



# Animal Protection Index (API) 2020

## Kingdom of the Netherlands: ranking B

### Executive summary

The Netherlands is a leading country with regards to animal welfare in Europe. The 2011 Animals Act is the main piece of legislation in the country for animal welfare. This Act, applicable to kept animals, with some general articles applicable to all animals, formally recognises animal sentience and the 'intrinsic value' of animals. Since the API was first published in 2014, the Wild Fauna and Flora act has been replaced by the Nature Protection Act 2017, whose Explanatory Memorandum reiterates the intrinsic value of wild animals. The Netherlands is progressive in certain areas of animal welfare. Notably, fur farming is being phased out by 2024. The Netherlands is the third EU Member State after Belgium and Luxemburg to adopt a Positive List, explicitly stating which animals can be kept as companion animals, though this List is still in the making – for mammals – and has currently not been enshrined in legislation yet. In addition, the country goes beyond EU requirements in some aspects for certain farm animals: the Netherlands has banned enriched cages for egg-laying hens, and legislation limits the use of gestation stalls to maximum four days for sows.

However, there is still room for improvement in many animal welfare areas. Notably, the Netherlands only bans the use of wild terrestrial mammals for entertainment: marine mammals and birds of prey can still be used for recreational purposes. Furthermore, the Netherlands allows to increase the stocking density for broiler chickens from 33kg/m<sup>2</sup> – the EU standard – to max. 42 kg/m<sup>2</sup>, in conformity with the derogation provisions of the EU, thus creating even more crowded conditions for the animals. Moreover, notable welfare problems are persistent, including the routine tail-docking of piglets often without anaesthesia and the stunning of pigs by CO<sub>2</sub>.

Animal welfare mainly falls under the remit of the Ministry of Agriculture, Nature and Food Quality. The Council on Animal Affairs (RDA) is an advisory body dealing with animal welfare concerns in the Netherlands. The membership of the Council is diverse and includes animal welfare organisations such as the Humane Society International, which reflects that the Government engages with various stakeholders on animal welfare issues.

The Government of the Netherlands is strongly encouraged to improve the welfare of farm animals through forbidding the stunning of pigs by high doses of CO<sub>2</sub>, banning all types of cages and outlawing the current derogations on the basis of EU legislation to increase the stocking densities of broiler chickens. With regards to wild animals in captivity, the Government of the Netherlands is urged to ban all performances by wild animals, including for marine mammals. The Government of the Netherlands is furthermore urged to outlaw the culling of stray cats, which occurs in some provinces. For wild animals, at the very least the Government of the Netherlands is encouraged to outlaw the use of the cruellest forms of hunting. 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 the prohibition of animal suffering

#### 1. Animal sentience is formally recognised in legislation

Analysis of the legislation	
Ranking	B
<p>At the European Union level, Article 13 of the Treaty on the Functioning of the European Union<sup>1</sup> 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 earliest formal embrace of the 'intrinsic value' of animals by the Dutch Government can be found in 1981 with the adoption of the Nota Rijksoverheid en dierenbescherming (National Government Regulations on Animal Protection). 'Intrinsic value' here means the acknowledgement of the self-worth of animals as individuals with feelings. This concept was then taken as a point of departure for the development of the Animal Health and Welfare Act 1992.</p> <p>The Animal Health and Welfare Act 1992 has been replaced by the Animals Act 2011<sup>2</sup> (in force since 2013) to form one integral animal framework law incorporating European Union legislative requirements. Article 1.3 of the Animals Act 2011 formally recognises animal sentience. Paragraph 2 states that recognising the intrinsic value of animals shall mean the recognition of the integrity and well-being of animals being sentient beings. In addition to this, paragraph 3 sets the foundations of care for animals based on the principles of the Five Freedoms. As such, the full spectrum of animal sentience, including expressing natural behaviours and not simply a recognition of pain and suffering, is formally recognised in Dutch law. The protection of the Act applies to animals that are kept except where the context requires otherwise, but it appears that the recognition of sentience extends to all categories of animals (including wild animals).</p> <p>The Experiments on Animals Act 1977 also refers to the 'intrinsic value of animals' (Article 1a) since its revision in 1996.</p> <p>With regards to wild animals, the intrinsic value of animals was clearly articulated in the preamble of the Flora and Fauna Act 1998. However, this Act was replaced in 2017 by the Nature Protection Act. This new Act only contains a broader reference to the intrinsic value of 'nature'. Its Explanatory Memorandum, however, points out to the Animals Act with regards to the intrinsic value of animals living in the wild and the duty of care regarding their welfare, irrespective of the conservation status of their species.</p> <p>The Dutch Civil Code declares that 'animals are not things' (Book 3 General Property Law, General</p>	

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

<sup>2</sup> <https://wetten.overheid.nl/BWBR0030250/2013-01-01#Opschrift>

Provisions, section 1 definitions, Article 2a1). It is, however, also stated (Article 2a2) that: 'Provisions regarding things are applicable to animals, taking into account the legal requirements and rules of common law, reasonable restrictions, obligations and principles of law, as well as public order and morality.'

### Analysis

*Though it is positive that Article 13 of the Treaty on the Functioning of the European Union explicitly acknowledges animal sentience, the requirement from Member States to pay 'full regard' to animal welfare is too vague and does not create a precise and enforceable duty.*

*The Animals Act 2011 recognises animal welfare and the suffering of animals as an independent issue and addresses the topic in line with leading legislation worldwide. Animal sentience is formally recognised and defined using the principles of the Five Freedoms, which are explicitly stated in legislation. The Act is extensive in its guidelines for a wide variety of areas surrounding the care, use, trade, transport and killing of animals. In using the concept of sentience in the foundations of legislation, it is now introduced and embedded into the wider governmental strategy in the country. The recognition of animal sentience, the recognition of the intrinsic value of animals and the duty of care as expressed in the Animal Act cover all animals, including animals living in the wild, irrespective of the conservation status of their species.*

### Enforcement mechanisms

There are enforcement mechanisms for the provisions of the Animals Act 2011 that arise out of the recognition of animal sentience. Section 3 of the Act contains administrative enforcement mechanisms, while section 4 focuses on criminal enforcement mechanisms.

### Key recommendations

- **The Netherlands constitutes an example for other countries to follow as it fully recognises animal sentience in the law: going beyond the recognition that animals can feel pain, Dutch law also acknowledges the intrinsic value of animals and their ability to express natural behaviours.**

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

### Analysis of the legislation

Ranking

B

Article 2.1(1) of the Animals Act 2011 prohibits causing an animal pain or injury or infringing upon its health and welfare without reasonable purpose or by exceeding what is reasonable for such purpose. Although this appears to apply to all animals covered by the Act (including those used in scientific research), the protection of the Act applies to animals which are kept (except where the context



requires otherwise) and this particular provision appears in a chapter on domestic animals, so it is not clear whether this extends to a wild animal in the wild and/or to a wild animal in captivity.

Article 1.4 of the Animals 2011 sets out the duty of care of Dutch citizens for animals, based on the Five Freedoms. This is a strong legislative basis to ensure that those responsible for animals do not cause suffering by a failure to act or through neglect. Article 1.4(2) clarifies that this extends to a duty to take action when a person knows or reasonably suspects that his failure to act will cause harm to an animal. Article 2.1(6) also requires citizens to give due care to 'helpless' animals, and this provision applies to all animals (not just animals who are kept), thus extending to wild animals. The requirement to give care includes protecting animals from anxiety and distress (Article 1.3(3)(d)).

Also, article 1.3 of the Animal Holders Decree is relevant (prohibited behaviours with regard to animals).

The Nature Protection Act 2017 also provides some protection for wild animals. Article 1.11 (1) requires people to take 'sufficient care' of animals living in the wild. Article 1.11 (2) clarifies that this duty extends to taking action where a person knows or reasonably suspects that failure to do so would cause harm to animals (or flora).

The Criminal Code gives further legal protection from deliberate acts of cruelty. Of particular note is Article 350, which makes it a criminal activity to kill, damage, disable or kidnap an animal belonging to another person.

### Analysis

*The Animals Act 2011 recognises animal welfare and the protection of animals as an independent issue and addresses the topic in line with leading legislation worldwide. It is positive that citizens have a duty of care towards animals, based on the Five Freedoms and which includes a failure to act. It is also remarkable that protection is granted to wild animals, through Article 2.1(6) of the Animal Health and Welfare Act 2011, as well as through the Nature Protection Act 2017.*

### Enforcement mechanisms

Article 8.12(3) and 8.12(4) of the Animals Act 2011 provide that infringement of the anti-cruelty provisions of Article 2.1(1) or the duty of care under Article 1.4 is a criminal offence punishable by fines or imprisonment of up to six months.

### Key recommendations

- **The Netherlands has extensive legislation promoting animal protection through prohibiting either deliberate acts of cruelty or negligence towards animals. The country's 2011 Animals Act is based on the Five Freedoms, as recommended by the OIE.**
- **The Government of the Netherlands is urged to encourage other countries to follow its example by adopting welfare provisions for wild animals.**



## 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	C
<p><u>Rearing</u></p> <p>At the EU level, the 1976 European Convention for the Protection of Animals kept for Farming Purposes<sup>3</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'. Article 4 protects the freedom of movement of animals and Article 5 regulates the lighting, temperature, humidity, air circulation, ventilation and other environmental conditions.</p> <p>Based on this European Convention, Council Directive 98/58/EC<sup>4</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.</p> <p>With regards to Dutch-specific legislation, the Animals Act 2011 recognises the welfare of animals used in farming as an individual issue, in line with leading legislation worldwide. To further increase awareness and standards of farm animal welfare, extensive secondary legislation in the form of Decrees sets out minimum standards for those animals permitted to be used in production.</p> <p>The general anti-cruelty and duty of care provisions in Articles 2.1 and 2.2(8) of the Animals Act 2011 apply to this category of animals.</p> <p>There is extensive primary and secondary legislation specifically addressing animals used in farming. Primary legislation is concentrated in the Animals Act 2011. The Act provides for rules to be made on issues including the health and welfare requirements of European Union legislation (Article 2.3(3)), the transport of animals (Article 2.5), breeding (Article 2.6), trade (Article 2.7) and slaughter (Article 2.10). These rules take the form of Decrees and Regulations and implement European Union legislative requirements.</p>	

<sup>3</sup> <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680076da6>

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0058&from=EN>

## Rearing - pigs

At the EU level, welfare provisions for pigs are laid out in Council Directive 2008/120/EC.<sup>5</sup> Among animal welfare provisions, Article 3 prohibits the tethering of sows or gilt (female pig after puberty and before farrowing). The ban of individual sow stalls was decided in 2001, and a phase-out period of 12 years was allowed for adapting to the new systems. From 1<sup>st</sup> January 2013, sows must be kept in groups rather than in individual stalls. However, stalls may still be used for the first 28 days of gestation, and one week before the expected time of birth (Article 3.4).

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

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

- teeth grinding or clipping (before 7 days old)
- tail-docking
- castration of male pigs by other means than tearing of tissues
- nose-ringing 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'.

With regards to pig welfare, the Netherlands has enacted the Pig Decree in 1994 (later transposed to the Animal Holders Decree).<sup>6</sup> Tethering has been banned since 2002. In that same year, the Government also decided to phase out sow stalls and to provide group housing for all intensively kept sows by 2008.<sup>7</sup> The EU ban on sow stalls still allows for stalls to be used in the first 28 days of gestation, as well as in the week before farrowing. The Netherlands has gone beyond this EU requirement by legislating that sows can remain a maximum of four days in stalls post insemination. The country does not outlaw farrowing crates but is slightly innovating with free farrowing system.<sup>8</sup> Furthermore, the Animal Holders Decree (art. 2.17 and 2.18) provides more space for pigs than the minimum requirements from the EU directive 2008/120 and forbids fully slatted concrete floors.

<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0120&from=EN>

<sup>6</sup> <https://wetten.overheid.nl/BWBR0006806/2005-08-01>

<sup>7</sup> <https://www.ciwf.org.uk/media/3818886/welfare-of-europes-sows-in-close-confinement-stalls.pdf>

<sup>8</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/478588/Opinion\\_on\\_Free\\_Farrowing\\_Systems.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/478588/Opinion_on_Free_Farrowing_Systems.pdf)

### Rearing - broiler chickens

At the EU level, welfare provisions for broiler chickens are laid out in Council Directive 2007/43/EC.<sup>9</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 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.

To abide by this European Union Directive, the Netherlands has enacted a Broiler Decree in 2010 (later transposed to the Animal Holders Decree).<sup>10</sup> It allows for derogation for stocking densities, which the EU directive permits. In addition to the conditions for derogation set by the European Commission, The Netherlands requires an extra condition on foot pad dermatitis for farmers stocking more than 39kg of birds per 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>11</sup> Non-enriched cage systems have been prohibited since 1<sup>st</sup> 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.

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007L0043>

<sup>10</sup> <https://wetten.overheid.nl/BWBR0027822/2011-02-01>

<sup>11</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31999L0074&from=EN>

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

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

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

The Netherlands abides by the Council Directive 1999/74/EC to ban battery cages since 1<sup>st</sup> January 2012, and goes beyond this commitment since the country is phasing out the use of enriched cages, which are still allowed in EU legislation.<sup>12</sup> Enriched cages are phased out until 2021, when their use will be fully banned (Article 2.68).<sup>13</sup> Farmers have not been allowed to buy such enriched cages since 2008. The Dutch Order bans battery and enriched cages in favour of colony cages, which generally provide slightly more space per hen and have the same provisions as enriched cages (perches, nests, and surfaces for scratching and foraging).<sup>14</sup> In short, although small improvements have been made, The Netherlands still allows cages for laying hens.

In 2013, the Dutch Minister for Agriculture Sharon Dijksma introduced a ban on beak trimming for laying hens, which was supposed to take effect in September 2018, but was postponed to January 2019.<sup>15</sup>

In sum, very few mutilations in birds are allowed in The Netherlands nowadays, regulated by the Veterinary Medicines Decree, based on the Animal Act.

Also freeze branding of cattle has been banned and is phased out.

### Rearing - dairy cattle and calves

There is no EU legislation dedicated to dairy cattle.

Council Directive 2009/119/EC<sup>16</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

<sup>12</sup> <https://www.government.nl/topics/animal-welfare/welfare-of-animals-kept-commercially>

<sup>13</sup> [https://wetten.overheid.nl/BWBR0035217/2018-07-01#Hoofdstuk2\\_Paragraaf6\\_Sub-paragraaf6.2\\_Artikel2.68](https://wetten.overheid.nl/BWBR0035217/2018-07-01#Hoofdstuk2_Paragraaf6_Sub-paragraaf6.2_Artikel2.68)

<sup>14</sup> <https://poultrykeeper.com/rehoming-battery-hens/enriched-and-colony-cages/>

<sup>15</sup> <https://www.poultryworld.net/Health/Articles/2013/6/Netherlands-bans-beak-trimming-in-layer-hens-from-2018-1281266W/>

<sup>16</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0119&from=EN>



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 a letter to the Dutch Parliament (19<sup>th</sup> April 2016), the Dutch Minister of Agriculture expressed the ambition to reach access to grazing for 80% of Dutch dairy cows in 2020. However, in the new Government agreement 'Trust in the Future' the new Government watered this ambition down to the 2012 level of grazing (70% of cows with access to grazing). According to the figures of the Central Bureau for Statistics, the current percentage of cows with access to pasture is 68%.<sup>17</sup>

Note that the sector formulated an ambition to realize access to grazing at 81,2% of the farms (the level of 2012). This ambition was achieved in 2018: access to grazing at 82% of the farms. However, this indicator - access to grazing at farm level - is not measuring access to grazing for cows, since herd size varies wildly within the dairy sector. Note furthermore that access to grazing is defined by at least 120 days, 6 hours per day. According to this minimum requirement, cows only have access to pasture 8% of the year.

### Transport

At the EU level, welfare provisions for animal transport are laid out in Council Directive EC 1/2005.<sup>18</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'. Article 7 forbids long journeys (i.e. exceeding 8 hours) unless the means of transport has been inspected and approved under Article 18(1).

### 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>19</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

<sup>17</sup> <https://www.cbs.nl/nhl/nieuws/2018/28/weer-meer-melkkoeien-in-de-wei>

<sup>18</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

<sup>19</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1099&from=EN>

1099/2009 have been amended by Commission Implementing Regulation (EU) 2018/723<sup>20</sup> to approve the stunning of broiler chickens through asphyxia due to low atmospheric pressure.<sup>21</sup>

At the country level, the Netherlands has passed the Decree on the killing of animals to implement Council Directive EC No 1099/2009.<sup>22</sup>

In June 2011, the Dutch Parliament approved a bill backed by the Party for Animals and stipulating that livestock must be stunned before being slaughtered.<sup>23</sup> This bill was strongly opposed by some sectors of the community, though the law allowed religious groups to continue ritual slaughter if it was proven to be no more painful than stunning. The bill was rejected by the Senate in December 2011.<sup>24</sup> The Netherlands only has a sector agreement as a result ('Covenant onverdoofd slachten' - 'Covenant on Unanaesthetised Slaughter'), which shows major shortcomings from an animal welfare perspective since it allows that cows are conscious for 40 seconds after their carotid have been cut.

Pigs are also stunned with CO<sub>2</sub> in the Netherlands. Parliament adopted a motion for alternatives in 2015, however, no legislation has been passed on this matter so far.<sup>25</sup> Although major poultry slaughterhouses have adopted CO<sub>2</sub>-stunning for birds, the waterbath method to electrically stun poultry is still used in The Netherlands.

In NL there is an obligation to stun eel (electrical stunning) before slaughter (Animal Holders Regulation, art. 5.9 - 5.11).

#### Other relevant legislations and policies

The Dutch Parliament has set several targets for reducing farm antibiotic use. Using 2009 as a baseline, a 20% reduction was targeted for 2011, 50% for 2013 and 70% for 2015. The first two targets were met, but the overall reduction in 2015 was only 58%.<sup>26</sup> The overall reduction in 2017 was 63%. A new body, the Netherlands Veterinary Medicines Authority (SDA), was established in 2010, with the aim to promote the responsible use of veterinary medicines, in particular of antibiotics in Dutch farming.<sup>27</sup>

The Netherlands Food and Consumer Product Safety Authority (NVWA) is responsible for supervising the welfare of animals kept for commercial purposes.<sup>28</sup> The NVWA also supervises the slaughtering of animals, based on the scientific advice of the Wageningen University Livestock Research faculty.<sup>29</sup>

<sup>20</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0723&from=EN>

<sup>21</sup> <https://www.efsa.europa.eu/en/efsajournal/pub/5056>

<sup>22</sup> <https://wetten.overheid.nl/BWBR0008686/2013-01-01>

<sup>23</sup> <https://www.reuters.com/article/us-dutch-religion-slaughter/idUSTRE75R4E420110628>

<sup>24</sup> <https://www.expatica.com/nl/ritualslaughter-ban-fails-in-dutch-senate/>

<sup>25</sup> <http://www.rijksbegroting.nl/2016/kamerstukken,2015/12/8/han100662a09.html>

<sup>26</sup> <http://www.saveourantibiotics.org/media/1751/farm-antibiotic-use-in-the-netherlands.pdf>

<sup>27</sup> <https://www.medact.org/wp-content/uploads/2016/02/Hetty-1.pdf>

<sup>28</sup> <https://www.government.nl/topics/animal-welfare/welfare-of-animals-kept-commercially>

<sup>29</sup> <https://www.wur.nl/en/Research-Results/Research-Institutes/livestock-research/Contact.htm>

### 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 used 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 to avoid 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>30</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>31</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<sup>st</sup> 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, exacerbated by allowing derogations, the Directive enables such crowded conditions that the Five Freedoms of broiler chickens cannot be fulfilled. Given that science shows that stocking densities of 30kg/m<sup>2</sup> or less are important to mitigate animal welfare risks, the derogations that the Netherlands grants on stocking densities for broiler chickens are unfortunate and affect mostly those animals that are bred for exports.

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.

<sup>30</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>31</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)



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>32</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

As of September 2019, since over 1 million verified signatures have been collected from EU citizens, the European Commission will be invited to propose the above-mentioned legislation.<sup>33</sup>

It should be highlighted that the Netherlands goes beyond EU legislation, through phasing out the use of enriched cages. Colony cages represent only a slight improvement by comparison to enriched cages and are not sufficient to ensure that the Five Freedoms of laying hens are respected.

The ban on beak trimming for laying hens is a positive step for animals, as the Dutch Government highlights on its website that this measure will improve the welfare of 56 million hens.<sup>34</sup> The Government further explains that although the ban was announced in 2013, it could only come into force in 2018 since the poultry sector needed to act first on housing, poultry management and on breeding chickens with a more sociable nature before leaving the hens' beaks intact: if the ban had taken effect immediately in 2013, the Government claimed it would have resulted in greater animal suffering since layer hens would have pecked each other's feathers. The Minister for Agriculture further emphasises that the welfare of poultry must be improved, but in a responsible manner'.<sup>35</sup> Still, it took a long time for the ban to come into effect - especially considering that the problem was already acknowledged in the 1970s. Even just one year of implementation sooner, could have improved the welfare of 56 million animals.

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. The lowering of the grazing ambition of the Dutch Government from 80% to 70% in 2020 is a step

<sup>32</sup> <https://www.eurogroupforanimals.org/compassion-in-world-farming-european-citizens-initiative-end-the-cage-age-successfully-launched-in-the-european-parliament>

<sup>33</sup> <https://eci.endthecageage.eu/>

<sup>34</sup> <https://www.government.nl/latest/news/2013/06/09/ban-on-beak-trimming-improves-animal-welfare-in-poultry-sector>

<sup>35</sup> <https://www.government.nl/latest/news/2013/06/09/ban-on-beak-trimming-improves-animal-welfare-in-poultry-sector>

backward for the opportunity for cows to express natural behaviour. About 160,000 dairy cows will be negatively affected by this decision.

With regards to animal transport, it is positive that the Council Directive EC 1/2005 recognises in its preamble that, 'for reasons of animal welfare the transport of animals over long journeys, including animals for slaughter, should be limited as far as possible'. However, the exception of Article 7, allowing the transport of animals for over 8 hours, is detrimental to animal welfare. In fact, long live animal transport is known to cause stress. Moreover, many breaches of Council Directive EC 1/2005 have been reported, including the transport of unfit animals, exceeding stocking densities, requirements on feed, water and rest not respected, insufficient headroom and bedding, too high temperature.<sup>36</sup>

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>37</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>38</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, numerous EU countries have exemptions to this requirement, notably due to religious reasons. In 2018, the European Commission has also developed a series of fact sheets outlining how various species should be stunned.<sup>39</sup> This appears to show that the EU Commission is willing to disseminate knowledge and improve animal welfare. However, CO<sub>2</sub> stunning of pigs is still common practice in the Netherlands, despite an adopted resolution by Parliament in 2015 and scientific evidence that animals are not spared any avoidable pain, distress or suffering during their killing.<sup>40</sup>

The Ministry of Economic Affairs supports the partnership for the Sustainable Livestock Farming Agenda, gathering companies, civil society organisations and provincial authorities on key themes, among which sustainable animal housing, animal health and welfare.<sup>41</sup> As part of this sustainable strategy for livestock production, the Government is using an innovative economic incentive by compensating farmers who decide to quit dairy and pig farming.<sup>42</sup> The rationale behind this measure is more geared towards reducing pollution from phosphate rather than concern for animal welfare, however, this policy therefore indirectly contributes to reducing animal suffering.

The Council on Animal Affairs (RDA) provides the Minister for Agriculture with solicited and unsolicited advice on multidisciplinary issues relating to animal welfare, including animal health. Already in 2009,

<sup>36</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>

<sup>37</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>38</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

<sup>39</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>40</sup> [http://library.wur.nl/WebQuery/wurpubs/fulltext/388582\\_p.85-102](http://library.wur.nl/WebQuery/wurpubs/fulltext/388582_p.85-102)

<sup>41</sup> <https://www.government.nl/topics/livestock-farming/sustainable-livestock-production>

<sup>42</sup> <https://www.government.nl/topics/livestock-farming/sustainable-livestock-production>

the Dutch Government outlined that animal welfare considerations ought to be taken into account as the Netherlands intends to implement a sustainable food system.<sup>43</sup> In its 2016 report, the RDA questions the ethics of breeding farm animals, which may cause a conflict between human interest and animal welfare.

As the Government wants to develop a follow-up to its policy on antibiotics, the RDA also addresses in its 2016 report the use of antibiotics in livestock farming.<sup>44</sup> Following the commitment by the Dutch Parliament to reduce antibiotic use, the RDA reports that data collected on dairy and veal calf farms showed, for example, that calf mortality rate has risen alongside the fall in antibiotics use. Thus, the RDA recommends ensuring that the follow-up governmental policy is accompanied by the proper recording of data on the use of antibiotics and animal health including animal welfare.

In its 2017 report, the RDA advises that improving animal welfare in Dutch livestock farming may be a way of giving the sector a distinctive and profitable position in Europe and the world.<sup>45</sup> The RDA underscores that there are consumers who attach great importance to animal welfare and are willing to pay a higher price for a higher welfare meat, however these customers are currently underserved since the farming sector follows a mainstream approach in which the consumer is a uniform entity.

However, it appears that the Dutch Government has not taken up all the recommendations from the RDA. In its government coalition agreement 'Trust in the future', the Dutch Government states that a level playing field requires as less as possible national animal welfare improvements on top of European legislation.<sup>46</sup> The Netherlands has stated its international commitment in her Voortgangsbrieven beleidsbrief dierenwelzijn of 4 September 2019.<sup>47</sup>

In addition, the RDA in its 2017 report shows that the Government itself puts barriers to greater animal welfare through local regulations. For instance, in regions with a lot of intensive livestock farming, high local requirements are set on odour, ammonia and particulate matter emissions. As a result of this, solutions such as free-range systems are possible only on a very small scale. Moreover, the Government seems to interpret EU competition law stricter than is required – which is a barrier for collaboration to jointly improve farm animal welfare.

Overall, in 2014 a report from the NGOs 'Dier & Recht' and 'Varkens in Nood' calculated that on an annual basis there are 2,7 billion violations of the law against farm animals.<sup>48</sup> As such, on average, every farm animal in the Netherlands is confronted by multiple violations of the legislation that is supposed to protect them. Note that this figure concerns a calculation and extrapolation and is not

<sup>43</sup> <https://www.government.nl/documents/parliamentary-documents/2009/11/17/policy-agenda-for-sustainable-food-systems>

<sup>44</sup> <https://english.rda.nl/publications/annual-reports/2017/04/20/annual-report-council-on-animal-affairs-rda-2016>

<sup>45</sup> <https://english.rda.nl/publications/publications/2017/05/09/animal-welfare-for-sale>

<sup>46</sup> <https://www.rijksoverheid.nl/regering/regeerakkoord-vertrouwen-in-de-toekomst/3-nederland-wordt-duurzaam/3.4-landbouw-voedsel-natuur-visserij-en-dierenwelzijn>

<sup>47</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/09/04/kamerbrief>

<sup>48</sup> [https://www.dierenrecht.nl/sites/dierenrecht.nl/files/field/attachment/dierenrecht\\_nalevingdierenwelzijnswetgevingindevee-industrie2014\\_1.pdf](https://www.dierenrecht.nl/sites/dierenrecht.nl/files/field/attachment/dierenrecht_nalevingdierenwelzijnswetgevingindevee-industrie2014_1.pdf)

based on physical checks. It is based on research reports and multiplication of research findings by the total numbers of animals of the categories concerned that are kept in the Netherlands in a year.

### 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.

Article 8.12(3) and 8.12(4) of the Animals Act 2011 provide that infringement of the anti-cruelty provisions of Article 2.1(1) or the duty of care under Article 2.2(8) is a criminal offence punishable by fines or imprisonment of up to six months. Failure to comply with decrees relating to the welfare and health of animals used in production (made under Article 2.3(3)) and to the transport of animals (made under Article 2.5(2)), is a criminal offence punishable by fines and/or imprisonment. Failure to comply with decrees relating to slaughter (made under Article 2.10(2) and (3)) is an administrative offence punishable with a fine.

### Key recommendations

- The Netherlands has extensive legislation with regards to ensuring the welfare of farm animals during rearing, transport and slaughter. However, the Netherlands still allows the slaughter of non-stunned animals. The Government of the 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>49</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.
- In addition, the Government of the Netherlands is urged to ban the stunning of pigs by CO<sub>2</sub>, recognising that the inhalation of high concentrations of CO<sub>2</sub> causes enormous animal suffering.
- The Netherlands should encourage other European countries to adopt free farrowing systems and to limit the number of days a sow can stay in a stall to lower than 28 days. The Netherlands will only be considered a leader in animal welfare its legislation fully outlaw the worst forms of

<sup>49</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))

confinement in factory farming, which includes sow stalls, farrowing crates and cages for egg-laying hens.

- In this vein, the Government of the Netherlands is urged to consider a ban on all types of cages for laying hens, including colony systems.
- The Government of the Netherlands is strongly encouraged to reduce the stocking densities of broiler chickens to 33kg/m<sup>2</sup>, in order to comply with the general provision of the EU Directive on broiler chickens.

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

Analysis of the legislation	
Ranking	B
<p>The general anti-cruelty and duty of care provisions in Articles 2.1 and 2.2(8) of the Animals Act 2011 apply to this category of animals.</p> <p>The Animals Act 2011 is the legislative basis for the protection of animals in captivity in the Netherlands. Secondary legislation is used to implement the primary legislation and make it directly applicable to animals in captivity, and Article 2.16 provides that rules can be made on keeping animals for exhibition to the public.</p> <p>Also, article 1.3 of the Animal Holders Decree is relevant (prohibited behaviours with regard to animals).</p> <p>And articles 1.6 and 1.7 of the Animal Holders Decree give general provisions for the keeping respectively care of animals.</p> <p>At the EU level, Council Regulation (EC) 1/2005<sup>50</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.</p> <p><u>Zoos</u></p>	

<sup>50</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>



At the EU level, welfare provisions for wild animals kept in zoos are laid out in Council Directive 1999/22/EC.<sup>51</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>52</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.

In the 2014 Animal Holders Decree laying down the rules for Animal Keepers,<sup>53</sup> Chapter 4 (Keeping of animals for exhibition) requires that zoos operate with a licence, and such a licence cannot be delivered if the establishment does not meet certain welfare criteria. These criteria are species-specific (Article 4.4). However, no licence is needed for establishments keeping less than 10 (or exactly 10) animal species. However, if one of these animals concerns a protected species, the zoo license is needed anyway. Article 4.8 further mandates that the licence holder must take care of the animals according to their specific species, and the conditions of animals must be checked daily. No mention is made of subsequent inspections of zoos by third-party.

The Animal Holders Decree, comprises the earlier Separation of Animals Decree which covers specified captive animals (including chimpanzees and some monkeys) and animals bred for the pet trade (dogs, cats and rabbits), provides that animals may not be separated from their mothers before a specified age.

### Private keeping of wild animals

The Netherlands is the third EU member state after Belgium and Luxemburg to adopt a Positive List legislation, which consists of a 'clear, concise list of mammals that can be kept as pets, on the basis of scientific risk assessments which remains open for review under specific and strict conditions and establishes unambiguous exceptions'.<sup>54</sup> The Dutch Ministry of Agriculture, Nature and Food Quality highlights that such a Positive List should be created for the protection of animal welfare, and for the protection of animals and humans.<sup>55</sup> A list of mammal species will be assessed by an expert committee,

<sup>51</sup> <https://www.eaza.net/assets/Uploads/Governing-documents/EU-Zoo-Directive-1999.pdf>

<sup>52</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>53</sup> <https://wetten.overheid.nl/BWBR0035217/2018-07-01#Hoofdstuk4>

<sup>54</sup> <https://www.eurogroupforanimals.org/unfortunate-delay-adoption-dutch-positive-list-mammal-pets>

<sup>55</sup> <http://www.animalwelfareintergroup.eu/wp-content/uploads/2017/02/Netherlands-Ministry-of-Economic-Affairs-Hansvan-Dongen.pdf>

using a framework provided by an advisory committee. The assessments are input for the Ministry of Agriculture, Nature and Food Quality to make a list of species to be deemed suited to be kept as a companion animal. In 2015, a preliminary list detailing the mammal species allowed to be kept as pets was published. This Positive List was reviewed by the Dutch Ministry of Agriculture, Nature and Food Quality: any animal not on the list of 123 species presented by the Ministry would no longer be allowed, though a clause allows private owners of companion animals not on the list to keep their animals until the end of their lives. However, following a lawsuit initiated by pet keepers' association, the Dutch ministry of Agriculture, Nature and Food Quality informed the Dutch Parliament in 2017 that the assessment procedure for the 123 mammal species will be delayed.<sup>56</sup> At the time of writing, this Positive List has still not been enshrined into legislation. This delay on the adoption of the final list is detrimental to the welfare of e.g. exotic animals in private households and involved in the trade to private households. An encouraging development is that this first Positive List for mammals could then use a similar scientific, systematic assessment of species to create Positive Lists for reptiles, amphibians and birds.<sup>57</sup>

### Fur farming

At the EU level, a ban on cat and dog fur was introduced by Regulation No 1523/2007,<sup>58</sup> and has entered into force on 31<sup>st</sup> 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.

In 2009, the Dutch Parliament approved a law to phase out fur farming by 2024; this law was also accepted by the Senate in 2012: however, in 2014, a court in The Hague overturned this new legislation.<sup>59</sup> Eventually, the Dutch Supreme Court ruled in 2016 that the mink farming ban shall be upheld as it does not conflict with human rights, as it was claimed by the Dutch Federation of Fur Holders.<sup>60</sup> Under this law, starting a new fur farm or expanding an existing mink farm has been forbidden since January 2013. Fur farming will be completely forbidden as of 1<sup>st</sup> January 2024.

### 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.*

<sup>56</sup> <https://www.eurogroupforanimals.org/unfortunate-delay-adoption-dutch-positive-list-mammal-pets>

<sup>57</sup> <https://www.aap.nl/en/whatwe-do/public-policy/positive-list>

<sup>58</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R1523&from=EN>

<sup>59</sup> [https://www.dutchnews.nl/news/2014/05/fur\\_farmers\\_celebrate\\_as\\_court/](https://www.dutchnews.nl/news/2014/05/fur_farmers_celebrate_as_court/)

<sup>60</sup> <https://www.furfreealliance.com/supreme-dutch-court-upholds-mink-farming-ban/>

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.

The development of detailed secondary in the Netherlands legislation shows that the welfare of captive animals is being recognised by society. The Dutch Government also has pages on its website dedicated to the welfare of zoo animals and the welfare of animals kept commercially, for fur for instance.<sup>61,62</sup> With regards to zoo animals, the Government emphasises that animals should be housed in social groups and should be given enough space to express their natural behaviours, which illustrates that attention is paid to the mental wellbeing of animals.<sup>63</sup>

It is positive that all zoos must be licenced, and that an inspection is carried out prior to granting such a licence. However, it would be beneficial for the 2014 Decrees on animal keepers to highlight that regular inspections will be carried out, and that a zoo licence may be revoked if the establishment is found non-compliant with animal welfare criteria. Furthermore, current legislation allows for zoos containing 10 or less species of animals to operate without a licence. This constitute a legal loophole, allowing for small-scale establishment to operate without abiding with any animal welfare requirements. However, if one of these animals concerns a protected species, the zoo license is needed anyway.

With regards to the private keeping of wild animals, it is remarkable that the Netherlands has decided to establish a Positive List, taking into account animal welfare criteria. The Government is encouraged to adopt this Positive List as soon as possible.

With regards to fur farming, it is positive that the country has fully banned the practice, with a phase-out period lasting until 2024. The Netherlands has a large fur industry, with 160 fur farms recorded in the country. The need for a ban on this cruel activity is thus even more pressing.<sup>64</sup>

At the EU level, 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, namely cats and dogs. The most common species farmed for their fur in Europe - rabbits, minks, foxes - are not included in this ban.

### Enforcement mechanisms

Article 8.12(3) of the Animals Act 2011 provides that infringement of the anti-cruelty provisions of Article 2.1(1) or the duty of care under Article 2.2(8) is a criminal offence punishable by fines or imprisonment of up to six months. Further to the general enforcement mechanisms related to cruelty

<sup>61</sup> <https://www.government.nl/topics/animal-welfare/welfare-of-zoo-animals>

<sup>62</sup> <https://www.government.nl/topics/animal-welfare/welfare-of-animals-kept-commercially>

<sup>63</sup> <https://www.government.nl/topics/animal-welfare/welfare-of-zoo-animals>

<sup>64</sup> <http://www.animalwelfareintergroup.eu/wp-content/uploads/2011/08/The-mink-farming-ban-in-the-Netherlands-Inez-Staarink.pdf>



suffered by any animal in the Netherlands, the zoo regulations in the Animal holders decree sets out additional enforcement mechanisms allowing authorities to partially or fully close zoos not compliant with the secondary legislation. The Minister also has closure powers under Article 5.12 of the Animals Act 2011.

**Key recommendations**

- The Netherlands is progressing to achieve overall high welfare standards for animals in captivity, since the ban on fur farming will be fully effective in 2024. Following the 2016 Supreme Court decision to uphold a ban on fur farming, the Netherlands should act as an example for other countries and champion a Europe-wide ban on fur farming, including by opposing the efforts by the European Commission to legitimise it.
- With regards to animals kept in zoos, the Netherlands is encouraged to carry out regular animal welfare inspections of zoos, and the results of such examinations should be made public.
- It is encouraging that the Netherlands is planning to adopt a Positive List of species, specifying which animals can be kept as companion animals, based on animal welfare and other relevant criteria. The Government of the Netherlands is highly encouraged to adopt this Positive List as soon as possible and to enshrine it into law.

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

**Analysis of the legislation**

Ranking	C
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Care of companion animals

The European Convention for the Protection of Pet Animals<sup>65</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 the Netherlands in 1987.

Article 1 of the Convention 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

<sup>65</sup> <https://www.coe.int/en/web/conventions/fulllist/-/conventions/rms/090000168007a67d>



animals. Article 11 specifies that the killing of companion animals shall be done with the minimum of physical and mental suffering appropriate to the circumstances.

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

The general anti-cruelty and duty of care provisions in Articles 2.1 and 2.2(8) of the Animals Act 2011 apply to this category of animals.

Secondary legislation provides a more detailed application of legislation to companion animals. The animal holders decree regulates the breeding of companion animals and the exercise of any commercial activity regarding companion animals. This regulation relates to persons that sell, have in stock, or breed (with the purpose of selling) companion animals as a business, shelters and boarding houses as well as establishments set up for the purpose of quarantine. This decree and the regulations based on this decree provide processes and protocols around the registration of such activities as well as guidelines on housing and care, breeding and vaccination. Notably, companion animals may not be sold to anyone younger than 16 and that animals for sale may not be displayed in a shop window. Professional or hobby breeders may not breed with animals that have serious defects, diseases or behaviour problems. Moreover, dogs must not be bred more often than once a year.

The Animal Holders Decree which covers specified captive wild animals (including chimpanzees and some monkeys) and animals bred for the pet trade (dogs, cats and rabbits), provides that animals may not be separated from their mothers before a specified age.

### Stray animals

There are no national guidelines on stray animal populations, since this is delegated to the provinces.

Stray dogs are nearly non-existent. A found dog is considered to have an owner. The mayor is obliged to keep the dog in a shelter for at least 2 weeks. After those 2 weeks the dog can be rehomed. If stray cat populations cause a problem, local authorities deal with this. At a central level legislation and the distribution of information about responsible pet ownership aim at preventing animals to become strays.

Chapter III of the European Convention for the Protection of Pet Animals 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'.

### 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 welfare of companion animals is recognised as an individual issue in Dutch legislation with dogs and cats being specifically referred to in the Animals Act 2011. The Animals Act 2011 aims to better include other companion animals alongside dogs and cats.

Stray dogs do not appear to be an issue in the Netherlands, however, stray cats are shot in some provinces.<sup>66</sup> The Dutch Government notes that since cats is the domestic animal with the greatest freedom of movement, a large population of stray cats has arisen alongside the domestic pet cat population.<sup>67</sup> The RDA therefore published a report on the issue in 2016, which focuses more on managing the stray cat populations than on their welfare.<sup>68</sup> The Council provided various recommendations, among which the compulsory registration of pet cats and neutering newly born domestic kittens. The RDA specifies that 'culling by hunting is undesirable apart from in exceptional cases, for instance where cats are very difficult to capture in woodland areas'. Finally, the recommendation mentions several other measures relating to vaccinations, sandy soils, shelter, not disposing of domestic cat faeces in the organic waste bin and a national blueprint for tackling the stray cat problem. However, such recommendations by the RDA are not legally binding, and do not reflect practice. In reality, cats are culled in some provinces in the Netherlands.

Despite the lack of national legislation regulating the treatment of stray animals, measures have been taken at the national level to reduce the number of potential stray animals including mandatory identification and registration. Some municipalities offer free sterilisation (for lower income households).

Furthermore, the Dutch Government has pages on its website dedicated to the welfare pets, which demonstrates its willingness to mainstream the issue of animal welfare to make information easily accessible by the public.<sup>69</sup>

### Enforcement mechanisms

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

Article 8.12(3) and 8.12(4) of the Animals Act 2011 provide that infringement of the anti-cruelty provisions of Article 2.1(1), the duty of care under Article 1.4, or the rules made under Article 2.2, is a criminal offence punishable by fines or imprisonment of up to six months. Mistreating or abandoning an animal leads to a fine of more than €16,000 and imprisonment of up to six months.

<sup>66</sup> <https://www.dutchnews.nl/news/2018/07/1000-feral-cats-shot-in-the-netherlands-as-more-provinces-consider-a-cull/>

<sup>67</sup> <https://english.rda.nl/publications/publications/2016/06/11/managing-de-stray-cat-population>

<sup>68</sup> <https://english.rda.nl/publications/publications/2016/06/11/managing-de-stray-cat-population>

<sup>69</sup> <https://www.government.nl/topics/animal-welfare/welfare-of-pets>

### Key recommendations

- The Netherlands has extensive legislation on preventing cruelty to be inflicted onto companion animals.
- The Dutch Government is encouraged to promote humane population management for stray cats to all provinces.
- The Netherlands should continue promoting responsible pet ownership. To do so, the Dutch Government is encouraged to enshrine into law the Positive List of species as soon as possible, in order to better regulate the exotic pet trade.

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

### Analysis of the legislation

#### Ranking

#### E

#### Animals used for entertainment

The general anti-cruelty and duty of care provisions in Articles 2.1 and 2.2(8) of the Animals Act 2011 apply to this category of animals. Also, article 1.3 of the Animal Holders Decree is relevant (prohibited behaviours with regard to animals). And articles 1.6 and 1.7 of the Animal Holders Decree give general provisions for the keeping respectively care of animals.

Article 2.13 of the Animals Act 2011 prohibits the use of any animal as a prize in any competition. Article 2.14 prohibits the organisation of and attendance at animal fights. Article 2.15 provides that rules can be made to implement European Union requirements on competitions using animals, and Article 2.16 provides that rules can be made on keeping animals for exhibition to the public.

Since the API was first published in 2014, the Netherlands has banned the use of wild mammals in circuses as of 15<sup>th</sup> September 2015.<sup>70</sup> It is now illegal for circuses to include wild mammals in their shows or to transport them.

#### Draught animals

No legislation has been found specifically relating to draught animals. However, article 2.1 of the Animals Act 2011 prohibits to cause an animal to perform work that apparently exceeds its powers or for which it is unsuitable due to its condition and it prohibits to use dogs for pulling (with exception of certain cases of sled dog sport).

<sup>70</sup> <https://www.government.nl/topics/animal-welfare/welfare-of-circus-animals>

Also, the general anti-cruelty and duty of care provisions in Articles 2.1 and 2.2(8) of the Animals Act 2011 apply to this category of animals and article 1.3 of the Animal Holders Decree is relevant (prohibited behaviours with regard to animals). Furthermore, articles 1.6 and 1.7 of the Animal Holders Decree give general provisions for the keeping respectively care of animals.

### **Analysis**

*The inclusion of aspects of recreational use of animals in the Animals Act 2011 does to an extent recognise the welfare of this category of animals as an independent issue. However, the provisions in this legislation do not specifically relate to the care and conditions for keeping animals used for draught and recreational purposes, nor is there evidence of secondary legislation providing guidelines for this purpose. The general welfare provisions of the legislation do cover all animals and therefore the law is effective in bringing animals used for recreation into the mainstream agenda.*

*As of September 2015, there were 22 circuses in the Netherlands, among which 16 own a total of 119 wild animals. As a result of the announcement of the ban on keeping wild mammals in circuses, concerns were raised with regards to where the animals currently living in circuses would go.<sup>71</sup> The ban on keeping wild mammals in circuses is a positive step taken by the Dutch Government to improve the welfare of animals used for recreational purposes. The Netherlands seems to follow the path paved by the other European countries which have already implemented a similar ban on keeping wild animals in circuses.<sup>72</sup>*

*However, the country still allows wild animals other than mammals to be used in circuses. In particular, the use of wild birds and reptiles for entertainment purposes is still allowed. Shows with birds of prey pose especially welfare concerns.*

*Moreover, the Netherlands still allows the keeping marine mammals for recreational use. Notably, the dolphinarium facility located in Harderwijk is the largest marine mammal park in Europe.<sup>73</sup> The park proposes dolphin shows and a closer encounter with dolphins whereby visitors can be in contact with the animals.<sup>74</sup> The presence of this dolphinarium is an obstacle to protecting the welfare of these animals, since wild animals belong in the wild and should not be kept in captivity for entertainment purposes.*

### **Enforcement mechanisms**

Article 8.12(3) and 8.12(4) of the Animals Act 2011 provide that infringement of the anti-cruelty provisions of article 2.1(1) or the duty of care under Article 1.4 is a criminal offence punishable by fines or imprisonment of up to six months. Breach of the prohibition on attending animal fighting is punishable by imprisonment of up to six months or a fine (Article 8.12(3)), and this is increased to up to three years and a higher fine for organising animal fighting (Article 8.12(1)).

<sup>71</sup><https://csglobe.com/netherlandsbanswild-animals-in-circuses/>

<sup>72</sup>[http://www.ad-international.org/animals\\_in\\_entertainment/go.php?id=281](http://www.ad-international.org/animals_in_entertainment/go.php?id=281)

<sup>73</sup><https://www.dolphinarium.nl/en/>

<sup>74</sup><https://www.dolphinarium.nl/en/plan-your-visit/play-and-discover/inwaterwithdolphins/>



### Key recommendations

- Following its 2015 ban on the use of wild mammals in circuses, the Dutch Government is strongly encouraged to ban the keeping and breeding marine mammals in captivity for recreational purposes. Such a ban would remedy the current clear lack of consistency between the use of terrestrial animals in circuses, which has been outlawed since 2015, and the use of marine species for entertainment.
- Following its 2015 ban on the use of terrestrial wild mammals in circuses, the Dutch Government is also urged to ban the use of birds and reptiles for recreational purposes.
- The Netherlands should champion an international, at least Europe-wide, ban on the organisation, participation and attendance to animal fights.

## 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 at the time of slaughter are laid out in Directive 2010/63/EU,<sup>75</sup> which updated and replaced the 1986 Directive 86/609/EEC<sup>76</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 provide 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 using 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>77</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 to market finished cosmetic products and ingredients in the EU which were tested on animals (marketing ban). The testing ban on finished cosmetic products applies since 11<sup>th</sup> September</p>	

<sup>75</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0063&from=EN>

<sup>76</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31986L0609&from=EN>

<sup>77</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<sup>th</sup> March 2009.

In Dutch legislation, the general anti-cruelty and duty of care provisions in Articles 2.1 and 1.4 of the Animals Act 2011 apply to this category of animals. In relation to the provisions of Article 2.1, the wording 'reasonable purpose' is particularly relevant for this category of animals.

The majority of the legislative provisions relating to animals used in experimentation are found within the Experiments on Animals Act 1977,<sup>78</sup> which has been amended to incorporate European Union legislative requirements in this area. Of particular note is Article 1A, which states 'in exercise of powers conferred by or under this Act, the recognition of the intrinsic value of the animal as a general starting point'. This sets the foundation for the welfare of animals throughout the Act.

Provisions in the Act encourage the replacement, reduction and refinement of scientific research using animals. Article 10 prohibits the use of animals in research where expert opinion shows that the objective can be achieved by other forms of research that do not use animals. In all cases, it is prohibited to use animals in research where the human interest does not outweigh the distress caused to an animal. Such decisions are made by the Committee on Animal Experimentation, which is given the power to prohibit any experimentation upon ethical review. Article 18a provides that members of the central Committee on Animal Experimentation must be experts in animal experimentation and animal welfare. Some members shall also be experts in scientific uses involving animals, including the Replacement, Reduction and Refinement principles. Moreover, each breeder, supplier or user of animals for research shall establish an animal welfare authority (Article 14a).

In addition, Article 12 provides that those conducting experiments using animals must comply with orders of the Council on Animal Affairs concerning the care and treatment of the animals, which orders will contain guidance on: the expertise required to handle animals; the size, construction and cleanliness of the shelters in which animals are kept; and feeding of the animals. Article 13 stipulates that unnecessary distress may not be caused to any animal and that where an operation is to be undertaken the proper anaesthetic is to be used, except in cases where use of anaesthetic would defeat the object of the test. Animals suffering from severe distress caused by an experiment may only be used once in such experiments (or any other similarly distressing experiments). If an animal would subsequently suffer from distress as a result of an experiment, they are required to be 'immediately slain'. Article 14 requires that those tasked with supervising the welfare of animals used in experiments must be veterinarians or similar.

In addition, the use of great apes (chimpanzees, bonobos, orangutans and gorillas) is forbidden in all experiments since 2003. This is expanded upon in Article 5 of the Decree on Animal Testing which sets out the other relevant qualifications and requires that all must have completed and passed a course on the welfare of laboratory animals. The Biotechnology with Animals Decree focuses on licensing and the formation of a committee on Animal Biotechnology (chapter 2). Included on this committee is an 'expert in the field of ethics', whose remit should include animal welfare.

With regards to animal testing on cosmetics, the Netherlands falls under the EU commitment and has

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<sup>78</sup> <https://wetten.overheid.nl/BWBR0003081/2014-12-18>

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 in order to cause the least amount of suffering possible. Numerous references are made throughout the Directive to the duty for Member States to reduce animal suffering as much as possible. However, a loophole appears in Article 14, since the use of anaesthetics or analgesia is mandated 'unless it is inappropriate'. Thus, it is still possible in the EU to carry out experiments on live animals without them being rendered unconscious or insensitive to the pain.

*With regards to animal testing for cosmetic products, it is positive that the EU has banned testing on finished cosmetic products and their ingredients through Regulations EC No 1223/2009. However, the testing and marketing bans remain limited. Notably, these bans only apply to cosmetic products and ingredients which are only used in cosmetics. Furthermore, the bans only apply to tests specifically aimed at consumer safety, but do not apply to worker safety tests. The bans also do not apply if the testing is intended to determine whether the product poses a risk to the environment.*

*The Netherlands has a strong legislative basis for improving the welfare of animals used in research. It is amongst the leading international standards and provides guidelines and codes of practice to shape how welfare is a consideration for the industry in the country. Two separate committees focused on the use of animals in experimentation and biotechnology have legal mandate to hold those responsible to account and push forward the recognition of laboratory animal welfare in the Netherlands. Moreover, it is positive that the Three Rs principles – Replacement, Reduction, Refinement – are enshrined in the Experiments on Animals Act 1977 (Article 18a). Furthermore, it is positive that the Committee on Animal Experimentation includes experts on the 'keeping and care of animals of the species that will be used' (Article 18). However, it is not explicit that such experts will be from animal welfare organisations.*

*In addition, the Dutch Government demonstrates its willingness to mainstream the issue of animal welfare for species used in experiments on its website. It states its commitment to reduce the number of animal experiments conducted in the country, which amounted to 600,000 in 2009.<sup>79</sup> As of 2017, the Netherlands conducted 530.568 procedures on animals, which represents a 17.9% increase since 2016.<sup>80</sup> This number furthermore omits the number of 'surplus' animals. The Dutch Government also actively promotes the Three Rs principles – Replacement, Reduction, Refinement – on its website.*

*In 2016, the Netherlands National Committee for the protection of animals used in scientific research (NCAD) laid out a strategy on phasing out certain animal experiments by 2025 in its report 'Transition*

<sup>79</sup> <https://www.government.nl/topics/agriculture/animals/biotechnology-in-animals-and-animal-experiments>

<sup>80</sup> <https://www.nvwa.nl/documenten/dier/dierenwelzijn/zo-doende/publicaties/zo-doende-2017-jaaroverzicht-dierproeven-en-proefdieren-van-de-nvwa>

to non-animal research on opportunities for the phasing out of animal procedures'.<sup>81</sup> According to NCAD, regulatory safety testing of chemicals, food ingredients, pesticides and (veterinary) medicines should and can be phased out by 2025 without hindering human safety, provided a strong government leadership to enable a complete paradigm shift to animal-free science.<sup>82</sup> The use of laboratory animals for the release of biological products, such as vaccines, will also be phased out. However, the report admits that regulatory pre-clinical research cannot be phased out at the same pace. The report also encourages to reduce the number of animals used in education and training.

In 2018, the Dutch minister for agriculture launched the Transition Programme for Innovation without the use of animals (TPI), aiming at increasing the pace of animal-free innovation. TPI is founded on the basis of effective cooperation. TPI's partners are active in government, society, academia and the business community (<https://www.transitieproefdiervrijinnovatie.nl/english>).

### Enforcement mechanisms

Article 8.12(3) and 8.12(4) of the Animals Act 2011 provide that infringement of the anti-cruelty provisions of article 2.1(1) or the duty of care under Article 1.4 is a criminal offence punishable by fines or imprisonment of up to six months.

Article 25 of the Experiments on Animals Act 1977 outlines which violations are considered to be criminal activities and those which are misdemeanours. Violation of the key welfare related articles are classed as crimes and treated with the most seriousness. These include all parts of Article 10 (and its sub-articles) and Article 13; which relate to conducting experiments on animals where proven alternatives are known and recommended by the Committee, as well as those articles relating to causing unnecessary severe distress and the use of great apes in experiments.

### Key recommendations

- **The Netherlands has extensive legislation with regards to the use of animals in scientific research. Other countries should follow the example set by the Dutch legislation, prohibiting all animal testing for cosmetics and banning the use of great apes in all experiments.**
- **In addition, the Government is encouraged to further its commitment by implementing the strategies laid out in the 2016 report by the NCAD on phasing out animal experiments.**
- **The Netherlands is encouraged to engage with animal welfare organisations in order to promote alternatives to animal experiments.**

<sup>81</sup> <https://www.ncadierproevenbeleid.nl/documenten/rapport/2016/12/15/ncad-opinion-transition-to-non-animal-research>

<sup>82</sup> <http://www.eurogroupforanimals.org/dutch-see-2025-as-first-year-without-regulatory-animal-experiments>

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

Analysis of the legislation	
Ranking	C
<p>At the EU level, wild animals are protected by various Directives and Regulations.</p> <p>Council Directive 92/43/EEC<sup>83</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).</p> <p>Council Directive 2009/147/EC<sup>84</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 species listed in Annex III (Article 6). Member States must outlaw all forms of non-selective and large scale killing of birds, especially the methods listed in Annex IV (Article 8).</p> <p>Council Regulation (EC) No 338/97<sup>85</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.</p> <p>Council Regulation (EC) 1/2005<sup>86</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</p>	

<sup>83</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN>

<sup>84</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0147&from=EN>

<sup>85</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997R0338&from=en>

<sup>86</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R0001&from=en>

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.

In Dutch legislation, Article 2.1(6) of the Animals Act 2011 requires citizens to give due care to 'helpless' animals, and this provision applies to all animals (not just to animals that are kept), thus extending to wild animals. The requirement to give care includes protecting animals from anxiety and distress (Article 1.3(3)(d)).

However, the duty of care in Article 1.4 and the anti-cruelty provisions of Article 2.1(1) do not apply to wild animals, as the protection of the Act applies to animals that are kept except where the context requires otherwise.

The Nature Protection Act 2017 provides the foundation legislation for the protection of wild animals in the Netherlands and transposes the Habitats and Birds Directive into national legislation. Although this act focuses on the preservation of native biodiversity, the explanatory memorandum refers to the 'intrinsic value of animals' and Article 1.1 (1) makes it the duty of all Dutch citizens to take sufficient care of wildlife. However, there is no specific welfare provisions in the Nature Protection Act with regards to wild animals.

In this Act, hunting is framed as part of fauna management plants (Article 3.12). Hunting licence holders must provide the relevant fauna management units information with regards to the numbers of animals killed, distinguished by species (Article 3.13). Article 3.21 prohibits certain methods of hunting; however, dog hunting is still allowed. It is also legal to trap muskrats and net geese.

Since the API was first published in 2014, the Minister for Agriculture Martijn van Dam announced that import permits for trophies of more than 200 species will no longer be issued in the Netherlands; this announcement took immediate effect in 2016. It is therefore no longer possible to import trophies of white rhinos, elephants, cheetahs, lions, hippos and polar bears in the Netherlands.<sup>87</sup>

In 2015, the State Secretary of Economic Affairs responsible for nature conservation in the country established a marine mammal and shark sanctuary in the waters under Dutch sovereignty and jurisdiction in the Caribbean (i.e. the territorial waters and exclusive economic zones of the islands of Bonaire and Saba).<sup>88</sup> Appropriate measures will be taken in the Sanctuary to 'ensure the protection of marine mammals and sharks and their habitats from negative impacts of human activities, whether direct or indirect, actual or potential'.<sup>89</sup> As such, provisions may concern the use of fishing gear and banning the targeted capture, killing, deliberate removal and disturbance of sharks or the maiming or removal of fins or tails.

### **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,*

<sup>87</sup> <https://www.government.nl/ministries/ministry-of-agriculture-nature-and-food-quality/news/2016/05/02/additional-hunting-trophies-added-to-the-import-prohibition-list>

<sup>88</sup> <http://extwprlegs1.fao.org/docs/pdf/net158155.pdf>

<sup>89</sup> <http://extwprlegs1.fao.org/docs/pdf/net158155.pdf>

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.

Wild animals are included in animal protection legislation in the Netherlands. As such, there is recognition that their welfare is an issue of some importance. However, there are no provisions that directly highlight the welfare of wild animals as a unique issue needing attention. The concept of animal welfare is absent from the Nature Protection Act 2017; however, its Explanatory Memorandum refers to the intrinsic value of animals and, more broadly, the intrinsic value of Nature. Additionally, there are no guidelines directing the protection of the welfare of wildlife in more details in the Netherlands. As such, Dutch legislation is not fully effective to make the welfare of wild animals a mainstream concern of society.

It is positive that the Nature Protection Act regulates hunting through a permit system. However, some of the cruellest forms of hunting (e.g. dog hunting and trapping muskrats) are still allowed.

The extension of the list of species whose trophies can no longer be imported in the Netherlands is a positive step to highlight the current critical rate of biodiversity loss. In his announcement, the Minister also seemed to take into account welfare concerns as he stated "I take great exception to people shooting protected animals to display them as hunting trophies".<sup>90</sup>

The announcement of the creation of a marine sanctuary in the Dutch waters in the Caribbean sheds light on welfare concerns of marine mammals, sometimes hampered by human activities. The sanctuary is established with the dual aim to contribute both to the conservation of populations as well as to the welfare of individual animals. This is demonstrated by the fact any activity 'likely to prejudice the welfare of marine mammals or the integrity of their populations' will be the subject of regulation within the sanctuary.

### Enforcement mechanisms

Article 8.12(3) of the Animals Act 2011 provides that infringement of the requirement to give care to helpless animals under Article 2.1(6) is a criminal offence punishable by fines or imprisonment of up to six months.

Article 7.6(2) of the Nature Protection Act provides that the Minister can impose an administrative order relating to enforcement.

<sup>90</sup> <https://www.government.nl/ministries/ministry-of-agriculture-nature-and-food-quality/news/2016/05/02/additional-hunting-trophies-added-to-the-import-prohibition-list>



The supervision of the correct implementation of the fauna management will also be intensified (Action Plan Supervision and Enforcement outer areas).

**Key recommendations**

- The protection of wild animals is included in the Nature Protection Act 2017 whose Explanatory Memorandum recognises the intrinsic value of wild animals. However, the Act authorises hunting as a form of fauna management and allows for some of the cruellest hunting methods to be used (e.g. dog hunting and trapping). Therefore, the Government of the Netherlands is encouraged to ban any form of hunting that does not directly support subsistence i.e. feeding oneself and one’s family and not for commercial gain. Subsistence hunting operations must employ the least cruel methods of hunting and slaughter, and that all possible efforts should be made to reduce the time to death of animals killed in these hunts. At the very least, the Government is strongly encouraged to forbid the use of the cruellest hunting methods.
- The decision by the Minister for Agriculture to outlaw the importation of animal trophies for certain species is a positive development which highlights the plight of animals killed for display and not for genuine subsistence purposes.
- The creation of the marine mammal sanctuary in the Caribbean ought to be acclaimed, as it seeks to promote and enhance both the welfare of individual animals as well as the conservation of the populations of species.

**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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Each relevant piece of legislation assigns governmental responsibility for animal protection. Animal welfare mainly falls under the remit of the Ministry of Agriculture, Nature and Food Quality. In 2012, the Ministry laid down its vision and ambition in the Note on Animal Welfare and Animal Health, a memorandum concerning the vision and ambition of the Government on improving animal welfare.<sup>91</sup>

<sup>91</sup> [https://www.leefmilieu.nl/sites/www3.leefmilieu.nl/files/imported/pdf\\_s/2012-02-23\\_nota-dierenwelzijn-en-diergezondheidv2.pdf](https://www.leefmilieu.nl/sites/www3.leefmilieu.nl/files/imported/pdf_s/2012-02-23_nota-dierenwelzijn-en-diergezondheidv2.pdf)





This was reinforced by the 2013 Policy Letter on Animal Welfare.<sup>92</sup> In 2018, Minister Schouten sent a letter to the Lower House of Parliament on the topic of animal welfare.<sup>93</sup>

Secondary legislation specifies the government departments responsible for the oversight and enforcement of provisions of the primary legislation. The Designation Decree WJZ/12375497 of 2012 assigns responsibilities for the Animals Act 2011 and the Designation of Persons Responsible for Supervising Compliance with the Law on Animal Experiments 1992 assigns responsibilities for the Experiments on Animals Act 1977.

Article 10.8 of the Animals Act 2011 establishes the Council on Animal Affairs ('Raad voor Dierenaangelegenheden', RDA), an independent board of experts which consults on issues concerning national and international policy in the field of animal health and animal welfare. Members are appointed by the Minister of Agriculture, Nature and Food, in agreement with the Minister of Health, Welfare and Sport. The RDA consists of about forty members with very different backgrounds and expertise, including representatives from the farming industry as well as animal welfare organisations.<sup>94</sup> In 2008, the Council was transformed from a consultation platform for animal husbandry organisations to a broadly oriented expert panel.<sup>95</sup> The RDA publishes annual report on animal welfare, the latest available being from 2016.<sup>96</sup> RDA is only an advisory body, and it is not part of its mission to enforce animal welfare legislation.

Enforcement of animal welfare standards is done by the Netherlands Food and Consumer Product Safety Authority (NVWA) for farm animals.<sup>97</sup> The National Animal Protection Inspectorate (LID), established in 1986, is run by the Dierenbescherming, subsidised by the State, and focuses enforcing legislation for companion animals and small numbers of livestock kept as pets.<sup>98</sup>

The Experiments on Animals Act 1977 grants power to the Committee on Animal Experimentation to prohibit any experimentation upon ethical review. Article 18a of this Act provides that members of the central Committee on Animal Experimentation must be experts in animal experimentation and animal welfare.

Furthermore, there exists an animal welfare police force, established in 2011 by the Security and Justice Minister. Police officers have the authority to seek penalties for cases of animal cruelty, neglect, bestiality and poaching yet in practice, their competence is limited to pets and does not apply to farm animals.<sup>99</sup> The animal welfare police has its own dedicated hotline to report animal abuse.

### **Analysis**

*Animal welfare is given recognition as an individual issue in Dutch legislation in the variety of acts and*

<sup>92</sup> <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/10/07/kamerbrief-met-beleidsbrief-dierenwelzijn.html>

<sup>93</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2018/10/04/kamerbrief-over-dierenwelzijn>

<sup>94</sup> <https://www.rda.nl/over-ons/raadsleden>

<sup>95</sup> <https://www.rda.nl/over-ons>

<sup>96</sup> <https://english.rda.nl/publications/annual-reports/2017/04/20/annual-report-council-on-animal-affairs-rda-2016>

<sup>97</sup> <https://english.nvwa.nl/>

<sup>98</sup> <https://www.dierenbescherming.nl/inspectiedienst>

<sup>99</sup> <http://www.lawyersforanimalprotection.eu/country-profile/the-netherlands/>

decrees referred to in this report. It is positive that a Ministry is assigned with responsibility for animal welfare. The RDA acts as an independent advisory body, which gives solicited and unsolicited advice to the Ministry of Agriculture, Nature and Food Quality in the field of animal welfare and health. However, because of its advisory nature, the scope of action and the influence of the RDA is limited. For instance, the RDA's recommendations in 2018 with regards to fish welfare were not followed up by policy or legislative decision from the Government.<sup>100</sup>

In 2014, the Dutch and Danish Governments announced their commitment to cooperate to improve animal welfare at the EU level, following a visit to a Dutch veal farm.<sup>101</sup> The Dutch Government notably highlighted its commitment to an 8-hour limit for transportation of animals destined for slaughter. This reflects that the Dutch Government is willing to cooperate with international actors to champion stronger animal welfare standards. Together with Germany and Denmark, The Netherlands signed the 'Declaration of Vught' (December 2014) and several follow up Position Papers, also together with Sweden and Belgium. Its international commitment has been further detailed in the Voortgangsbrieven beleidsbrief dierenwelzijn of 4 September 2019.<sup>102</sup> The latter document states, inter alia, that regarding EU trade agreements, The Netherlands strives, depending on the country, to align third country standards with EU animal welfare standards, but that alignment is not always feasible. This acceptance of lowering animal welfare provisions is apparent in the Government stance on CETA, the EU-Canada trade agreement, which fails to uphold EU animal welfare requirements.

#### Enforcement mechanisms

The responsibilities of relevant government bodies are mandated by legislation.

#### Key recommendations

- The Netherlands is an example for other countries to follow in order to effectively allocate governmental and financial resources to animal welfare. The Council on Animal Affairs is an example of a multi-stakeholder committee which engages all relevant experts to find solutions for welfare concerns.
- The Government of the Netherlands is encouraged to appoint a Minister of Animal Welfare to ensure that animal welfare is implemented independently of other vested interests.

## Goal 4: Support for international animal welfare standards

<sup>100</sup> <https://www.rda.nl/publicaties/zienswijzen/2018/03/07/welzijn-van-vissen-verdient-meer-aandacht-van-overheid-en-andere-betrokken-partijen>

<sup>101</sup> <https://www.government.nl/latest/news/2014/05/21/the-netherlands-and-denmark-join-forces-for-animal-welfare-in-europe>

<sup>102</sup> <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/09/04/kamerbrief>

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

Analysis of the legislation	
Ranking	A
<p>The legislation in the Netherlands incorporates European Union legislative requirements, which include many of the OIE's guiding principles and standards on animal welfare and further builds on them in some areas.</p> <p>For instance, with regards to broiler chickens, EU legislation is stricter than the OIE's standards. Notably, the OIE states that 'broilers should be housed at a stocking density that allows them to access feed and water and to move and adjust their posture normally.'<sup>103</sup> By contrast, the EU Council Directive 2007/43/CE laying down minimum rules for the protection of chickens kept for meat production specifies that the stocking density shall not exceed 33kg/m<sup>2</sup> (Article 3).</p> <p>Policies on stray animal management, in line with OIE standards, are partially enshrined in legislation at local level.</p> <p><b>Analysis</b></p> <p><i>By incorporating the OIE's guiding principles and standards into legislation, the Dutch Government has utilised these tools to improve animal welfare in the country. The range of secondary legislation in the Netherlands previously cited in this report gives detailed guidelines on many of the relevant areas and continues to push towards improving animal welfare issues.</i></p> <p><i>The OIE standards on animal welfare appears lower than EU legislation in certain areas. Notably, the standard on broiler chickens is weakened by the use of 'should', rather than 'shall' or 'must'. Furthermore, the OIE states: 'these recommendations cover broilers kept in cages [...]', implying that it is allowed to keep broilers in cages.</i></p>	
Enforcement mechanisms	
<p>There are enforcement mechanisms in the relevant legislation that incorporates the OIE's standards and guiding principles, from administrative penalties to imprisonment.</p>	
Key recommendations	
<ul style="list-style-type: none"> <li>• <b>The Netherlands has incorporated the OIE animal welfare standards into its legislation. The Government is encouraged to advocate for OIE standards for other categories of animals and for improvements in existing OIE animal welfare standards.</b></li> </ul>	

<sup>103</sup> [https://www.oie.int/index.php?id=169&l=0&htmlfile=chapitre\\_aw\\_broiler\\_chicken.htm](https://www.oie.int/index.php?id=169&l=0&htmlfile=chapitre_aw_broiler_chicken.htm)



## 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 the Netherlands, 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>104</sup>

Beyond this European Union support, the Dutch Government has expressed individual national support for the UDAW the 2<sup>nd</sup> February 2009, through a declaration /signature of the petition for a universal declaration by the Minister of Agriculture.

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

*Support for the UDAW has a significant role in making the concept of animal welfare of mainstream concern in Sweden, and current legislation is in line with the general principles of the UDAW.*

### Enforcement mechanisms

There are no enforcement mechanisms relevant to this indicator.

### Key recommendations

- **The Netherlands has provided government support to UDAW, through a declaration /signature of the petition for a universal declaration by the Minister of Agriculture and Fisheries in 2009. The Netherlands should thus act as an example for other countries to pledge support in principle to UDAW.**

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<sup>104</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)