that animals shall be spared any 'avoidable pain, distress or suffering during their killing and related operations'. Article 4 mandates that animals must be stunned prior to being slaughtered, and the loss of consciousness and sensibility shall be maintained until the death of the animal. Article 5 specifies that workers should check whether animals do not present any signs of consciousness in the period between the end of the stunning process and death. Annex I to

²⁰ <https://vgt.at/en/>

²¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

²² <http://extwprlegs1.fao.org/docs/pdf/aut73108.pdf>

²³ https://ec.europa.eu/food/sites/food/files/animals/docs/aw_platform_20181119_pres02.pdf

²⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1099&from=EN>

this Directive lists all the stunning methods possible. Annex II sets out the requirements regarding the layout, construction and equipment of slaughterhouses.

In 2018, following a favourable opinion of the European Food Safety Authority on low atmospheric pressure system for the stunning of broiler chickens, Annexes I and II to Council Regulation (EC) No 1099/2009 have been amended by Commission Implementing Regulation (EU) 2018/723²⁵ to approve the stunning of broiler chickens through asphyxia due to low atmospheric pressure.²⁶

In relation to slaughter, Article 32 of the Animal Welfare Act 2004 provides that the slaughter of animals must be undertaken in a way that avoids all unnecessary pain, suffering, injury or distress for the animals and must be undertaken only by qualified, skilled persons. Killing without stunning is prohibited, with an exemption for religious slaughter. Religious slaughter can only be performed by persons with the necessary skills, in presence of a veterinarian. Animals shall be anaesthetised after opening the blood vessels, and this anaesthetisation should become effective immediately after the cut is performed.

In 2013, Austria issued a Federal Act²⁷ implementing directly applicable EU legislation on the protection of animals at the time of killing.

In addition, an Ordinance of the Federal Minister of Health on the protection of animals at time of slaughtering or killing was published on the 16 of October 2015 to implement several acts in regards of the protection of animals.²⁸ This Ordinance lays down provisions by which animals shall be spared any avoidable pain, distress or suffering during their killing and related operations.

Analysis

The wording of Council Directive 98/58/EC is quite general and does not consider species-specific needs, by comparison to the other Directives.

With regards to pigs, it is positive that the ban on sow stalls has entered into force since 2013. However, this ban is limited since stalls are still allowed to be use for the first 28 days of gestations, and shortly before giving birth.

The many exemptions provided in Chapter I of the Annex of Council Directive 2008/120/EC allows for piglet mutilations to be performed without anaesthetics. The use of anaesthetic is only mandated for castration, occurring on a piglet at least 7-days-old. Piglet mutilations are extremely cruel and these exemptions represent a legal loophole allowing for the inhumane treatment of farm animals.

Castration is practiced the development of undesirable sexual or aggressive behaviour, and to avoid the development of 'boar taint, which gives pork meat a distinctive taste and odour. The European Commission acknowledges on its website that castration has become 'a significant animal welfare

²⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0723&from=EN>

²⁶ <https://www.efsa.europa.eu/en/efsajournal/pub/5056>

²⁷ <http://extwprlegs1.fao.org/docs/pdf/aut121378.pdf>

²⁸ <http://extwprlegs1.fao.org/docs/pdf/aut150132.pdf>

concern in recent years', inflicting pain 'even on very young pigs'.²⁹ A working group, made of representatives of European farmers, meat industry, retailers, scientists, veterinarians and animal welfare NGOs, met in 2010 and developed the European Declaration on Alternatives to Surgical Castration of Pigs.³⁰ Two key decisions were taken through this Declaration: the surgical castration of pigs, if carried out, shall be performed with prolonged analgesia and/or anaesthesia with methods mutually recognised. Secondly, the surgical castration of pigs should be abandoned by 1 January 2018. Over 30 stakeholders (animal welfare NGOs, industry practitioners etc.) signed this voluntary agreement.

It is positive that Austria is phasing out the use of farrowing crates by 2033. However, Austria still allows for piglet mutilations to be carried out without anaesthetics.³¹

With regards to broiler chickens, Council Directive 2007/43/EC represents the first legal instrument in which 'welfare indicators' were included as a means of scientific assessment. It is positive that the Directive goes into details about the environment of rearing of chickens (i.e. drinkers, feeding, litter, ventilation and heating, noise, light requirements). The Directive also provides a maximum stocking density, however, by allowing derogations to be made, the Directive enables large-scale, industrial farming practices to be developed in the EU. In such crowded conditions, the Five Freedoms of broiler chickens cannot be fulfilled. In addition, the exemptions for beak trimming and chicken castration enables this practice to be carried out without anaesthetics. Austria should be commended for going beyond EU requirements through limiting the stocking density of broiler chickens to 30kg/m².

With regards to egg-laying hens, the 2012 ban on the use of battery cage systems was an important step to improve the welfare of egg-laying hens. By comparison to battery cages, enriched cages provide 20% more space to each hen (the equivalent of an A4 paper with a postcard). Enriched cages have nest boxes, litter, perch space and some scratching materials, and house up to 10 hens. Though the current two systems in use (enriched cages and alternative systems) represent incremental improvements to the life of hens, the EU still allows for hens to be raised in cages. When reared in cages, the Five Freedoms of egg-laying hens are necessarily compromised.

In September 2018, a European Citizen Initiative (ECI) entitled 'End the Cage Age' was launched, supported by a coalition of animal welfare NGOs, among which World Animal Protection.³² The ECI invites the European Commission to propose legislation to prohibit the use of:

- cages for laying hens, rabbits, pullets, broiler breeders, layer breeders, quail, ducks and geese;
- farrowing crates for sows;
- sow stalls, where not already prohibited

²⁹ https://ec.europa.eu/food/animals/welfare/practice/farm/pigs/castration_alternatives_en

³⁰ https://ec.europa.eu/food/sites/food/files/animals/docs/aw_prac_farm_pigs_castalt_declaration_en.pdf

³¹ <https://vgt.at/en/work-pigletcastration.php>

³² <https://www.eesc.europa.eu/en/news-media/news/end-cage-age>



- individual calf pens, where not already prohibited

Since September 2019, as over 1 million verified signatures have been collected from EU citizens, the European Commission will be invited to propose the above-mentioned legislation.³³

With regards to dairy cattle and calves, it is regrettable that there is no EU legislation protecting the welfare-specific needs of dairy cattle. It is positive that calves must not be tethered, though this should be a full ban. Moreover, EU legislation allows for the isolation of calves under eight weeks old. The isolation of calves is detrimental to their welfare and the provision that calves in isolation need to be able to see other calves is not sufficient to satisfy their need for social interactions.

With regards to animal transport, it is positive that the Council Directive EC 1/2005 recognises in its preamble that, 'for reasons of animal welfare the transport of animals over long journeys, including animals for slaughter, should be limited as far as possible'. However, the exception of Article 7, allowing the transport of animals for over 8 hours, is detrimental to animal welfare. In fact, long live animal transport is known to cause stress. Moreover, many breaches of Council Directive EC 1/2005 have been reported, including the transport of unfit animals, exceeding stocking densities, requirements on feed, water and rest not respected, insufficient headroom and bedding, too high temperature.³⁴

In 2015, the European Commission launched a three-year Pilot Project aiming at improving animal welfare during transport by developing and disseminating Guides to Good and Best Practice for the transport of the main livestock species.³⁵ In September 2017, the contractor of the project published five extensive guides to good practices, as well as 17 technical fact sheets on good animal transport practices.³⁶ This is a positive development, however, a total ban on long live animal transport would grant stronger protection to animals.

It is positive that Austrian legislation limits transport within Austria to 4.5 hours. Long-distance transport of over eight hours is also forbidden.

With regards to slaughter, it is positive that the Council Directive EC No 1099/2009 mandates stunning prior to slaughter, however, numerous EU countries have exemptions to this requirement, notably due to religious reasons. In 2018, the European Commission has also developed a series of fact sheets outlining how various species should be stunned.³⁷ This appears to show that the EU Commission is willing to disseminate knowledge and improve animal welfare.

Austria still allows for religious slaughter to be practiced without prior stunning. Furthermore, it has been reported that over half of the more than 5 million pigs in Austria are stunned by gas before being slaughtered, which causes intense animal suffering.³⁸

³³ <https://eci.endthecageage.eu/>

³⁴ <https://www.ciwf.org.uk/media/7434627/report-on-implementation-of-eu-regulation-on-welfare-of-animals-during-transport-compassion-in-world-farming-october-2018.pdf>

³⁵ https://ec.europa.eu/food/sites/food/files/animals/docs/aw_prac_transport_pilotreport.pdf

³⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

³⁷ https://ec.europa.eu/food/animals/welfare/practice/slaughter/2018-factsheets_en

³⁸ <https://vgt.at/en/work-co2stunning.php>



Enforcement mechanisms

Breach of the anti-cruelty provision in Article 222 of the Penal Code is a criminal offence punishable with imprisonment of up to one year or a fine.

Breach of the anti-cruelty and duty of care provisions in Article 5 of the Animal Welfare Act 2004 is punishable with fines (Article 38), prohibition on keeping animals (Article 39) and confiscation (Article 40).

Breach of the secondary regulations produced under the Animal Welfare Act 2004 is punishable with a fine (Article 38).

The Animal Welfare Monitoring Regulation 2004 clearly specifies that monitoring should be undertaken by qualified individuals to ensure compliance with all relevant provisions. This piece of secondary legislation is designed to enforce compliance. In addition, Article 42(7) of the Animal Welfare Act 2004 specifies that the Animal Protection Council is responsible for issuing guidelines for the implementation of measures in the Act.

Key recommendations

- **The Government of Austria is urged to ban the worst forms of confinement for farm animals. In particular, the use of farrowing crates, sow stalls, and cages should be banned. Surgical operations, such as piglet mutilations, should not be performed except under anaesthesia and with analgesics.**

- **The Government of Austria is urged to mandate the humane slaughter of all farm animals. Animals should be instantaneously rendered unconscious and insensible to pain and distress prior to slaughter. Today, there is growing consensus amongst religious authorities worldwide that pre-slaughter stunning is compatible with religious principles.³⁹ Humane halal slaughter allows for the animal to be temporarily rendered unconscious via stunning prior to slaughter, as long as the animal's skull remains intact and the animal would regain consciousness in time should slaughter not occur. Therefore, animals should be unconscious before being bled, and no further processing should occur until irreversible loss of consciousness is confirmed. No animal should be forced to witness other animals being slaughtered as this is inherently distressing.**

4. There are laws that apply to animals in captivity

Analysis of the legislation

³⁹ [http://www.fao.org/3/x6909e/x6909e09.htm#b5-Religious%20or%20ritual%20slaughter%20\(Halal%20and%20Kosher\)](http://www.fao.org/3/x6909e/x6909e09.htm#b5-Religious%20or%20ritual%20slaughter%20(Halal%20and%20Kosher))

Ranking	B
<p><u>Zoos</u></p> <p>At the EU level, welfare provisions for wild animals kept in zoos are laid out in Council Directive 1999/22/EC.⁴⁰ 'Zoos' are defined as 'all permanent establishments where animals of wild species are kept for exhibition to the public for 7 or more days a year', with the exceptions of circuses, pet shops and any other establishments that Member States deem not to host sufficient animals. Article 3 provides that zoos shall implement conservation measures. Among them, one measure is welfare-oriented since zoos have to accommodate their animals 'under conditions which aim to satisfy the biological and conservation requirements of the individual species, inter alia, by providing species specific enrichment of the enclosures; and maintaining a high standard of animal husbandry with a developed programme of preventive and curative veterinary care and nutrition.' Article 4 mandates the licencing and inspections of existing and new zoos. Article 8 lays out that Member States shall determine penalties for a breach of this Directive: such penalties shall be effective, proportionate and dissuasive.</p> <p>The EU Zoos Directive Good Practices (2015),⁴¹ while not legally binding, are aimed at supporting practitioners and Member States in implementing the spirit and requirements of the Council Directive 1999/22/EC. The Directive includes recommendations regarding key aspects of animal health and welfare within the zoo environment such as temperature, enclosure size and furnishings and noise.</p> <p>Council Regulation (EC) 1/2005⁴² on the transport of animals is also applicable to wild animals, both those living in captivity as well as wild animals living in the wild but susceptible of being transported (e.g. for rehabilitation or reintroduction purposes). Article 3 (General Conditions) provides that 'no person shall transport animals or cause animals to be transported in a way likely to cause injury or undue suffering to them'. Chapter II, Article 1.3 provides that a notice shall be given explaining that the animals are wild, timid and dangerous and containing written instructions about feeding, watering and any special care required. Furthermore, Chapter III Article 1.1 mandates that wild animals shall become acclimatised to the mode of transport prior to the proposed journeys.</p> <p>The general anti-cruelty law in Article 222 of the Penal Code, as well as the anti-cruelty and duty of care provisions of the Animal Welfare Act 2004 apply to wild animals in captivity. The Animal Welfare Act 2004 makes various provisions specifically relating to the keeping of animals in captivity. Article 26 of the Act mandates that the keeping of wild animals in zoos shall be approved by the authority. Article 26 also makes provisions relating to keeping animals in zoos, which are more clearly defined in secondary legislation. If a zoo is wholly or partially closed, the animals shall be handed over to other associations or institutions able to keep them in lawful conditions; such institutions may be abroad. If this is not possible, the animals 'can be killed by a painless method'.</p> <p>The Zoo Regulation No. 491 of 2004⁴³ makes various detailed provisions regarding animals in</p>	

⁴⁰ <https://www.eaza.net/assets/Uploads/Governing-documents/EU-Zoo-Directive-1999.pdf>

⁴¹ https://ec.europa.eu/environment/nature/pdf/EU_Zoos_Directive_Good_Practices.pdf

⁴² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

⁴³ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003823>

captivity. Article 2 states that permission to keep animals in zoos may be granted under certain circumstances, including that animals are kept in a way that suits their biological and conservation needs, depending on the species, and the zoo is supported by a qualified veterinary surgeon who has the expertise to create a programme of care and monitoring. Articles 3 to 7 make administrative provisions relating to the monitoring of the numbers of animals in the zoo, the qualifications of the zoo leader and other personnel who will care for the animals, and also distinguish between three different categories of zoos, with category A able to keep any type of animal in any numbers, and categories B and C restricted as to the type and numbers of animals that they may keep.

Article 4 of the Animal Welfare Monitoring Regulation 2004⁴⁴ provides that, in line with Article 23 of the Austrian Animal Welfare Act 2004, the authorities must inspect zoos at least once each year to check on compliance with animal welfare legislation.

The Second Regulation on Keeping Animals No. 486 of 2004⁴⁵ makes detailed provisions for the keeping of a wide range of specific wild animals (including wild animals generally). Provisions relate to space, temperature, ground depth, nest or hutch material, feeding and whether animals should be kept together or separately.

Since the API was first published in 2014, the Minister for Hunting and Rural Affairs in the Austrian province of Lower Austria announced on 16 May 2017 a ban on the hunting of captive-bred wild animals in enclosures. A wide range of animals are bred for such trophy hunting practice, ranging from wild boar through to ibex, chamois, fallow deer, mufflons and stags. Hunters would pay large amounts of money for killing their prey, for instance up to €16,000 for a stag.⁴⁶ Each of the nine Austrian states have enacted a ban on the practice in their own wording: many of such facilities will have to be closed by 2023, but the last province of Lower Austria will be able to operate until January 2029.

Private keeping of wild animals

Article 9 of the Second Regulation on Keeping Animals No. 486 of 2004 forbids the private keeping of certain wild animal species, outside zoos and establishments carrying out scientific experiments. This list of species contains, among others, apes, hyenas, cheetah, bears, marine mammals – whales, seals, manatees – rhinoceroses, hippopotamuses, giraffes. When enacted, this Ordinance allowed the private keeping of brown bear; however, this exemption was removed in 2019.

Fur farming

At the EU level, a ban on cat and dog fur was introduced by Regulation No 1523/2007,⁴⁷ and has entered into force on 31 December 2008. The Regulation bans the placing on the market and the import to or export from the Union of cat and dog fur and products containing such fur.

⁴⁴ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003824>

⁴⁵ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003860>

⁴⁶ <https://vgt.at/en/work-captivebredhunting.php>

⁴⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R1523&from=EN>

The Animal Welfare Act 2004 defines 'animals kept for farming purposes' as 'all domestic or wild animals kept for the production of animal products (e.g. food, wool, skin, furs, leathers) or other agricultural or forestry purposes' (Article 4.6). However, Article 25(5) later on bans fur farming.

Analysis

Council Directive 1999/22/EC provides general provisions for animals kept in zoos. Following the wording of Article 3, zoos are primarily intended to achieve conservation efforts, taking into account animal welfare. It is positive that zoos have to be licenced to operate, and that such a licence can only be obtained if criteria of Article 3 are met, which includes welfare provisions relating to enrichment, husbandry, veterinary care and nutrition. Enrichment has to be species-specific, but there is no mention of the psychological distress that is induced by constraining animals to enclosures. This Directive could be improved by focusing on the mental wellbeing of animals, rather than on satisfying their basic needs (e.g. nutrition requirements). In particular, a provision could be made to ensure that the size of enclosure is large enough to enable individuals to express normal behaviours, as well as allowing social interactions. Moreover, the frequency of inspections is not mandated in this Directive.

It is positive that Council Directive (EC) 1/2005 is not limited to livestock, but also covers the transport of wild animals. However, the welfare provisions in this Directive are quite general. For instance, Chapter III, Article 1.1 does not specify how wild animals shall become 'acclimatised' to the mode of transport of the proposed journey.

Any ban on fur farming is a positive step for animals, since the fur farming industry is inherently cruel and fur cannot be produced without causing large amount of pain, distress and suffering to animals. It is thus positive that the EU has implemented a ban on fur farming, though this ban appears very much limited since it covers only two species. The most common species farmed for their fur in Europe – rabbits, minks, foxes – are not included in this ban. Furthermore, there is no legislation at the EU level mandating humane slaughter for animals farmed for their fur.

It is positive that the legislation relating to the welfare of animals in captivity is detailed, mandating that the standards of care must be species-specific. Zoos must be licenced and it is positive that the Animal Welfare Monitoring Regulation 2004 requires the regular inspection of zoos.

With regards to the private keeping of wild animals, it is positive that the Second Regulation on Keeping Animals No. 486 of 2004 forbids the keeping of certain species as companion animals. However, most species listed in this document are large and this list does not address smaller species most commonly found as exotic pets, such as birds and reptiles. This list could be expanded.

Furthermore, Austria should be considered an example for other countries to follow for having banned the production of fur, thus going beyond EU requirements. The last fur farm in Austria closed in 1998. The legislation could go further by banning the import and sale of fur products throughout the territory.

Enforcement mechanisms

Breach of the anti-cruelty provision in Article 222 of the Penal Code is a criminal offence punishable with imprisonment of up to one year or a fine.

Breach of the anti-cruelty and duty of care provisions in Article 5 of the Animal Welfare Act 2004 is punishable with fines (Article 38), prohibition on keeping animals (Article 39) and confiscation (Article 40).

Breach of the provisions of the Animal Welfare Act 2004 relating to licensing for animals kept in captivity (Articles 26 to 29), and of secondary regulations produced under the Act, is punishable with fines (Article 38).

The legislation specifies that zoos must be inspected on a regular basis to ensure compliance with the regulations. The Animal Welfare Monitoring Regulation 2004 requires that monitoring should be undertaken by qualified individuals to ensure compliance with all relevant provisions. This piece of secondary legislation is designed to enforce compliance. In addition, Article 42(7) of the Animal Welfare Act 2004 specifies that the Animal Protection Council is responsible for issuing guidelines for the implementation of measures in the Act.

Key recommendations

- **Austria has extensive legislation with regards to animals kept in captivity. Results from zoo inspections, carried out every year as mandated by the Animal Welfare Monitoring Act 2004, should be made available to the public. Furthermore, the Government of Austria is strongly encouraged to keep a registry of licenced zoos.**
- **The Government of Austria is encouraged to develop a Positive List of species, specifying which animals can be kept as companion animals, based on clear criteria including animal welfare and other relevant concerns.**
- **The Government of Austria should act as an example and champion a Europe-wide ban on fur farming. Furthermore, the Government of Austria is urged to ban the imports of fur products. In fact, by authorising the import and trade within Austrian borders of fur products, Austria is still encouraging the cruel exploitation of animals for their fur.**

5. There are laws that apply to companion animals

Analysis of the legislation

Ranking

B

Care of companion animals

The European Convention for the Protection of Pet Animals⁴⁸ is a treaty of the Council of Europe to companion animals and ensure minimum protection standards. Signed in 1987, the treaty entered

⁴⁸ <https://www.coe.int/en/web/conventions/fulllist/-/conventions/rms/090000168007a67d>

into force in 1992 and is now open to countries outside members from the Council of Europe. As of March 2019, the Convention has been ratified by 24 countries, among which Austria.

Article 1 prohibits anyone from causing unnecessary pain, suffering or distress, or to abandon a companion animal. Article 2 creates a duty of care onto animal owners, responsible for their health and welfare. Article 10 forbids surgical procedures for the purpose of modifying the appearance of a companion animal, or for other non-curative purposes. In particular, the docking of tails, the cropping of ears, devocalisation, declawing and defanging are prohibited. Exceptions exist if a veterinarian considers non-curative procedures necessary or to prevent the reproduction of animals. Article 11 specifies that the killing of companion animals shall be done with the minimum of physical and mental suffering appropriate to the circumstances.

Chapter III contains Supplementary Measures for Stray Animals. Article 12 mandates that the capture of stray animals must be done with the least amount of suffering possible. Once captured, animals may be kept or killed 'in accordance with the principles laid down in this Convention'.

The general anti-cruelty law in Article 222 of the Penal Code and the anti-cruelty and duty of care provisions of the Animal Welfare Act 2004 apply to companion animals, for example, the prohibitions on breeding where that would cause suffering. The examples of cruel conduct under Article 5(2) also include selective breeding for aggressiveness and using an animal to train another to attack.

The Animal Welfare Act 2004 also contains various provisions specifically relevant to companion animals. Article 7 prohibits physical interventions that are not used for therapeutic or diagnostic purposes or for identification in accordance with relevant legislation, including tail-docking, ear-cropping, debarking, declawing, defanging and beak-trimming unless to prevent reproduction or if the intervention is essential for the protection of the animal or others. Article 7(5) prohibits the import and sale of dogs born after 1 January 2008 and who have had such interventions made.

Article 16 prohibits restricting the freedom of movement of an animal which causes pain, suffering, injury or severe anxiety, and permanent tethering is prohibited. Dogs may not be kept chained outside (16(5)). Article 24a requires dogs to be microchipped and registered.

Article 29 requires shelters to be licenced in accordance with Article 23, and commercial breeders and pet shops are required to be licenced under Article 31. The Minister of Health has powers to make more detailed regulations. In relation to the regulation of commercial breeders and pet shops, the legislation placed a time limit of 2008 for these regulations to be made (Article 31(5)).

There are also various pieces of secondary legislation relevant to companion animals. The Commercial Animal Husbandry Regulation No. 487 of 2004⁴⁹ applies to establishments that keep animals for businesses purposes, such as pet shops, kennels and riding stables (Article 1). Article 2 provides that business establishments are responsible for the wellbeing and welfare of the animals they keep within the meaning of the Animal Welfare Act 2004. Article 4 outlines various standards required of business establishments keeping animals. Article 7a makes further rules about the keeping

⁴⁹<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003832&FassungVom=2018-06-30>

of dogs and cats in pet shops, including provisions relating to care of the animals, size and type of space to be provided and minimum age for keeping in a pet shop. Articles 10 to 13 make similar provisions regarding space, cleanliness and the qualification of staff in relation to kennels. Unwell animals must be taken to a veterinary surgeon, animals must have papers where relevant, and the kennels must record information about the animals. Articles 14 to 17 make provisions relating to riding stables and schools.

The Animal Shelter Regulation 2004 outlines specific provisions for keeping animals in shelters. For example, Article 3 requires that a sufficient number of qualified persons must look after the animals and a qualified manager must manage the shelter. Article 4 specifies that personnel are responsible for the feeding and watering of animals; young animals must be looked after according to their needs; dogs (except where aggressive) should be kept in groups; new animals should be kept apart in a quiet zone until they are ready to be integrated; unwell animals should be referred to a veterinary surgeon immediately and all animals should be checked by a veterinarian at intervals.

The Animal Welfare Monitoring Regulation 2004 specifies that all animal homes and establishments where animals are kept for business purposes must be inspected at least once per year for compliance with animal welfare legislation.

Annex I of the First Regulation on Keeping Animals 2004 sets out detailed minimum standards relating to the keeping of equids and Annex 9 sets out detailed minimum standards relating to the keeping of rabbits. The provisions relate to the hutch facilities, including provisions relating to light (including during gestation), temperature, nest material, floor space and freedom of movement.

The Second Regulation on Keeping Animals 2004 makes provisions for the keeping of vertebrates that are not covered by the First Regulation on Keeping Animals, those that have special requirements and those for whom private keeping is forbidden, for example, apes. Annex I lays out detailed provision for the keeping of mammals: dogs, cats, small rodents, including chinchillas, gerbils, hamsters, house mice, guinea pigs, rabbits, degus, rats and ferrets. Annex II sets out the minimum standards for the keeping of birds. Annex III sets out the minimum standards for the keeping of reptiles, snakes, lizards and chameleons. Annex IV sets out the minimum standards for the keeping of amphibians. Annex V sets out the minimum standards for the keeping of fish (both fresh and saltwater).

Since the API was first published, it was reported that the online advertising of pets for sale has been banned in 2017.⁵⁰

Stray animals

Article 6 of the Animal Welfare Act 2004 prohibits the killing of animals for unjustifiable reasons meaning that it is prohibited to kill stray animals due to their lack of ownership.

Article 30 of the Animal Welfare Act 2004 states that if an animal has escaped or has been abandoned, if the transfer of the animal to his/her original keeper is not an option, the authorities must

⁵⁰ <https://www.thelocal.at/20170223/austrias-new-animal-protection-act-will-ban-advertising-pets-for-sale-on-online-platforms>

hand over the animals to 'persons, institutions or associations that are responsible for keeping animals' and can guarantee the welfare provisions laid out in the Act. If the original owner of the animal has not been found within a month, ownership of the animal can be transferred to third parties.

Analysis

Legislation regarding the keeping of companion animal is highly detailed and makes very specific provisions for the care of companion animals in a range of settings and across a number of species. It is positive that the Animal Welfare Act 2004 contains a comprehensive duty of care from animal owners towards their animals. The Act furthermore contains provisions that specifically apply to companion animals. Article 16 takes into account the mental wellbeing of animals, since it prohibits restricting the freedom of movement of animals which would cause them 'severe anxiety'.

Furthermore, it is positive that commercial breeders require to be licenced under Article 31 of the Animal Welfare Act 2004. The Animal Welfare Monitoring Regulation 2004 mandates annual inspections to check whether breeders comply with animal welfare regulations. It should be highlighted as a progressive step that online advertisements for the sale of animals has been banned in 2017, thus showing the government's efforts to encourage the adoption of companion animals over the purchase of commercially-bred animals.

Cosmetic mutilations are only partially banned on companion animals. In fact, mutilations such as tail-docking, ear-cropping, debarking, declawing, defanging and beak-trimming are allowed if they are needed for reproduction – which implies that commercial breeders may subject all their animals to these mutilations, in order to make their animals allegedly more appealing. Furthermore, these mutilations are allowed if they are considered 'essential for the protection of the animal or others'. No detail is provided as to under which circumstances would such a scenario occur.

With regards to stray animals, it is positive that the authorities must transfer any abandoned animal to another person or institution able to respect the welfare provisions laid out in the Animal Welfare Act 2004, and which thereby becomes the owner of the animal. However, there is not an outright ban on the culling of stray animals.

Enforcement mechanisms

Breach of the anti-cruelty provision in Article 222 of the Penal Code is a criminal offence punishable with imprisonment of up to one year or a fine.

Breach of the anti-cruelty and duty of care provisions in Article 5 of the Animal Welfare Act 2004 is punishable with fines (Article 38), prohibition on keeping animals (Article 39) and confiscation (Article 40). Breach of the provisions dedicated to companion animals within the Animal Welfare Act 2004 (Articles 12 to 23, 29), and of secondary regulations produced under that Act, is punishable with fines (Article 38).

The Animal Welfare Monitoring Regulation clearly specifies that monitoring should be undertaken by qualified individuals to ensure compliance with all relevant provisions. This piece of secondary legislation is designed to enforce compliance. There are penalties for non-compliance. In addition,

Article 42(7) of the Animal Welfare Act 2004 specifies that the Animal Protection Council is responsible for issuing guidelines for the implementation of measures in the Act.

Key recommendations

- **The Government of Austria is strongly encouraged to ban all cosmetic mutilations on companion animals.**
- **The Government of Austria should continue to promote responsible pet ownership, including the adoption of companion animals over the purchase of commercially bred animals.**

6. There are laws that apply to animals used for draught or recreational purposes

Analysis of the legislation

Ranking	D
<p><u>Animals used for entertainment</u></p> <p>The general anti-cruelty law in Article 222 of the Penal Code and the anti-cruelty and duty of care provisions of the Animal Welfare Act 2004 apply to animals used for recreational purposes. Examples of cruel conducts under Article 5(2) include organising animal fights, holding dog racing on hard surfaces, and using animals for activities such as movies and advertising when pain, suffering, injury or severe anxiety are involved.</p> <p>Article 16 prohibits restricting the freedom of movement of an animal which causes pain, suffering, injury or severe anxiety, and permanent tethering is prohibited. In relation to wild animals, temporary tethering is prohibited (Article 16(6)).</p> <p>Article 27 of the 2004 Animal Welfare Act prohibits holding wild animals in 'circuses, variety shows and similar facilities'. Keeping other animals in circuses requires a licence in accordance with Article 23. The use of animals in other events such as film recordings also requires licensing (Article 28).</p> <p>Various regulations produced under the Animal Welfare Act 2004 are specifically relevant to animals used for draught or recreational purposes. The Animal Welfare Events Regulation 2004⁵¹ states that events using animals must obtain the authorisation of a person responsible for compliance with the provisions of the Animal Welfare Act 2004. This responsible person must ensure that: animals do not suffer any pain, suffering, damage or severe fear; cages and aviaries meet certain standards; animals have sufficient food and water; smoking during the event is prohibited. The responsible person must check twice each day the health of the animals. Unwell animals may not take part in any event. Specific provisions relate to animal shows and exhibitions. The organiser of the event must keep a</p>	

⁵¹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003825>

register of the type and number of animals used, which must be presented to the authority responsible for enforcing the Animal Welfare Act if necessary. Any show using animals must last a maximum of three consecutive days (Article 5). Article 6 lays out general requirements for the accommodation of certain exhibited animals, with specific provisions for rabbits (Article 7), guinea pigs (Article 8), poultry (Article 9), pigeons (Article 10) and other birds (Articles 11-13).

The Animal Welfare Circus Regulation 2004⁵² relates to keeping working animals, such as horses, in circuses, variety shows and similar establishments. This Regulation lays out minimum requirements for indoor and outdoor facilities, for group housing, food and water supply. Article 6 lays out that care must be provided to the animal by a sufficiently large amount of caregivers, who have experience caring for these particular species. With regards to the training of the animals, animals can only perform postures and movements that are within the scope of their normal range of behaviours, with consideration given to the 'age, general condition, gender, willingness to act and the level of education of each individual animals'. Furthermore, the social ranking of individual animals in the case of socially-living species must be considered. Training with open fires is prohibited, as well as any other forms of training that cause pain, suffering or distress to the animal.

The First Regulation on Keeping Animals 2004 and the Second Regulation on Keeping Animals 2004 also both apply to animals used in circuses, as specified in the Animal Welfare Circus Regulation 2004. Animals must be kept in conditions that ensure their health and safety as well as that of carers and visitors. They must be kept in a way as to avoid illness and behavioural problems. Animals must be kept in a way that is appropriate to their species. An inside area should be provided as well as an outside area where prescribed by the Regulations, and the outside area should be used daily where it is provided. Animals should be regularly trained where they are to perform, and on days when they are trained, should be allowed into the outside area for at least six to eight hours where possible.

The Animal Welfare Monitoring Regulation 2004 states that all circuses and other similar arrangements must be inspected at least once per series of events at the place where the event will be held. For all other events, the authorities should carry out random checks in line with Article 28 of the Animal Welfare Act 2004.

Though the keeping of whales is restricted (prohibited or subject to approval criteria) according to Article 6 of the Zoo Regulation No. 491 of 2004, while the keeping of other marine mammals such as dolphins is prohibited for entertainment purposes under the Second Regulation on Keeping Animals 2004

Since the API was first published, Austria has banned the tattooing and the dyeing of an animal's skin, fur or feathers.

[Draught animals](#)

⁵² <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003821>

The general anti-cruelty law in Article 222 of the Penal Code and the anti-cruelty and duty of care provisions of the Animal Welfare Act 2004 apply to animals used for draught.

Various regulations produced under the Animal Welfare Act 2004 are specifically relevant to animals used for draught or recreational purposes. The Commercial Animal Husbandry Regulation No. 487 of 2004 applies to establishments that keep animals for businesses purposes, including riding stables. Article 2 specifies that business establishments are responsible for the well-being and welfare of the animals they keep within the meaning of the Animal Welfare Act 2004. Article 4 outlines various standards required of business establishments keeping animals. Articles 14 to 17 make provisions relating to riding stables and schools.

The First Regulation on Keeping Animals 2004 and the Second Regulation on Keeping Animals 2004 both apply to draught animals. Annex I of the First Regulation sets out detailed minimum standards relating to the keeping of equids. The provisions relate to the hutch facilities, including provisions relating to light (including during gestation), temperature, nest material, floor space and freedom of movement. Only healthy animals with no underlying conditions may take part in animal markets and exchanges. Pregnant animals near to giving birth or who have given birth within the last seven days may not take part in an event, and young animals still suckling may not take part in events without their mothers. Animals must not take part in similar events less than four days apart. Article 6 sets out minimum standards for the accommodation of animals in relation to litter, access to food and water for all animals, size of cages, transport caddies and climate conditions. Other regulations make specific provisions for a variety of species.

The Regulation on the Training of Service Dogs 2004⁵³ outlines a series of provisions on the use of aids that may cause pain, suffering or damage in training or retraining dogs used by the security forces and armed forces. The Regulation on More Detailed Provisions on the Training of Dogs in Compliance with Animal Welfare provides further details, stating that the training of dogs must be carried out in such a way as to comply with the Article 5 of the Animal Welfare Act 2004 (the anti-cruelty provision of that Act).

Analysis

Legislation regarding the level of care needed for animals used for recreational purposes is highly detailed and takes into account the species of the animal as well as the animal's individual characteristic, such as gender and social rank within a group of other individuals from the same species. It is positive that Austria has outlawed the use of animals for fights, and the use of wild animals in circuses. The use of wild animals in 'variety show institutions and similar facilities' is also forbidden: the wording of this article could clarify what exactly are considered similar facilities. It should also be highlighted that Austria has adopted further prohibition to protect animals from being used for entertainment, such as a ban on the tattooing and the dying of an animal's skin, fur or feathers.

It is furthermore positive that Austrian legislation provides details with regards to the keeping of animals used for draught. The legislation for this category of animals is detailed and provides species-specific provisions, such as Annex I of the First Regulation on Keeping Animals 2004 which sets out the

⁵³ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003826>

necessary conditions to keep horses.

However, other entertainment events causing animal cruelty, such as dog races, are still allowed in Austria: the Animal Welfare Act merely prohibits to hold such events on 'hard surfaces'.

Enforcement mechanisms

Breach of the anti-cruelty provision in Article 222 of the Penal Code is a criminal offence punishable with imprisonment of up to one year or a fine.

Breach of the anti-cruelty and duty of care provisions in Article 5 of the Animal Welfare Act 2004 is punishable with fines (Article 38), prohibition on keeping animals (Article 39) and confiscation (Article 40). Breach of the secondary regulations produced under the Animal Welfare Act 2004 is punishable with a fine (Article 38).

The Animal Welfare Monitoring Regulation 2004 clearly specifies that monitoring should be undertaken by qualified individuals to ensure compliance with all relevant provisions. This piece of secondary legislation is designed to enforce compliance. There are penalties for non-compliance. Chapter 4 of the Animal Welfare Act 2004 outlines a range of penalties for contravention of the Act. In addition, Article 42(7) of the Act specifies that the Animal Protection Council is responsible for issuing guidelines for the implementation of measures in the Act.

Key recommendations

- **The Government of Austria is urged to ban the use of all animals in circuses. At present, only the use of wild animals in circuses is prohibited. No animal should be used for entertainment purposes when this causes animal suffering. Outlawing the use of wild animals in circuses is a first step towards phasing out the use of all animals in circuses.**
- **The Government of Austria is urged to forbid the organisation of and attendance to entertainment events causing animal suffering, such as horse and dog races. Welfare concerns for such activities include housing, diet, transport, management, training, the use of the whip and risk of injury and death. Due to these serious animal welfare concerns and the Five Freedoms of animals being compromised, the Government of Austria is strongly encouraged to ban the breeding, training and racing of horses and dogs for races or other forms of entertainment.**
- **Given that the physiological and behavioural needs of marine mammals cannot be met in captivity, the Government of Austria is strongly encouraged to ban the breeding, keeping and training of all marine mammals in captivity, so that these animals constitute the last generation in captivity in the country. These animals should be retired to large seaside sanctuaries, which allow for an increased range of natural behaviours.**

7. There are laws that apply to animals used for scientific research

Analysis of the legislation	
Ranking	A
<p>At the EU level, welfare provisions for animals used in scientific research are laid out in Directive 2010/63/EU,⁵⁴ which updated and replaced the 1986 Directive 86/609/EEC⁵⁵ on the protection of animals used for scientific purposes. This new Directive applies to live vertebrates and live cephalopods (Article 1.4). Article 4 enshrines the Three Rs principles in legislation – Replacement, Reduction, Refinement. Article 6 mandates that animals are killed with minimum ‘pain, suffering, distress’. Articles 7 and 8 provides exemptions for the use of endangered species and non-human primates in experiments, respectively. It is forbidden to take animals from the wild to carry experiments, except when the procedure cannot be achieved by the use of an animal who has been bred for use in procedures. It is furthermore prohibited to use animals stray and feral animals of domestic species in experiments. (Article 11). Article 14 ensures that ‘Member States shall ensure that, unless it is inappropriate, procedures are carried out under general or local anaesthesia, and that analgesia or another appropriate method is used to ensure that pain, suffering and distress are kept to a minimum’.</p> <p>With regards to animal testing for cosmetic products, Chapter V, Article 18 of Regulations EC No 1223/2009⁵⁶ of the European Parliament and of the Council of 2009 on cosmetic products prohibits to test finished cosmetic products and cosmetic ingredients on animals (testing ban). The same article also prohibits to market finished cosmetic products and ingredients in the EU which were tested on animals (marketing ban). The testing ban on finished cosmetic products applies since 11th September 2004, while the testing ban on ingredients or combination of ingredients applies since 11th March 2009.</p> <p>The general anti-cruelty provision of Article 222 of the Penal Code applies to vertebrates used in scientific research. Article 222 forbids to cause mistreatment or ‘unnecessary pain’ to animals.</p> <p>Article 3(3) of the Animal Welfare Act 2004 states that nothing in this Act shall affect provisions of the Animal Experimentation Act 2012.⁵⁷ Therefore, experiments carried out in accordance with the requirements of the Animal Experimentation Act 2012 would not fall within the protection of the Animal Welfare Act 2004.</p> <p>The Animal Experimentation Act 2012, which incorporates the requirements of EU Directive 2010/63/EU, aims to avoid and reduce the use of animals in experimentation, to promote better conditions for the breeding, accommodation, care and use of animals in animal experimentation, to promote alternative methods of experimentation, and to avoid or at least reduce stress for animals used during experimentation. The Act applies to vertebrates (including independently feeding larval forms and foetal mammals in the last third of gestation), and cephalopods (Article 1). Animal</p>	

⁵⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0063&from=EN>

⁵⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31986L0609&from=EN>

⁵⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1223&from=EN>

⁵⁷ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008142>

experimentation may only take place for certain specified purposes (Article 5) and prior approval must be obtained (Article 26). Article 25 requires breeders, suppliers and users of animals to ensure that the animals receive adequate accommodation, food, water and care for their health and well-being; to keep to a minimum any factors that can inhibit animals being able to satisfy their physiological and ethological needs; and to comply with specific housing and care requirements set out in secondary legislation. Anaesthetic must always be used, except where incompatible with the purpose of the experiment or where the pain of the experiment is less than that of the anaesthetic (Article 8). Article 11 stipulates that animals must be killed with the least amount of pain, suffering and fear. The law bans experimentation on great apes (Article 4(5)) and restricts the type of experiments that can be carried out on other non-human primates (Article 13).

All breeders, suppliers and users of animals for scientific experiments shall be inspected by animal protection ombudsmen, through unannounced visits taking place at least once a year for users (Article 32). A federal Animal Experiments Commission is set up within the Federal Ministry of Education, Science and Research (Article 35(1)). This federal Commission is responsible to advising competent authorities and animal welfare bodies on the matters relating to the acquisition, breeding, housing, care and use of animals in animal experiment. The Commission is also in charge of sharing good practices. Members of the Federal Animal Experiments Commission include representatives of relevant federal Ministries, academics, representatives of the Austrian Chamber of Commerce, of the Chamber of Agriculture and of the Chamber of Labour, animal protection ombudsmen and five representatives of the Association of Austrian Animal Protection Organisation.

The relevant species-specific provisions of the First and Second Regulations on Keeping Animals 2004 also apply here, depending on what types of animal are used for the scientific experimentation.

With regards to animal testing on cosmetics, Austria falls under the EU commitment and has banned the testing on animals of finished cosmetic products, as well as their ingredients. Animal testing for cosmetics is prohibited in Article 4(9a) of the Animal Experimentation Act 2012.

Analysis

At the EU level, it is positive that Directive 2010/63/EU enshrines the Three Rs principles in legislation. These respectively aim at replacing animals with non-animal methods as much as possible, reducing the number of animals used in experiments to the lowest level, and refining experimentation methods in order to cause the least amount of suffering possible. Numerous references are made throughout the Directive to the duty for Member States to reduce animal suffering as much as possible. However, a loophole appears in Article 14, since the use of anaesthetics or analgesia is mandated 'unless it is inappropriate'. Thus, it is still possible in the EU to carry out experiments on live animals without them being rendered unconscious or insensitive to the pain.

With regards to animal testing for cosmetic products, it is positive that the EU has banned testing on finished cosmetic products and their ingredients through Regulations EC No 1223/2009. However, the testing and marketing bans remain limited. Notably, these bans only apply to cosmetic products and ingredients which are only used in cosmetics. Furthermore, the bans only apply to tests specifically



aimed at consumer safety, but do not apply to worker safety tests. The bans also do not apply if the testing is intended to determine whether the product poses a risk to the environment.

Austrian legislation is highly detailed and makes very specific provisions for the care of animals used for scientific research. The Animal Experimentation Act 2012 incorporates the Three Rs principles – Replacement, Reduction, Refinement – as the aim of this legislation is to avoid and reduce the number of animals used in experimentation. The legislation also prohibits experiments where there are non-animal alternatives, the results of previous experiments are available, and when new findings are not anticipated and the experiment is not needed for control purposes (Article 4(1-3)). Article 38 makes provision for cooperation with the European Commission on the development of alternatives to animal testing. Consequently, the legislation is explicitly designed to make cumulative improvements to the welfare of animals used in experimentation. It should be commended that experiments on great apes have been fully banned, and that experiments on other non-human primates are restricted. It is furthermore positive that animal testing for cosmetic products has been banned, in line with EU requirements.

The federal Animal Experimentation Commission is in charge of disseminating good practices in terms of animal experiments; it is positive that this government body includes as permanent members one representative of the animal protection ombudsmen and five representatives of the Association of Austrian Animal Protection Organisation.

Enforcement mechanisms

Breach of the anti-cruelty provision in Article 222 of the Penal Code is a criminal offence punishable with imprisonment of up to one year or a fine. Breach of the anti-cruelty and duty of care provisions in Article 5 of the Animal Welfare Act 2004 is punishable with fines (Article 38), prohibition on keeping animals (Article 39) and confiscation (Article 40).

Breach of the provisions of the Animal Experimentation Act 2012 is an administrative offence punishable with fines, unless the conduct amounts to a criminal offence (that is, unless the conduct falls under the remit of the Penal Code) (Article 39). Facilities may be closed under Article 34. Articles 32 and 33 of the Animal Experimentation Act 2012 make provisions for supervision and enforcement activities.

Key recommendations

- **Austria has extensive legislation with regards to the use of animals in scientific research and has enshrined the Three Rs principles – Replacement, Reduction, Refinement – in its Animal Experimentation Act 2012.**
- **The Government of Austria is strongly encouraged to create a multi-stakeholder committee dedicated to developing alternatives to animal experimentation, following the model set out by Nordic countries such as Denmark.⁵⁸ At present, the National Centre for the Replacement,**

⁵⁸ https://www.foedevarestyrelsen.dk/Dyr/dyrevelfaerd/Danmarks_3R_Center/Sider/Danmarks3R-Center.aspx

Refinement and Reduction of Animals in Research (NC3Rs) is the country's national organisation dedicated to advance the Three Rs principles. However, the NC3Rs is comprised of experts and would benefit from including a wider range of stakeholders' perspectives. Representatives from animal welfare organisations should be included in the NC3Rs.

- Austria is encouraged to continue engaging with animal welfare organisations, for instance through the federal Animal Experiments Commission, in order to promote alternatives to animal experiments.

8. There are laws that apply to wild animals

Analysis of the legislation	
Ranking	C
<p>At the EU level, wild animals are protected by various Directives and Regulations. Council Directive 92/43/EEC⁵⁹ on the conservation of natural habitats and of wild fauna and flora, known as the Habitats Directive, prohibits all capture, killing, deliberate disturbance, destruction or taking of the eggs, deterioration or destruction of breeding sites or resting places of wild vertebrates listed in Annex IV(a) (Article 12). Furthermore, the keeping, transport, sale and exchange of these same species is also prohibited. Annex IV(a) lists over 400 species (Article 8). For over 90 species listed in Annex V, Member States must ensure that their exploitation and taking in the wild is compatible with maintaining them in a favourable conservation status (Article 14).</p> <p>Council Directive 2009/147/EC⁶⁰ of the European Parliament and of the Council on the conservation of wild birds, known as the Birds Directive, provides various regimes for different bird species. 82 species listed in Annex II can be hunted, however, the hunting periods are limited and hunting is forbidden when birds are at their most vulnerable (i.e. during their return migration to nesting areas, reproduction and the raising of their chicks) (Article 7). Overall, this Directive prohibits activities that directly threaten birds, such as their deliberate killing, capture or trade, or the destruction of their nests, are banned. With certain restrictions, Member States can allow some of these activities for 26 species listed in Annex III (Article 6). Member States must outlaw all forms of non-selective and large scale killing of birds, especially the methods listed in Annex IV (Article 8).</p> <p>Council Regulation (EC) No 338/97⁶¹ on the protection of species of wild fauna and flora by regulating trade therein also applies to wild animals. Article 4.1(c) provides that when an endangered species is introduced in the EU, the competent scientific authority must be satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it proper. In the same vein, Article 4.2(b) mandates that there must be a written proof that</p>	

⁵⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN>

⁶⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0147&from=EN>

⁶¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997R0338&from=en>

the intended accommodation for a live specimen is 'adequately equipped to conserve and care for it properly'. Article 4.6.(c) provides that the introduction of species in the EU may be restricted if species have a high mortality rate during shipment or for which it has been established that they are unlikely to survive in captivity.

Council Regulation (EC) 1/2005⁶² on the transport of animals is also applicable to wild animals, both those living in captivity as well as wild animals living in the wild but susceptible of being transported (e.g. for rehabilitation or reintroduction purposes). Article 3 (General Conditions) provides that 'no person shall transport animals or cause animals to be transported in a way likely to cause injury or undue suffering to them'. Chapter II, Article 1.3 provides that a notice shall be given explaining that the animals are wild, timid and dangerous and containing written instructions about feeding, watering and any special care required. Furthermore, Chapter III Article 1.1 mandates that wild animals shall become acclimatised to the mode of transport prior to the proposed journeys.

Article 222 of the Penal Code creates an offence of cruelty to animals. It is prohibited to mistreat an animal or inflict unnecessary pain and the wanton killing of vertebrates is prohibited. It is not clear whether activities connected with hunting are excluded from these provisions.

The Animal Welfare Act 2004 does not apply to hunting and fishing activities (Article 3(4)).

Austrian legislation relating to hunting is regulated at state level in each of the nine states. Namely, there is the 2017 law on hunting in Burgenland,⁶³ 2000 law for Carinthia,⁶⁴ 1974 law for Lower Austria,⁶⁵ 1964 law for Upper Austria,⁶⁶ 1993 law for Salzburg,⁶⁷ 1986 law for Styria,⁶⁸ 2004 law for Tyrol,⁶⁹ 1988 law for Vorarlberg,⁷⁰ and the 1948 law for Vienna.⁷¹

As a result of this regional legislations, hunting seasons differ among the nine states. Overall, however, all state regulations on hunting contain similar provisions. As a typical example, in Burgenland, the Hunting Act 2004 allows hunting in two circumstances: where a landowner hunts on his own land or hunting enclosure, and where hunting associations hunt in 'cooperative hunting areas'. These areas must be registered with the authorities as designated hunting areas. Game reserves (for hunting, show or breeding) may also be established with the permission of the authorities. All those who hunt must carry a valid hunting licence or, for foreigners, an equivalent document granted by another EU Member State in conjunction with a hunting guest card. Article 11 states that game reserves will be given authorisation where animal welfare and veterinary supervision requirements are met, and Article 67(11) of the Burgenland Hunting Act 2004 stipulates that a hunting card will not be granted where a person has been convicted of cruelty to animals under the Penal Code or has committed a serious

⁶² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

⁶³ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgld&Gesetzesnummer=20001124>

⁶⁴ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=20000013>

⁶⁵ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20000559>

⁶⁶ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LROO&Gesetzesnummer=10000063>

⁶⁷ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=10000930>

⁶⁸ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000850>

⁶⁹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=10000088>

⁷⁰ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrVbg&Gesetzesnummer=20000567>

⁷¹ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000437>

or repeated hunting offence. Article 95 of that same Act prohibits the use of poison; Article 93 generally prohibits the use of traps which do not ensure intact live capture. Trapping is still allowed for corvidae (i.e. crows, ravens, rooks, jackdaws, jays, magpies, treepies, choughs, and nutcrackers). However, Article 92 permits hunting with dogs.

Analysis

The Directives and Regulations applicable to wild animals at the EU level focus primarily on the conservation of wild species, rather than on protecting the welfare of individual animals. In particular, it would be beneficial for animal protection legislation to forbid the use of the cruellest forms of hunting (i.e. dog hunting, live baiting, poisoning, trapping, falconry, bow hunting).

It is positive that Council Directive (EC) 1/2005 is not limited to livestock, but also covers the transport of wild animals. However, the welfare provisions in this Directive are quite general. For instance, Chapter III, Article 1.1 does not specify how wild animals shall become 'acclimatised' to the mode of transport of the proposed journey.

Hunting is regulated at the state level in Austria, which results in slight differences across regions with regards to the hunting seasons. However, state regulations on hunting are broadly similar. Overall, sport and recreational purposes is allowed across the country. Hunters must obtain a licence to carry out their activities. The use of poison is forbidden across Austria, and the use of traps is restricted. However, it is regrettable that some of the cruellest forms of hunting, such as hunting with dogs, is permitted throughout the country.

In its Biodiversity Strategy 2020+ published in January 2014, Austria aims to preserve a 'diverse nature': the document focuses on the conservation of species with no particular reference to the protection of individual animals.⁷² The Government notes that 'public acceptance of predatory animals has improved', which may be an encouraging sign to promote better protection measures for wild animals considered predatory.

Enforcement mechanisms

Breach of the anti-cruelty provision in Article 222 of the Penal Code is a criminal offence punishable with imprisonment of up to one year or a fine.

At state level, the typical example of the Burgenland Hunting Act 2004 contains provisions for disciplinary action including fines (Articles 159 to 180).

Key recommendations

- **The protection of wild animals is sparsely included in Austria's hunting regulations, which prevents the use of some of the cruellest forms of hunting, such as the use of poison. However, hunting with dogs is still allowed. At a minimum, the Government of Austria is urged to ban all**

⁷² <http://extwprlegs1.fao.org/docs/pdf/aut162284.pdf>



the cruellest forms of hunting, which include dog hunting, live baiting, trapping, falconry, bow hunting.

- The Government of Austria is encouraged to ban any form of hunting that does not directly support subsistence i.e. feeding oneself and one’s family and not for commercial gain. Subsistence hunting operations must employ the least cruel methods of hunting and slaughter, and that all possible efforts should be made to reduce the time to death of animals killed in these hunts. At a minimum, the Government is strongly encouraged to forbid the use of the cruellest hunting methods.

Goal 3: Establishment of supportive government bodies

9. The Government has assigned responsibility and accountability for improving animal protection at a high government level and has provided resources

Analysis of the legislation	
Ranking	A
<p>In Austria, the Federal Ministry of Health is responsible for animal welfare issues. The Federal Ministry of Health works with the Federal Ministry of Agriculture, Forestry, Environment and Water Management to work on animal welfare issues concerning farm animals.</p> <p>The Animal Welfare Act 2004 mandates that each province shall appoint an Animal Protection Ombudsperson to work in conjunction with the Minister of Health. Only persons who have completed studies of veterinary medicine, zoology or agricultural sciences or comparable studies and have undergone additional training in the field of animal protection may be appointed as Animal Protection Ombudsperson. The term of office of is five years and reappointment is admissible. Animal Protection Ombudspersons are responsible for representing the interests of animal protection: they have the status of a party in administrative proceedings, including penal proceedings, and have access to all records of criminal animal cruelty cases (under Article 222 of the Penal Code). Ombudspersons can appeal in front of the Administrative Courts at the state level in case of animal cruelty. Ombudspersons are not subject to any instructions when on duty, and report to the provincial governments on their activity. During their term, Animal Protection Ombudspersons shall not exercise any activities which are incompatible with their duties or ‘which are suitable to give the impression of being biased’.</p> <p>Austria also has three animal welfare bodies created under the Animal Welfare Act 2004.</p> <p>Set up under Article 41a of the Animal Welfare Act 2004, the Animal Protection Commission consists of one representative from each party in the National Council, and two experts each from the Federal Ministries of Health and of Agriculture, Forestry, the Environment and Water Management.</p>	



Membership of the Commission is an honorary position. The Animal Protection Commission advises the Minister for Health on animal welfare issues; makes recommendations regarding strategies for the further development of animal protection; and advises the Minister of Health with regards to the work plan it produces in relation to animal protection. This work plan covers several years. The Minister for Health is also required to submit a report on animal protection to the National Council every two years.

Secondly, the Animal Protection Council is established under Article 42 of the Animal Welfare Act 2004. This Council is composed of representatives of the Federal Ministry of Health, Ministry of Agriculture, the respective ombudsmen of the States, representatives of laboratories, universities, zoos, two representatives from animal protection organisations. Positions within the Council are also held in an honorary manner. This Council advises the Ministry of Health and the Animal Protection Commission with regards to animal welfare issues, writes diverse position papers on draft regulations to be issued through the Animal Welfare Act 2004 or the Animal Transportation Act 2007, prepares a yearly report on its activities and another one on the development of scientific knowledge relevant to animal welfare.

Thirdly, the Animal Protection Enforcement Advisory Board, set up under Article 42a of the Animal Welfare Act, drafts guidelines for the enforcement of the Animal Welfare Act 2004, as well as the enforcement of animal welfare standards during transport. This Board also contribute to the Ministry of Health's working plan from an enforcement perspective. Board members include heads of specialist enforcement bodies at the state level, the Chair of the Animal Welfare Council, a representative of the state Animal Welfare Ombudsmen, and representatives of the Federal Ministries of Health and of Agriculture, Forestry, the Environment and Water Management. This Advisory Board also produces surveys, makes recommendations (including in relation to enforcement in the states), produces position papers based on scientific evidence and also an annual report on its activities.

In relation to animal testing, Article 35 of the Animal Experimentation Act 2012 establishes a federal Animal Experiments Commission, whose members must include representatives of government, academia, industry and animal protection organisations. The Commission advises government and exchanges information within the EU and with other national bodies.

Analysis

There is a strong administrative framework for managing animal welfare in Austria, at both federal and state level. National responsibility for animal welfare falls to the Ministry of Agriculture and the Ministry of Health, emphasising the importance of animal welfare to humans and animals. It should be highlighted as a best practice the presence in each state of an Animal Protection Ombudsperson. These Ombudspersons perform a variety of tasks, with their principal function being to act as an independent, non-governmental representative of the interests of animal welfare

Furthermore, it is positive that there are various government bodies dedicated to animal welfare. The Animal Protection Commission directly advises the Minister of Health with regards to animal welfare policies and working plan. The Animal Protection Council in turns advises the Commission, after conducting research on the latest scientific evidence available and international trends in terms of animal welfare best practices. The Animal Protection Enforcement Advisory Board in turns evaluates



whether legislations and policies are correctly implemented. It is positive that there each of this body is dedicated to a specific policy stage – position papers and regulations are drafted using the latest science available by the Animal Protection Council, then such recommendations presented to the Ministry of Health by the Animal Protection Commission and, finally, the implementation thereof is evaluated by the Enforcement Advisory Board. A shortcoming, however, may lie in the fact that positions of the Animal Protection Commission and Council are of honorary nature, which may present a barrier for their members to juggle with other work priorities.

Enforcement mechanisms

The various functions of the relevant administrative bodies are enshrined in the Animal Welfare Act 2004 Articles 41 and 42 and in Article 35 of the Animal Experimentation Act 2012.

Key recommendations

- **Austria is an example for other countries to follow in order to effectively allocate governmental and financial resources to animal welfare. At the national level, the Federal Ministry of Health is responsible for animal welfare and three government bodies are responsible for the drafting of regulations (Animal Protection Council and Animal Protection Commission), as well as the enforcement of animal welfare standards (Animal Protection Enforcement Advisory Board). At the state level, Animal Protection Ombudspersons act as independent, non-governmental representatives of the interests of animals. The Government of Austria is encouraged to provide financial compensation to members of the Animal Protection Commission and Animal Protection Council for their work on these important government bodies.**

Goal 4: Support for international animal welfare standards

10. The Government has incorporated the OIE’s guiding principles for animal welfare and its animal welfare standards into policy and legislation

Analysis of the legislation	
Ranking	A
The OIE Animal Welfare Standards focus on transport, slaughter, production systems (beef cattle, broiler chickens, dairy cattle, pigs), stray dog population control, the use of animals in research and education, and working equids. ⁷³	
There are numerous legislations in place at the federal level in Austria that effectively transposes the OIE’s guiding principles into legislation. This includes the content of the OIE’s standards on transport,	

⁷³ <http://www.oie.int/infographic/StandardsAW/index.html>

slaughter, animal population control, research and production. Consequently, Austrian legislation is in line with the OIE's principles and standards. The Government has also transposed European Union Regulations and Directives, which cover the areas included within the OIE's standards.

Analysis

Austria has fully incorporated the OIE animal welfare standards into the country's legislation. By transposing EU legislation, Austrian legislation even goes further than OIE standards. For instance, the OIE standard with regards to broiler chicken production systems only mandates that 'broilers should be housed at a stocking density that allows them to access feed and water and to move and adjust their posture normally'. By contrast, the EU standard is more stringent since it mandates that the stocking density of broiler does not exceed 42 kg/m² at the maximum.

Austria has furthermore assigned responsibility for animal welfare at high governmental level and provides resources to improve animal welfare and to fulfil its commitments with respect to the EU and the OIE. The Animal Protection Commission produces regular reports on animal welfare and advises on the animal welfare policy. This is an effective mechanism for ensuring that future OIE standards can be similarly transposed into national legislation.

Enforcement mechanisms

There are administrative penalties under the Animal Welfare Act 2004, the Animal Experimentation Act 2012 and relevant secondary legislation, for breaches of the provisions of that legislation that cover the OIE's standards.

Key recommendations

- **Austria fully incorporates OIE's principles and standards into legislation, which includes enforcement mechanisms. The Government of Austria is encouraged to continue to advocate for the development and improvement of international animal welfare standards, in line with the Austrian Constitution.**

11. The Government has pledged in principle support for the Universal Declaration on Animal Welfare (UDAW)

Analysis of the legislation

In 2009, the 27 Agriculture Ministers of the European Council, including from Austria, unanimously approved a statement on the UDAW encouraging the European Commission to support and initiate further international initiatives to raise awareness and create a greater consensus on animal welfare, and inviting the Member States and the Commission to support the UDAW initiative.⁷⁴

⁷⁴ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/agricult/106877.pdf



Note: The UDAW is a proposed formal international acknowledgement of a set of principles giving animal welfare due recognition among governments and the international community. An expression of support for the UDAW demonstrates a government's commitment to working with the international community to improve animal welfare.

Analysis

The UDAW is currently the only proposed international instrument that creates a soft law commitment for countries to acknowledge and respect animal sentience and to work towards ending cruelty and protecting the needs of animals. The Government has expressed full formal support for the UDAW, thus helping to incorporate animal welfare into policy discussions.

Enforcement mechanisms

There are no enforcement mechanisms relevant to this indicator.

Key recommendations

- **Austria has provided government support to UDAW, through a joint EU Declaration from the member States' Agriculture Minister. Austria should act as an example for other countries to pledge support in principle to UDAW.**

Last edited: 17 February 2020

Publication: March 2020