



# Animal Protection Index (API) 2020

## Federal Republic of Germany: ranking C

### Executive summary

The German Constitution includes the protection of animals as a state goal. The overarching federal animal welfare legislation in Germany, the Animal Protection Act (TierSchG), protects the lives and well-being of animals, defines the responsibility of humans for animals as 'fellow creatures', and states that no person may cause an animal pain, suffering or harm without 'reasonable reason' – although this term is not defined in legislation. It is especially positive that some sections of the Animal Protection Act are explicitly applicable to cephalopods, decapod crustaceans and other invertebrates. The protection of animals kept for farming purposes is achieved through: the Regulation on the Protection of Farm Animals (TierSchNutzIV: which implements Council Directive 98/58/EC); the Regulation on the Protection of Animals at Slaughter or Killing (TierSchIV: which implements Council Directive EC No 1099/2009); and the Regulation for the Protection of Animals During Transport (TierSchTrV: which implements Council Directive EC 1/2005). The requirements for keeping animals in zoos and the private keeping of wild animals is achieved through the Federal Nature Conservation Act (BNatSchG), which provides specific details on the licencing of premises and the conditions in which animals must be kept (in accordance with their species-specific biological and conservation requirements). The protection of animals used for scientific purposes is achieved through the Animal Welfare: Laboratory Animal Regulation (TierSchVersV: which implements Directive 2010/63/EU). Additionally, Germany signed the European Convention on the Protection of Pets on 21 June 1988.

Despite implementing and, in some cases exceeding, the minimum European Union legislative requirements, there is room for improvement in some areas related to animal welfare. Animal sentience is not formally enshrined within the German Animal Protection Act. Additionally, the Federal Nature Conservation Act (BNatSchG) does not define 'animal', so it is unclear whether its provisions extend to wild animals. Furthermore, fur farming has only been banned in certain regions but not at the federal level.

Since the API was first published in 2014, Germany has updated and amended the Animal Protection Act (TierSchG: revised 2019), the Regulation on the Protection of Farm Animals (TierSchNutzIV: revised 2017), the Regulation for the Protection of Animals During Transport (TierSchTrV: revised 2015), and the Animal Welfare: Laboratory Animal Regulation (TierSchVersV: updated 2015).

The Ministry of Food and Agriculture is given powers under the Animal Protection Act (TierSchG) to make secondary regulations on a wide variety of issues affecting animal welfare. The Ministry appoints an Animal Welfare Commission to assist it in animal welfare issues and must consult this Commission when making new regulations under the Act. It is positive that the Commission includes experts from animal welfare associations. The Nature Conservation Act (BNatSchG) allocates responsibility to the Federal Agency for Nature Conservation and to Federal competent authorities, depending on the issue in question.



The Government of Germany is urged to formally recognise animals as sentient in legislation, given the scientific evidence which has proven that all vertebrates, cephalopods and decapod crustaceans are sentient. Furthermore, the Government of Germany is strongly encouraged to expand the scope of application of its Animal Protection Act (TierSchG) to all animals. The Government of Germany is urged to ban the confinement of farm animals – for instance, in sow stalls and farrowing crates 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 Germany is furthermore urged to ban fur farming at the federal level, which is inherently cruel, causing pain and distress to animals. 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	C
<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).<sup>1</sup> 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>The principles of Article 1 of the German Animal Protection Act (TierSchG: published on 18 May 2006, amended on 20 November 2019)<sup>2</sup> are to protect the lives and wellbeing of animals, from the responsibility of humans for animals as 'fellow creatures', and states that no person may cause an animal pain, suffering or harm without 'reasonable reason'.</p> <p>The term 'animal' is not defined in the Act. Some individual provisions in the Act make reference to specific groups of animals such as vertebrates, warm-blooded animals, and fish (e.g. Sections 2 and 3 on animal husbandry and the killing of animals), whilst others also include cold-blooded animals, amphibians, reptiles, and cephalopods (e.g. Section 5 on animal testing). Taken together, this suggests a general interpretation that animals are capable of experiencing pain and suffering.</p> <p>In 2002, the German Constitution<sup>3</sup> was amended to include protection of animals as a state goal (Article 20a). Although not specifically stated in the constitution itself, the Constitution was amended in this way to take account of the sentience of animals. A draft law was put before Parliament in 2012, proposing further amendments of the law to further embrace the concept of animal sentience, but it remains unclear whether this has been passed and implemented.<sup>4</sup></p> <p><b>Analysis</b></p> <p><i>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 while Article 13 represents a minimum standard to which any government must commit, its scope and impact for animals is limited.</i></p>	

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

<sup>2</sup> <http://www.gesetze-im-internet.de/tierschg/BJNR012770972.html>

<sup>3</sup> <https://www.btg-bestellservice.de/pdf/80201000.pdf>

<sup>4</sup> <http://dip21.bundestag.de/dip21/btd/14/083/1408360.pdf>

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 Germany 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.

In Germany, the Animal Protection Act (TierSchG) recognises animal welfare and the suffering of animals and addresses the topics in line with leading legislation worldwide, incorporating the requirements of EU legislation. Although animal sentience is not specifically referred to in the German Animal Protection Act (TierSchG), various aspects of sentience are recognised (e.g. pain and suffering and species-appropriate behaviour). Nonetheless, an important loophole appears in the law as suffering and harm can be inflicted upon an animal with ‘reasonable cause’, though this term is not defined. This creates a loophole in law by which numerous situations and circumstances could be claimed to represent a ‘reasonable cause’ for making an animal suffer.

The Act includes provisions on protecting farm animals and animals involved in experimentation from suffering. These include general guidelines and codes of practice. The Act also sets out the relationships between government departmental stakeholders. As such, the concept of animal suffering (though not sentience explicitly) is introduced into wider governmental strategy in the country.

### Enforcement mechanisms

There are enforcement mechanisms for the provisions of the Animal Protection Act (TierSchG) which arise out of the recognition of elements of animal sentience (such as the ability of animals to suffer) which include fines of up to €25,000 and imprisonment of up to three years (Articles 17 and 18). There are also powers for confiscation and bans (Articles 19 and 20).

### Key recommendations

- Given the extensive body of scientific evidence proving that animals are sentient, the Government of Germany is urged to recognise that all animals for whom there is scientific evidence – at a minimum, all vertebrates, cephalopods and decapods crustaceans – are sentient beings and to enshrine this principle into legislation. Recognising animals as sentient will underpin further animal welfare considerations.

## 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
<p>The term 'animal' is not defined in the Animal Protection Act (TierSchG) but reference is made throughout the Act to vertebrates, warm-blooded animals, fish, cold-blooded animals, amphibians, reptiles, and cephalopods suggest that the provisions of Articles 18(2), 3 and 2 encompass a wide-reaching use of the word.</p> <p>Article 3 of this Act lists the acts and behaviours that constitute animal cruelty. Namely, Article 3 prohibits: demanding performance from animals that exceeds their powers; demanding services from an animal that has undergone procedures or treatments; training animals or using animals in sporting events in ways that cause considerable pain, suffering or damage; selling or acquiring a frail, sick, aborted or old animal for which a continued life is associated with unrecoverable pain or suffering; abandoning animals; using an animal for a filming, exhibition, advertisement or similar event, if this is associated with pain, suffering or damage for the animal; giving food to an animal that causes considerable pain, suffering or damage; using a device that significantly restricts the proper behaviour of an animal, in particular the animal's movement, or forces the animal to move due to the direct influence of electricity, thereby causing considerable pain, suffering or damage to the animal, and using an animal for own sexual acts or to training or providing them for the sexual acts of third parties and thereby to forcing them to behave in a manner contrary to their species.</p> <p>Article 2 creates a duty of care, requiring that anyone who looks after an animal must provide species-specific care and behaviour-appropriate accommodation and cannot restrict the animal's movements so that avoidable pain, suffering or injury is caused. Article 3 also stipulates that properly caring for animals is an obligation of ownership and that a failure to do so (negligence) is forbidden.</p> <p>Article 4 states that a vertebrate may only be killed with effective pain elimination (anaesthesia) in a state of imperceptibility and insensitivity or otherwise, as far as possible, only with the avoidance of pain. However, the killing of farm animals without stunning is permitted for religious reasons (Article 4a).</p> <p>Section 5 of the Animal Protection Act focuses on animal testing and specifies that tests on vertebrates and cephalopods 'may only be carried out if the expected pain, suffering or damage to the animals is ethically justifiable with regards to the purpose of the test' (Article 7a). In addition, Article 8a specifies that experiments on invertebrates other than cephalopods and crustaceans are to be reported to the competent authority insofar as these animals have the 'ability to suffer from the effects of the experiments' and that it is 'necessary to protect it'.</p> <p><b>Analysis</b></p> <p><i>The Animal Protection Act (TierSchG) recognises animal welfare and suffering and addresses the topic in line with leading legislation worldwide. It is positive that there is a comprehensive duty of care onto animal owners, which requires owners to pay attention to the species of their animals and protect them accordingly. It is also positive that the Act prohibits a failure to act in case of animal cruelty. The Act and related secondary legislation refer extensively to protection against pain, suffering or injury.</i></p>	

The Act does not explicitly define ‘animals’ but does specify the categories of animals to which specific Articles apply; there are no stated exclusions within the Act. It is positive that Section 5 on animal testing recognises that invertebrates are capable of suffering and that their welfare needs to be considered. However, there appears to be some inconsistency throughout the Act since Section 4, which focus on interventions potentially causing pain, only apply to vertebrates. This section requires the use of anaesthesia for all procedures involving pain.

### Enforcement mechanisms

Breaches of the prohibition in Article 17 of the Animal Protection Act (TierSchG), relating to cruel or long-lasting infliction of pain or suffering on vertebrates, is a criminal offence punishable with a fine or up to three years imprisonment or fines of up to €5,000 or €25,000 (Articles 17 & 18). There are also powers for confiscation and bans (Articles 19 and 20).

### Key recommendations

- **Building upon Section 5 of the Animal Protection Act, which is applicable to invertebrates, the Government of Germany is strongly encouraged to expand the scope of application of the Animal Protection Act. Animal protection measures should apply, at a minimum, to all vertebrates, cephalopods and decapod crustaceans, who should be all explicitly defined as sentient.**
- **The Government of Germany is urged to remove the exemption for religious slaughter of the pre-slaughter stunning requirement, through amending Article 4a of the Animal Protection Act.**

## Goal 2: Presence of animal welfare legislation

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

#### Analysis of legislation

Ranking	D
<p><u>Rearing</u></p> <p>At the EU level, the 1976 European Convention for the Protection of Animals kept for Farming Purposes<sup>5</sup> 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’.</p>	

<sup>5</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680076da6>



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/EC<sup>6</sup> 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 duty of care and anti-cruelty provisions of the Animal Protection Act (TierSchG) apply to animals used in farming. Particularly relevant are the regulations on: the duties of care (Article 2) including the knowledge and skills of the people caring for the animals (Article 2(a)); the prevention of pain, suffering and/or distress including force-feeding (Article 3); the pre-stunning of warm-blooded animals (with an exemption for religious slaughter) (Article 4); mutilations (Articles 5 & 6), and the design and use of animal housing and husbandry systems / equipment (Article 13(a)).

Articles 2a and 4b give powers to the Ministry of Food, Agriculture and Consumer Protection to make secondary regulations on various issues relating to farm animals, such as accommodation, training, transport and slaughter. Such secondary regulations that have been made under the Act also incorporate the requirements of EU legislation on farm animal welfare, for example, the Regulation on the Protection of Farm Animals (TierSchNutztV),<sup>7</sup> the Regulation on the Protection of Animals at Slaughter or Killing (TierSchIV),<sup>8</sup> and the Regulation for the Protection of Animals During Transport (TierSchTrV).<sup>9</sup>

The Regulation on the Protection of Farm Animals (TierSchNutztV) lays down minimum standards for the protection of farm animals and other warm-blooded vertebrates who are kept for the production of food, wool, hides or skins or for other agricultural purposes, or whose breeding is to be kept for these purposes. Specific Articles provide species-specific details for calves (Section 2, Articles 5-11), egg-laying hens (Section 3, Articles 12-15), broilers (Section 4, Articles 16-20), pigs (Section 5, Articles 21-30), and rabbits (Section 6, Articles 31-37).

### Rearing - pigs

At the EU level, welfare provisions for pigs are laid out in Council Directive 2008/120/EC.<sup>10</sup> Among animal welfare provisions, Article 3 prohibits the tethering of sows or gilts (female pigs after puberty but 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

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0058&from=EN>

<sup>7</sup> <http://www.gesetze-im-internet.de/tierschnutztv/BJNR275800001.html>

<sup>8</sup> [http://www.gesetze-im-internet.de/tierschlv\\_2013/BJNR298200012.html](http://www.gesetze-im-internet.de/tierschlv_2013/BJNR298200012.html)

<sup>9</sup> [http://www.gesetze-im-internet.de/tierschtrv\\_2009/BJNR037500009.html](http://www.gesetze-im-internet.de/tierschtrv_2009/BJNR037500009.html)

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0120&from=EN>

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 prohibitions 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 7<sup>th</sup> 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'.

In Germany, the Regulation on the Protection of Farm Animals (TierSchNutztV) lays down minimum standards for the protection of pigs (implementing in Council Directive 2008/120/EC).

In some areas, the Regulation on the Protection of Farm Animals (TierSchNutztV) exceeds Council Directive 2008/120/EC. For example, the stipulated minimum unobstructed floor space for weaners, rearing pigs (heavier than 20g) and gilts is greater than that required in the EU legislation. Rearing pigs are required to have at least 50% continuous solid floor that is greater than that required in the EU legislation). Dry pregnant sows and gilts should be fed at least 8% dry matter or 200g high fibre (in excess of EU legislation). The Act also demands that pigs are provided with at least 80 lux for more than eight hours per day and there should be daylight access in comparison to the 40 lux stipulated in EU legislation.<sup>11</sup> However, the Act falls short of completely banning sow stalls; banning farrowing crates and all forms of piglet mutilation.

### Rearing - broiler chickens

At the EU level, welfare provisions for broiler chickens are laid out in Council Directive 2007/43/EC.<sup>12</sup> Notably, Article 3.2 requires that the maximum stocking density is 33kg/m<sup>2</sup>. However, Article 3.3 allows for derogation to this general rule: a derogation to allow an increase

<sup>11</sup> <https://edepot.wur.nl/136142>

<sup>12</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007L0043>



above 33kg/m<sup>2</sup> up to 39kg/m<sup>2</sup> 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/m<sup>2</sup> up to 42kg/m<sup>2</sup> 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.

In Germany, the Regulation on the Protection of Farm Animals (TierSchNutzIV) lays down minimum standards for the protection of broiler chickens (implementing in Council Directive 2007/43/EC). In some areas, the Regulation on the Protection of Farm Animals (TierSchNutzIV) exceeds Council Directive 2007/43/EC. For example, the German regulation has a maximum permitted stocking density of 39 kg/m<sup>2</sup> compared with the EU maximum permitted stocking density of 42 kg/m<sup>2</sup>. However, the Act falls short of further reducing stocking density to 30 kg/m<sup>2</sup>.

### Rearing - egg-laying hens

At the EU level, welfare provisions for egg-laying hens are laid out in Council Directive 1999/74/EC.<sup>13</sup> Non-enriched cage systems have been prohibited since 1 January 2012 (Article 5.2). Two cage systems are now in use:

- enriched cages where laying hens have at least 750 cm<sup>2</sup> of cage area per hen
- alternative systems where the stocking density does not exceed nine egg-laying hens per m<sup>2</sup> 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.

<sup>13</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0074&from=EN>



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.

In Germany, the Regulation on the Protection of Farm Animals (TierSchNutzIV) lays down minimum standards for the protection of laying hens (implementing Council Directive 1999/74/EC). In some areas, the Regulation on the Protection of Farm Animals (TierSchNutzIV) exceeds Council Directive 1999/74/EC. For example, the German Federal Government and the regions have agreed to phase out small group housing systems by 2025.<sup>14</sup> However, the Act falls short of banning all types of cages.

### Rearing - dairy cattle and calves

There is no EU legislation dedicated to dairy cattle.

Council Directive 2009/119/EC<sup>15</sup> 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, 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.

In Germany, the Regulation on the Protection of Farm Animals (TierSchNutzIV) lays down minimum standards for the protection of calves (implementing Council Directive 2009/119/EC). However, the act falls short of specifying standards for dairy cattle or prohibiting zero-grazing systems for dairy cattle and calves.

### Transport

At the EU level, welfare provisions for animal transport are laid out in Council Directive EC 1/2005.<sup>16</sup> 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'.

<sup>14</sup> [https://www.bmel.de/EN/Animals/LivestockHusbandry/\\_Texte/HaltungLegehennen-Bioeier\\_FAQ.html](https://www.bmel.de/EN/Animals/LivestockHusbandry/_Texte/HaltungLegehennen-Bioeier_FAQ.html)

<sup>15</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0119&from=EN>

<sup>16</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

Article 7 forbids long journeys (i.e. exceeding 8 hours) unless the means of transport has been inspected and approved under Article 18(1).

In Germany, the Regulation for the Protection of Animals at Slaughter or Killing (TierSchIV) lays down the minimum standards for the protection of animals during transport (implementing Council Directive EC 1/2005). In some areas, the Regulation on the Protection of Farm Animals (TierSchNutzIV) exceeds Council Directive EC 1/2005. For example, the minimum space allowances permitted for the transport of broilers is larger in German Law than the EU Directive. A minimum of 170 cm<sup>2</sup>/kg is required for the transport of birds between 1.6 and 2.0 kg (compared to 160 cm<sup>2</sup> in the EU legislation) and 130 cm<sup>2</sup>/kg for birds of 4 kg or greater (compared to 115 cm<sup>2</sup> in EU legislation).<sup>17</sup> However, the Act falls short of protecting all of the Five Freedoms of the animals during transport; banning all long-distance transport longer than eight hours, and stating that animals should be slaughtered as close to the point of rearing as possible.

### Slaughter

At the EU level, welfare provisions for animals at the time of slaughter are laid out in Council Directive EC No 1099/2009.<sup>18</sup> 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 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) 2018/723<sup>19</sup> to approve the stunning of broiler chickens through asphyxia due to low atmospheric pressure.<sup>20</sup>

In Germany, the Regulation on the Protection of Animals at Slaughter or Killing (TierSchIV) lays down the minimum standards for the protection of animals at slaughter (implementing Council Directive EC No 1099/2009) including additional provisions for the slaughter of fish and crustaceans. Appendix 1 of the Act details certain deviations and additions to Council Directive EC No 1099/2009 (e.g. the use of captive bolt for the killing of pigs only in emergencies and with the consent of the competent authority for stunning or killing pigs).

A no-stunning permit may be granted if the following two requirements are met: (1) the applicant is a member of a group of persons who are united by a common religious conviction that has mandatory rules requiring slaughter without stunning (ritual slaughter) or prohibiting the consumption of animal meat not slaughtered in this way; and (2) slaughter without stunning is necessary to meet the needs of

<sup>17</sup> <https://www.britishpoultry.org.uk/identity-cms/wp-content/uploads/2018/05/2016-ADAS-EU-US-comparison.pdf>

<sup>18</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1099&from=EN>

<sup>19</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0723&from=EN>

<sup>20</sup> <https://www.efsa.europa.eu/en/efsajournal/pub/5056>

the members of that local religious community within Germany.<sup>21</sup> The use of short-term electrical stunning is permitted to meet the needs of certain religious communities (Article 13).

The current Law falls short of prohibiting systems where animals witness the slaughter of others; mandating for the regular inspection of slaughterhouses involving animal welfare criteria, banning aversive stunning methods (i.e. suffocation by gas for large mammals), and mandating video surveillance at slaughterhouses.

### 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 concern in recent years', inflicting pain 'even on very young pigs'.<sup>22</sup> 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.<sup>23</sup> 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.*

*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*

<sup>21</sup> [https://www.loc.gov/law/help/religious-slaughter/europe.php#\\_ftn61](https://www.loc.gov/law/help/religious-slaughter/europe.php#_ftn61)

<sup>22</sup> [https://ec.europa.eu/food/animals/welfare/practice/farm/pigs/castration\\_alternatives\\_en](https://ec.europa.eu/food/animals/welfare/practice/farm/pigs/castration_alternatives_en)

<sup>23</sup> [https://ec.europa.eu/food/sites/food/files/animals/docs/aw\\_prac\\_farm\\_pigs\\_castalt\\_declaration\\_en.pdf](https://ec.europa.eu/food/sites/food/files/animals/docs/aw_prac_farm_pigs_castalt_declaration_en.pdf)

chickens cannot be fulfilled. In addition, it the exemptions for beak trimming and chicken castration enables this practice to be carried out without anaesthetics.

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.<sup>24</sup> 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
- 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.<sup>25</sup>

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 and too high temperature.<sup>26</sup>

<sup>24</sup> <https://www.eesc.europa.eu/en/newsmedia/news/end-cage-age>

<sup>25</sup> <https://www.eesc.europa.eu/en/newsmedia/news/end-cage-age>

<sup>26</sup> <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>



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.<sup>27</sup> 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.<sup>28</sup> This is a positive development, however, a total ban on long live animal transport would grant stronger protection to animals.

With regards to slaughter, it is positive that the Council Directive EC No 1099/2009 mandates stunning prior to slaughter; however, many 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.<sup>29</sup> This shows that the EU Commission is willing to disseminate knowledge and improve animal welfare.

In Germany, the Animal Protection Act (TierSchG) recognises the welfare of animals used in farming and implements the relevant EU Directives laying down minimum standards for the main species of farm animals. The secondary legislation is detailed and implements European Union requirements (although it is noted that the European Commission issued a letter of formal notice to Germany in 2013 for failure to implement fully the European Union Directive on sow stalls (Directive 2008/120) within the required deadline).<sup>30</sup>

For pigs, there is no legislation that mandates the group-housing of sows, bans the use of farrowing crates, and mutilations such as tail docking, teeth resection or castration of piglets. For laying hens, there is no legislation completely banning the use of enriched or colony cages. There is no legislation for dairy cattle, and is no legislation banning zero-grazing systems (for dairy cows and calves). There are also no provisions in law that ban long-distance transport (greater than eight hours) or that require animals to be slaughtered as close to the point of rearing as possible. Relevant government stakeholders are named in the Act and held accountable for the improvement of farm animal welfare in Germany (e.g. Federal Ministry of Food and Agriculture).

### Enforcement mechanisms

The 1976 European Convention for the Protection of Animals kept for Farming Purposes does not contain any enforcement mechanism. At the EU level, a Directive requires Member States to achieve a particular result, but it does not devise laws on how to reach these goals. As such, Member States have some leeway to decide on their own legislations which will achieve the intended results. By contrast, a Regulation is a binding legislative act, directly applicable to the entirety of the EU.

In Germany, breach of the prohibition in Article 17 of the Animal Protection Act (TierSchG), relating to cruel or long-lasting infliction of pain or suffering, is a criminal offence punishable with a fine or up to three years imprisonment. Wilful or negligent breach of the other relevant provisions of the Act, and

<sup>27</sup> [https://ec.europa.eu/food/sites/food/files/animals/docs/aw\\_prac\\_transport\\_pilotreport.pdf](https://ec.europa.eu/food/sites/food/files/animals/docs/aw_prac_transport_pilotreport.pdf)

<sup>28</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

<sup>29</sup> [https://ec.europa.eu/food/animals/welfare/practice/slaughter/2018-factsheets\\_en](https://ec.europa.eu/food/animals/welfare/practice/slaughter/2018-factsheets_en)

<sup>30</sup> [http://europa.eu/rapid/press-release\\_IP-13-135\\_en.htm](http://europa.eu/rapid/press-release_IP-13-135_en.htm)

of the secondary regulations, is an administrative offence punishable with fines of up to €5,000 or €25,000 depending on the offence (Article 18).

### Key recommendations

- The Government of Germany 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. The stocking density of broiler chickens should also be reduced to a maximum of 30 kg/m<sup>2</sup> or lower. Surgical operations, such as piglet mutilations and beak trimming for egg-laying hens, should not be performed except under anaesthesia and with analgesics.
- The Government of Germany 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.<sup>31</sup> 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.
- Legislation regarding the transport of animals should protect their Five Freedoms. In addition, the Government of Germany is strongly urged to ban the export of live animals over long distances (i.e. more than eight hours) and replace it with a meat only trade. Long distance transport is inherently cruel as it involves chronic stress for all animals and, for some species and modes of transport, it may involve overpopulation, exhaustion, excess heat or cold, inadequate ventilation and/or access to food and water, leading to disease, pain, injury or death.

## 4. There are laws that apply to animals in captivity

Analysis of the legislation	
Ranking	B
<u>Zoos</u>	

<sup>31</sup> [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))

At the EU level, welfare provisions for wild animals kept in zoos are laid out in Council Directive 1999/22/EC.<sup>32</sup> '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.

The EU Zoos Directive Good Practices (2015),<sup>33</sup> 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.

Council Regulation (EC) 1/2005<sup>34</sup> 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.

The general duty of care and anti-cruelty provisions of Articles 2, 3, 17 and 18 of the Animal Protection Act (TierSchG) apply to animals in captivity. Particularly relevant are the prohibitions on the use of devices, which significantly limit the species-specific behaviour of an animal, especially the animal's movement, or force the animal to move, so as to cause not inconsiderable pain, suffering or injury (except where permitted by other legislation; Article 3(11)), and on releasing into the wild an animal bred or reared in captivity and unprepared to feed oneself in his/her new habitat in a species-adequate manner and not adapted to the climate there.

Article 42 of the Federal Nature Conservation Act (BNatSchG)<sup>35</sup> provides specific details on the conditions that zoos must meet. Article 42(2) requires that zoos are licenced. Article 42(3) mandates that zoos are constructed and operated in such a manner that animals are kept in accordance with their species-specific biological and conservation needs, particularly in terms of enclosure design.

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<sup>32</sup> <https://www.eaza.net/assets/Uploads/Governing-documents/EU-Zoo-Directive-1999.pdf>

<sup>33</sup> [https://ec.europa.eu/environment/nature/pdf/EU\\_Zoos\\_Directive\\_Good\\_Practices.pdf](https://ec.europa.eu/environment/nature/pdf/EU_Zoos_Directive_Good_Practices.pdf)

<sup>34</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

<sup>35</sup> <https://www.bmu.de/en/law/federal-nature-conservation-actbnatschg/>





Article 42(6) states that the competent authority shall monitor compliance with the requirements by carrying out regular reviews and inspections of zoos.

### Private keeping of wild animals

Article 3 of the Animal Protection Act (TierSchG) states that it is forbidden to release or settle a bred or reared animal of a wild species in the wild, who is not prepared for the type of food required for survival in the intended habitat and is not adapted to the climate. Article 44 defines the species protected through reference to Annex IV of Directive 92/43/EEC<sup>36</sup> on the conservation of natural habitats and of wild fauna and flora, known as the Habitats Directive.

Furthermore, Article 43 of the Federal Nature Conservation Act (BNatSchG) provides specific details on both the conditions in which wild animals must be housed (e.g. enclosures for only small numbers of animals, or only animals whose keeping presents minimal levels of husbandry), and the requirement for state supervision. Article 43 applies to wild animals who are kept outside of residential and commercial buildings for a period of at least seven days of the year, and that are not zoos within the definition of Article 42.

Article 44 states that it is prohibited to pursue, capture, injure or kill wild animals of specifically protected species, or to take from the wild, damage or destroy their developmental stages. It is also prohibited to gain possession or take custody of, have possession or custody of, handle or process animals or plants of specially protected species.

Additionally, Article 3 of the Ordinance for the Protection of Wild Animal and Plant Species (BArtSchV) prohibits the keeping of American Beaver (*Castor canadensis*); Common Snapping Turtle (*Chelydra serpentina*); and Alligator Snapping Turtle (*Macroclmys temminckii*) and Eastern Grey squirrel (*Sciurus carolinensis*).

### Fur farming

At the EU level, a ban on cat and dog fur was introduced by Regulation No 1523/2007,<sup>37</sup> 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.

Fur farms are licenced in Germany but have been banned in the federal states of Bavaria, Hessen, Nordrhein-Westfalen and Schleswig-Holstein.<sup>38</sup> Section 7 of the Regulation on the Protection of Farm Animals (TierSchNutzV) and Section A of the appendix of the Law on the implementation of Union law provisions on bans and restrictions with regard to the trade in certain animal products, as well as on keeping and selling bans in certain cases (TierErzHaVerbG),<sup>39</sup> specifies the requirements for keeping fur animals at the Federal level. It lays down the general provisions and facility arrangements, but also mentions specific requirements for mink, polecats, foxes, racoon dogs, beavers and chinchillas

<sup>36</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN>

<sup>37</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R1523&from=EN>

<sup>38</sup> <https://www.furfreealliance.com/wp-content/uploads/2016/02/List-of-national-legislation-Europe-1.pdf>

<sup>39</sup> <https://www.gesetze-im-internet.de/khfeverbG/BJNR239400008.html>

(including the need to increase the minimum cage size and provide a necessary supply of water basins).

### **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 must 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 must 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.

With regards to animals kept in zoos, it is positive that zoos must receive a licence to operate. The Federal Nature Conservation Act (BNatSchG) provides no explanatory detail as to what 'requirements of animal welfare' means. The legislation falls short of using the Five Freedoms as a guiding principle but does stipulate the requirement for regular inspections of zoos. The 2011 EU Zoo Inquiry reported that, although standards were generally acceptable in German zoos, some areas of concern were identified including entertainment shows and contact with members of the public, and increased enforcement activity was recommended.<sup>40</sup>

With regards to the private keeping of wild animals, it is positive that there are some restrictions in terms of the private keeping of wild animals. Notably, the Federal Nature Conservation Act (BNatSchG) prohibits to own protected species. Furthermore, Article 3 of the Ordinance for the Protection of Wild Animal and Plant Species (BArtSchV) prohibits the keeping of certain species.

Due to changes in the Regulation on the Protection of Farm Animals (TierSchNutzV) and Law on the implementation of Union law provisions on bans and restrictions with regard to the trade in certain animal products as well as on keeping and selling bans in certain cases (TierErzHaVerbG), the

<sup>40</sup><https://www.bornfree.org.uk/storage/media/content/files/Publications/FINDINGS%20%26%20RECOMMENDATIONS.pdf>



profitability of fur farming in Germany has fallen and the tightened legislation has likely led to the partial abolishment of fur farming in Germany. Despite animal welfare provisions contained in the law, fur farming is inherently cruel and causes pain and distress to animals. As such, fur farming should be prohibited at the Federal level.

**Enforcement mechanisms**

Breach of the prohibition in Article 17 of the Animal Protection Act (TierSchG), involving cruel or long-lasting infliction of pain or suffering, is a criminal offence punishable with a fine or up to three years imprisonment. Wilful or negligent breach of the other relevant provisions of the Act, and of the secondary regulations, is an administrative offence punishable with fines of up to €5,000 or €25,000 depending on the offence (Article 18).

Although the Federal Nature Conservation Act does contain enforcement mechanisms for administrative offences, other than refusal of a licence there appears to be no enforcement mechanism for breach of the requirements of Article 42(3) of the Act, which requires that zoos are constructed and operated in such a manner that animals are kept in accordance with their species-specific biological and conservation needs.

**Key recommendations**

- **Given that the physiological and behavioural needs of marine mammals cannot be met in captivity, the Government of Germany 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.**
- **The Government of Germany 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 Germany is urged to ban fur farming at the federal level. Fur farming is inherently cruel and causes pain, distress and suffering to animals.**

**5. There are laws that apply to companion animals**

**Analysis of the legislation**

<b>Ranking</b>	<b>C</b>
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[Care of companion animals](#)



The European Convention for the Protection of Pet Animals<sup>41</sup> is a treaty of the Council of Europe to companion animals and ensure minimum protection standards. Signed in 1987, the treaty entered 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 Germany is present. Germany signed the European Convention on the Protection of Pets on 21 June 1988.

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 duty of care and anti-cruelty provisions of Articles 2, 3, 17 and 18 of the Animal Protection Act (TierSchG) apply to companion animals. Particularly relevant are the prohibitions on abandonment (Article 3(3)), training for aggression (Article 3(8a)) and giving animals as prizes (Article 3(12)), together with the duty of care under Article 2.

Article 6 of the Animal Protection Act (TierSchG) prohibits full or partial amputation or destruction of body parts or tissues of vertebrates, except for sterilisation, where required by veterinary indications, or essential for hunting dogs' intended use and when there are no veterinary concerns. Article 11 requires licencing of shelters, training dogs for third parties, and commercial breeders. Article 11c prohibits the sale of vertebrates to those aged under 16. Article 11 states that anyone who breeds vertebrates (with the exception of farm animals and game animals) requires permission and licensing from the competent authority (subject to their compliance with the Act and the possession of internal processes for the avoidance, identification and elimination of defects).

The Government has also produced secondary legislation addressing welfare issues associated with companion animals. For example, the Animal Protection (Dogs) Regulation (TierSchHuV)<sup>42</sup> requires that where more than one dog is kept at the same property, dogs must be kept together as a group, unless this is not possible for reasons of behaviour or physical condition. They must also be kept in housing providing shelter, natural light and adequate space. Article 3 states that anyone who breeds dogs commercially must ensure that a carer is available for up to ten breeding dogs and their puppies, who has demonstrated the necessary knowledge and skills to the responsible authority. Article 7 stipulates that a dog may only be kept on a tether if the connection can slide freely on a running device that is at least six meters long, offers the dog a lateral freedom of movement of at least five meters, and ensures that the dog can go to his or her refuge, lie down and turn around freely. Tethering

<sup>41</sup> <https://www.coe.int/en/web/conventions/fulllist/-/conventions/rms/090000168007a67d>

<sup>42</sup> <http://www.gesetze-im-internet.de/tierschhuv/BjNRO83800001.html>

is prohibited for suckling bitches, dogs up to the age of 12 months, and in conditions where the practice would cause pain, suffering or harm.

### Stray animals

Article 1 of the Animal Protection Act (TierSchG) prohibits the killing of an animal without reasonable cause in Germany if they are healthy; leading to a ban on the euthanasia of (healthy) stray animals. A national spay-and-neuter programme does not appear to exist.

### Analysis

*At the EU level, the European Convention for the Protection of Pet Animals lays down important principles for the welfare of companion animals, notably by creating a positive duty of care onto animal owners and through prohibiting the abandonment of companion animals. It is also positive that the Convention prohibits surgical procedures on companion animals for appearance purposes.*

*However, the Convention does not provide as strong protections for the welfare of stray animals. In fact, the Convention authorises the killing of stray animals, instead of mandating their rehoming or placing them in a non-kill shelter.*

*The legislation contains some broad principles that are applicable to companion animals and further guidance is also provided on the website of the Ministry for Food and Agriculture, for example, about ending the illegal trade in puppies and on travelling with pets.<sup>43</sup> It is positive that the Animal Protection Act contains a duty of care onto animal owners. Furthermore, it is positive that all commercial breeders have to be licenced, and that a carer is available for up to ten breeding dogs. However, it is regrettable that cosmetic mutilations are still allowed for hunting dogs through Article 6 of the Animal Protection Act.*

*The legislation that can be applied to stray animals stipulates that animals cannot be killed without reasonable cause. This makes it illegal to euthanise healthy animals.<sup>44</sup> However, for as long as the legislation does not define what reasonable causes are acceptable, clarity in interpretation is lacking. Furthermore, the legislation allows for the killing of diseased animals.*

## Enforcement mechanisms

The European Convention for the Protection of Pet Animals does not contain any enforcement mechanisms.

Breach of the prohibition in Article 17 of the Animal Protection Act (TierSchG), relating to cruel or long-lasting infliction of pain or suffering, is a criminal offence punishable with a fine or up to three years imprisonment. Wilful or negligent breach of the other relevant provisions of the Act, and of the secondary regulations (including breeding animals without a licence), is an administrative offence punishable with fines of up to €5,000 or €25,000 depending on the offence (Article 18).

<sup>43</sup> [https://www.bmel.de/EN/Animals/PetsAndZooAnimals/\\_Texte/HeimtiereEinreiseregulung.html](https://www.bmel.de/EN/Animals/PetsAndZooAnimals/_Texte/HeimtiereEinreiseregulung.html)

<sup>44</sup> <http://www.stray-afp.org/nl/wp-content/uploads/2012/09/WSPA-RSPCA-International-stray-control-practices-in-Europe-2006-2007.pdf>

### Key recommendations

- The Government of Germany is urged to amend the Animal Protection Act as to fully ban cosmetic mutilations.
- The Government of Germany is strongly encouraged to promote humane dog population management, which relies on promoting responsible ownership, mass dog vaccinations and reproduction control programmes. Culling is unnecessary, cruel and has been scientifically proven to be ineffective. At present, there is a loophole in German legislation since the prohibition on killing animals only apply 'without reasonable cause', though it is not defined in law what scenarios would constitute 'reasonable cause'. The Government of Germany should also implement education programmes on dog bite prevention.
- The Government of Germany should 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	E
<p><u>Animals used for entertainment</u></p> <p>The general duty of care and anti-cruelty provisions of Articles 2, 3, 17 and 18 of the Animal Protection Act (TierSchG) apply to animals used for recreational purposes. In particular, Article 3 of the Act contains prohibitions relating to: using devices which significantly limit the species-specific behaviour of an animal, especially the animal's movement, or force the animal to move, so as to cause not inconsiderable pain, suffering or injury (except where permitted by other legislation) Article 3(11)); training an animal in a way that involves significant pain, suffering or injury (Article 3(5)); using in movies or entertainment in a way that involves suffering, pain or injury (Article 3(6)); training or testing an animal's strength on another living animal (Article 3(7)); setting an animal upon another except in hunting (Article 3(8)); and training for aggression (Article 3(8a)).</p> <p>There is no specific legislation banning the use of animals in German circuses; although the Animal Protection Act (TierSchG) legislates against gross acts of animal cruelty. The Federal Ministry of Food and Agriculture's website states that 'the keeping of circus animals represents a particular challenge due not least to the frequent changes of location and the associated issues of transportation and inadequate housing. Responsibility for the monitoring of circuses lies with the regions'.<sup>45</sup> It is concluded</p>	

<sup>45</sup>[https://www.bmel.de/EN/Animals/AnimalWelfare/Texte/Versuchtierrichtline\\_Tierschutzgesetz.html#doc3630502bodyText7](https://www.bmel.de/EN/Animals/AnimalWelfare/Texte/Versuchtierrichtline_Tierschutzgesetz.html#doc3630502bodyText7)

that, if monitoring by the regions demonstrates that the keeping and transportation of certain wild animals by circuses is not possible in accordance with animal welfare requirements (and that previous measures such as the Circus Register Regulation) have brought no significant improvements, further options will be considered including a ban on certain wild animals in circuses.

### Draught animals

The general duty of care and anti-cruelty provisions of Articles 2, 3, 17 and 18 of the Animal Protection Act (TierSchG) apply to animals used for draught purposes. No specific legislation safeguarding draught animals appears to exist outside of the Animal Protection Act (TierSchG). However, there are a number of particularly relevant prohibited conducts in Article 3 of the Act including overloading (Article 3(1)), and using an animal in training, sporting competitions or similar events that involve significant pain, suffering or injury and can affect the animal's ability to work (Article 3(1b)).

### Analysis

*It is positive that the use of animals for animal fights is forbidden through Articles 3.7 and 3.8 of the Animal Protection Act. However, other issues remain with the use of animals for entertainment. Notably, the use of wild animals in circuses remains legal in Germany. However, many countries worldwide have introduced bans due to the significant welfare issues associated with keeping wild animals in mobile captivity and forcing them to perform. The Government has reported that this issue is being considered.<sup>46</sup> Examples exist of innovations that have been trialled in Germany (e.g. the use of holograms) to facilitate the withdrawal of animals from circuses.<sup>47</sup> Similarly, the use of dolphins for shows at zoos should be outlawed throughout the country, seeing that such animals cannot thrive in captivity.<sup>48</sup>*

*Whilst, the Animal Protection Act (TierSchG) offers basic protection to the welfare of animals used for draught purposes through prohibiting several treatments causing suffering or uses that are inherently cruel, these provisions are insufficient to guarantee these animals their Five Freedoms.*

### Enforcement mechanisms

Breach of the prohibition in Article 17 of the Animal Protection Act (TierSchG), relating to cruel or long-lasting infliction of pain or suffering, is a criminal offence punishable with a fine or up to three years imprisonment. Wilful or negligent breach of the other relevant provisions of the Act, and of the secondary regulations, is an administrative offence punishable with fines of up to €5,000 or €25,000 depending on the offence (Article 18).

### Key recommendations

- **The Government of Germany is urged to forbid the organisation of and attendance to entertainment events causing animal suffering. Such a prohibition should cover rodeos, animal**

<sup>46</sup> [https://www.bmel.de/EN/Animals/AnimalWelfare/\\_Texte/Versuchtierrichtline\\_Tierschutzgesetz.html](https://www.bmel.de/EN/Animals/AnimalWelfare/_Texte/Versuchtierrichtline_Tierschutzgesetz.html)

<sup>47</sup> <https://www.smithsonianmag.com/smartnews/german-circus-uses-stunning-holograms-instead-live-animal-performers-180972376/>

<sup>48</sup> <https://tiergarten.nuernberg.de/en/your-visit/show-times-at-the-dolphin-lagoon.html>



fighths, animal races, marine mammal shows, rides on wild animals and all other forms of entertainment. Notably, the Government is strongly encouraged to ban the use of all animals in circuses. Phasing out the use of animals for entertainment purposes could start with a ban on the use of wild animals for such performances. The use of holograms, as used by one German circus already, represents a potential exciting alternative to the use of animals on stage.

- The Government of Germany is strongly encouraged to adopt specific legislation to address the welfare of working animals, including working equids, following the requirements of the OIE’s animal welfare standards. Working animals must be treated with consideration and must be given adequate shelter, exercise, care, food and water appropriate to their physiological and behavioural needs. Any condition that may impair their welfare must be treated promptly and, affected animals must not be worked again until they are fit. They must not be overworked or overloaded, nor must they be forced to work through ill-treatment.

## 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,<sup>49</sup> which updated and replaced the 1986 Directive 86/609/EEC<sup>50</sup> 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 be 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 1223/2009<sup>51</sup> 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 the marketing of finished cosmetic products and ingredients in the EU that were tested on animals (marketing ban). The testing ban on finished cosmetic products applies since 11 September</p>	

<sup>49</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0063&from=EN>

<sup>50</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31986L0609&from=EN>

<sup>51</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1223&from=EN>





2004, while the testing ban on ingredients or combination of ingredients applies since 11 March 2009.

The general duty of care and anti-cruelty provisions of Articles 2, 3, 17 and 18 of the Animal Protection Act (TierSchG) apply to animals used for scientific research. Articles 7 to 10 of the Act are dedicated to animals used for scientific research and encompass elements of the Three Rs principles – Replacement, Reduction, Refinement. Article 7 provides that pain, suffering and injury, number of animals, and the use in an experiment of species which have greater capacity to suffer, must be limited to an absolute minimum. Article 7a limits experiments to that which is indispensable to stated purposes including the health of humans, the welfare of animals, and education. Whether or not an experiment is indispensable is determined based on scientific knowledge and whether the objective can be achieved by other methods. It is prohibited to use animals in a variety of experiment types, including weapons, tobacco and cosmetic testing (Article 7). Tests on vertebrates and cephalopods must be authorised by the competent authority (Federal Ministry of Education and Research) under Article 8, and tests on decapods must be notified under Article 8a. Article 10 requires facilities testing on vertebrates and cephalopods to have an Animal Welfare Officer, whose tasks are to be set out in secondary legislation.

The Animal Welfare: Laboratory Animal Regulation (TierSchVersV)<sup>52</sup> provides greater details and incorporates the requirements of EU legislation with regards to animal testing. The Regulation sets out the duties of the Animal Welfare Officer, establishes an Animal Welfare Committee in facilities using vertebrates or cephalopods, and makes provisions for record-keeping, the accommodation and care of different categories of animals. Wild animals and stray or feral animals may generally not be used (Articles 20 and 21).

With regards to animal testing on cosmetics, Germany falls under the EU commitment and has banned the testing on animals of finished cosmetic products, as well as their ingredients.

### 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 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

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<sup>52</sup> <http://www.gesetze-im-internet.de/tierschversv/BjNR312600013.html>



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.

The German Animal Protection Act (TierSchG) details minimum standards for the welfare of animals used in scientific research and recognises animal welfare as a key individual issue to the industry. The Federal Ministry of Education and Research is the competent authority and the Ministry of Health is named as a relevant stakeholder, introducing the concept of animal welfare into the wider agenda of governmental strategy. Powers to make further guidance and codes of practice are given in the Act, thus creating a clear process for institutions to incorporate animal welfare policies into practice. It is furthermore positive that the use of animals for cosmetic testing has been banned, as part of EU legislation.

Article 49 of EU Directive 2010/63/EU stipulates that each member state of the European Union should set up a national committee for the protection of animals used for scientific purposes. In Germany, the National Committee for the Protection of Animals Used for Scientific Purposes was entrusted with the performance of these tasks through an amendment to the Act that came into force on 13 July 2013.<sup>53</sup> Article 45 of the Animal Welfare: Laboratory Animal Regulation (TierSchVersV) defines these tasks in detail.<sup>54</sup> The National Committee for the Protection of Laboratory Animals is made up of a 'pool of experts' which comprises 'scientists with acknowledged expertise in the fields of natural sciences, law, human and veterinary medicine as well as ethics'; managers at animal facilities as well as animal caretakers in a leading position are also part of the pool.<sup>55</sup>

The Federal Government is specifically promoting the development of alternatives to animal testing (Replacement). The Federal Ministry of Food and Agriculture awards the Research Prize for the promotion of methodological work aimed at reducing and replacing animal experimentation. In addition, the Ministry also provides financial support to the Foundation for the Promotion of Alternate and Complementary Methods to Reduce Animal Testing. Furthermore, Germany has assumed a leading role in Europe by establishing the Centre for Documentation and Evaluation of Alternatives to Animal Experiments (ZEBET) at the Federal Institute for Risk Assessment.<sup>56</sup>

### Enforcement mechanisms

Breach of the prohibition in Article 17 of the Animal Protection Act (TierSchG), relating to cruel or long-lasting infliction of pain or suffering, is a criminal offence punishable with a fine or up to three years imprisonment. Wilful or negligent breach of the other relevant provisions of the Act, and of the secondary regulations, is an administrative offence punishable with fines of up to €5,000 or €25,000 depending on the offence (Article 18).

<sup>53</sup> [https://www.bfr.bund.de/en/national\\_committee.html](https://www.bfr.bund.de/en/national_committee.html)

<sup>54</sup> [https://www.bfr.bund.de/en/national\\_committee.html](https://www.bfr.bund.de/en/national_committee.html)

<sup>55</sup> [https://www.bfr.bund.de/en/pool\\_of\\_experts.html](https://www.bfr.bund.de/en/pool_of_experts.html)

<sup>56</sup> [https://www.bmel.de/EN/Animals/AnimalWelfare/Texte/Versuchtierrichtlinie\\_Tierschutzgesetz.html](https://www.bmel.de/EN/Animals/AnimalWelfare/Texte/Versuchtierrichtlinie_Tierschutzgesetz.html)



Wilful or negligent breach of the provisions of the Animal Welfare: Laboratory Animal Regulation (TierSchVersV) is an administrative offence punishable with fines of up to €5,000 or €25,000 depending on the offence (Section 3, Article 44).

### Key recommendations

- **Germany has extensive legislation with regards to the use of animals in scientific research: animal testing for cosmetics is banned, and current legislation promotes the Three Rs principles – Replacement, Reduction, Refinement. Moreover, it is positive that the Government has created the Centre for Documentation and Evaluation of Alternatives to Animal Experiments (ZEBET), whose objective is to reduce the number of animals used for experiments. The Government of Germany is strongly encouraged to continue to fund the Foundation for the Promotion of Alternate and Complementary Methods to Reduce Animal Testing.**
- **The Government of Germany is strongly encouraged to engage with animal welfare organisations in order to promote alternatives to animal experiments.**

## 8. There are laws that apply to wild animals

### Analysis of the legislation

#### Ranking

#### C

At the EU level, wild animals are protected by various Directives and Regulations.

Council Directive 92/43/EEC<sup>57</sup> 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).

Council Directive 2009/147/EC<sup>58</sup> 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

<sup>57</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN>

<sup>58</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0147&from=EN>



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).

Council Regulation (EC) No 338/97<sup>59</sup> 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 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) 1/2005<sup>60</sup> 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.

The basic anti-cruelty provisions of Article 17 of the Animal Protection Act (TierSchG) apply to wild vertebrate animals, prohibiting killing vertebrates without reasonable grounds (Article 17(1)) and prohibiting cruelly inflicting substantial pain or suffering or inflicting long-lasting or recurring severe pain or suffering to vertebrates. Article 18(2) prohibits wilfully or negligently inflicting significant pain, suffering or injury to any animals without reasonable grounds. Where other animals can be used, wild animals are protected from use in experimentation in Article 9 of the Act. Article 13 of the Act empowers the Ministry of Food and Agriculture to prohibit, restrict or authorise the import and export of wild animal species on the grounds of animal welfare.

Article 44 of the Federal Nature Conservation Act (BNatSchG)<sup>61</sup> provides protection for endangered species and prohibits pursuing, capturing, injuring or killing wild animals of specially protected species. Hunting is permitted in the country under licence, and the Federal Hunting Act (BjagdG)<sup>62</sup> also contains some provisions relevant to the welfare of the animals listed as game species in Article 2. Notably, Article 19 prohibits the use of poison and Article 19a allows for refuge for game animals in prohibiting the disturbance of wild game species 'in its places of refuge, nesting places, breeding places or lying-places'. Article 22a of the Act requires that to spare stricken animals avoidable pain or suffering, they must be killed immediately.

<sup>59</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997R0338&from=en>

<sup>60</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

<sup>61</sup> [https://www.bmu.de/fileadmin/Daten\\_BMU/Download\\_PDF/Naturschutz/bnatschg\\_en\\_bf.pdf](https://www.bmu.de/fileadmin/Daten_BMU/Download_PDF/Naturschutz/bnatschg_en_bf.pdf)

<sup>62</sup> [http://www.gesetze-im-internet.de/bjagdG/Bjagdg\\_Bjagdg007800952.html](http://www.gesetze-im-internet.de/bjagdG/Bjagdg_Bjagdg007800952.html)



Section 4, Article 15 of the Federal Hunting Act (BJagdG) states that anyone wishing to hunt must carry a hunting licence in their name and show it to the police officers and those entitled to hunt protection on request. The first issue of a hunting licence depends on the applicant having passed a hunter's examination which includes elements related to animal welfare.

In terms of 'ownership', Section 960 of the Civil Code<sup>63</sup> stipulates that: wild animals are ownerless as long as they are free; wild animals in zoos and fish in ponds or other self-contained private waters are not ownerless; where a captured wild animal regains freedom, it becomes ownerless if the owner fails to pursue the animal without undue delay or if he gives up the pursuit, and a tamed animal becomes ownerless if it gives up the habit of returning to the place determined for it.

### *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.

There is some recognition of the welfare of wild animals in the Animal Protection Act (TierSchG) and the Nature Conservation Act and the Hunting Act (BJagdG). Elements of these Acts help to introduce the importance of the welfare of wild animals into wider governmental strategies. In particular, the Animal Protection Act (TierSchG) empowers the Ministry of Food and Agriculture to prohibit, restrict or authorise the import and export of wild animal species on the grounds of animal welfare in agreement with other relevant ministries.

It is slightly positive that hunting can only be done in Germany if exercised under a licence, which is only provided if the applicant passed an examination which includes some elements of animal welfare. Although the Hunting Act contains some provisions associated with animal welfare, such as prohibiting the use of poison and requiring stricken animals to be killed immediately to avoid pain or suffering, the trapping of animals, such as raccoons and muskrats, takes place in the country.<sup>64</sup> Hunting is popular in Germany and hunting federations in the regions are recognised within the Federal Nature Conservation Act (BNatSchG).

### **Enforcement mechanisms**

Breach of the prohibition in Article 17 of the Animal Protection Act (TierSchG), relating to cruel or long-lasting infliction of pain or suffering, is a criminal offence punishable with a fine or up to three years imprisonment. Wilful or negligent breach of the other relevant provisions of the Act, and of the

<sup>63</sup> [http://www.gesetze-im-internet.de/englisch\\_bgb/englisch\\_bgb.html#p3869](http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p3869)

<sup>64</sup> <http://www.spiegel.de/international/germany/germany-overrun-by-raccoon-invasion-a-847847.html>

secondary regulations, is an administrative offence punishable with fines of up to €5,000 or €25,000 depending on the offence (Article 18).

Breach of the Federal Nature Conservation Act (BNatSchG) is also punishable with fines and imprisonment (Article 71). The Hunting Act empowers those with the right to hunt (holding a license), landowners (gamekeepers) with enforcement mechanisms. Section 25 states that "gamekeepers shall have the powers and duties of police officers and shall act as investigators of the Public Prosecutor's Office, provided that they are professional huntsmen or have a professional training in forestry". There are provisions in the Act for fines, imprisonment, withdrawal of licences, and hunting bans (Articles 38 to 41a).

Section 330 of the Civil Code protects wild populations of animals resulting in imprisonment from six months to five years.

**Key recommendations**

- **The Government of Germany is encouraged to ban any form of hunting that does not directly support subsistence, i.e. for 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**

<b>Ranking</b>	<b>B</b>
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Responsibilities are allocated primarily under Article 15 of the Animal Protection Act (TierSchG), which provides that the competent authorities under Federal law are responsible for the implementation of the Act and its secondary regulations. The Ministry of Food and Agriculture is the central competent authority for animal welfare. It has the power to propose and prepare national laws and to transpose EU legislation into national law.

The Ministry is given powers under the Animal Protection Act to make secondary regulations on a wide variety of issues affecting animal welfare (for example, under Article 4b in relation to slaughter, under Article 7 in relation to experiments using animals, under Article 16d on administrative issues,



and under Article 21a on the implementation of EU requirements). A variety of governmental departments are involved through the Act via secondary legislation produced by the Ministry.

Article 16b provides that the Ministry shall appoint an Animal Welfare Commission to assist it in animal welfare issues and must consult this Commission when making new regulations under the Act. The involvement of this Commission can provide further depth to the accountability within the German Government concerning animal protection; however, it is noted that the Ministry has discretion over the composition and management of the Committee (Article 16b(2)). The Animal Welfare Commission Ordinance (TierSchKomV)<sup>65</sup> stipulates that the committee will consist of twelve members, including four experts from national animal welfare associations; one expert from a national animal keeper association; one expert from the German Research Foundation; one scientist each from the field the humanities, the behaviour customer, animal husbandry, basic biomedical research, of medicine and of veterinary medicine.

The Nature Conservation Act (BNatSchG) allocates responsibility to the Federal Agency for Nature Conservation and to Federal competent authorities, depending on the issue in question (Articles 3 and 70). Under the Hunting Act, the Ministry of Food and Agriculture and the relevant Federal authorities have power to make secondary regulations (Article 36). Hunting licences and permits are regulated at the state level (Articles 11 and 15).

### **Analysis**

*The Animal Protection Act (TierSchG) is specifically dedicated to animal protection and identifies relevant government departments in this matter. The Ministry of Food and Agriculture has been given responsibility for the implementation of the Animal Protection Act (TierSchG). The Government has recognised animal welfare and its departmental responsibility as an individual issue. The Act potentially has far-reaching impact on wider governmental strategy due to the variety of named departments involved in the Act.*

*It is positive that an Animal Welfare Commission exists to advise the Ministry of Food and Agriculture with regards to secondary regulation on animal welfare. It should be commended that this Commission includes members of animal welfare organisations.*

*Policy and legislation are kept up to date with EU requirements and the Government has a detailed strategy in reference to improving animal welfare in Germany and through the European Union.<sup>66</sup> However, responsibility for implementation and enforcement of animal welfare standards is allocated at the state level rather than at federal level, which could potentially result in uneven application depending on the relative priorities of the government of each state. This also presents challenges with respect to the adoption and implementation of a national strategy to improve animal welfare.*

### **Enforcement mechanisms**

The responsibilities of relevant government departments are set out in primary legislation.

<sup>65</sup> <https://www.gesetze-im-internet.de/tierschkomv/BINRO15570987.html>

<sup>66</sup> [https://www.bmel.de/EN/Animals/AnimalWelfare/Texte/Versuchtierrichtline\\_Tierschutzgesetz.html](https://www.bmel.de/EN/Animals/AnimalWelfare/Texte/Versuchtierrichtline_Tierschutzgesetz.html)



### Key recommendations

- It is positive that the Animal Welfare Commission comprises members from animal welfare organisations. The Government of Germany is encouraged to allocate consistent financial resources to improving animal welfare.

## 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

B

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.<sup>67</sup>

European Union legislation incorporates many of the OIE's guiding principles and standards on animal welfare and further builds on them in many areas, and those legislative requirements are incorporated into German law. In Germany, those relating to livestock, including their rearing, transport and slaughter; those relating to the use of animals in research and education and those relating to the killing of animals generally are integrated into the Animal Protection Act (TierSchG), which also provides the necessary detail to expand the legislation into practice.

#### Analysis

*By incorporating the OIE's guiding principles and standards into legislation, the German Government has promoted animal welfare in the country. The Ministry of Food and Agriculture has developed codes of practice and guidelines on many of the areas and continues to report on progress, to maintain and improve animal welfare standards.*

*The 2019 Animal Welfare Report of the Federal Government<sup>68</sup> reports the incorporation of the OIE's guiding principles and standards on animal welfare into national legislation including: animal transport by land, sea and air; the killing of animals for disease control; the management of stray dogs; the use of animals in experimentation, and the protection of cattle, calves and fish. In addition, Germany attends the Steering Group of the OIE Platform on Animal Welfare for Europe as an observer.*

#### Enforcement mechanisms

<sup>67</sup> <http://www.oie.int/infographic/StandardsAW/index.html>

<sup>68</sup> [https://www.bmel.de/SharedDocs/Downloads/Tier/Tierschutz/Tierschutzbericht\\_2019.pdf](https://www.bmel.de/SharedDocs/Downloads/Tier/Tierschutz/Tierschutzbericht_2019.pdf)





There are enforcement mechanisms, consisting of fines and imprisonment, for all aspects of the OIE guiding principles and standards on animal welfare that are included in the legislation.

#### Key recommendations

- **Germany fully incorporates OIE's principles and standards into legislation, which includes enforcement mechanisms. The Government of Germany is strongly encouraged to exceed OIE standards through the greater promotion of the rehoming of stray animals.**

## 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 Germany, 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.<sup>69</sup>

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 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

- **Germany has provided government support to UDAW, through a joint EU declaration in 2009. Germany should act as an example for other countries to pledge support in principle to UDAW.**

<sup>69</sup> [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/agricult/106877.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/agricult/106877.pdf)



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