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EU LAW ON ANIMAL WELFARE AND ITS CORRECT AND EFFECTIVE APPLICATION

ABSTRACT. With the support and cooperation of the Member States, the EU institutions have been promoting animal welfare for more than forty years. The aim of the EU policy on animal welfare is to reconcile the interests of the various actors on the market with the interest of 'individual' animals to improve the quality of their lives and to avoid their pain and suffering. The first part of this article outlines, in general terms, the EU policy on animal welfare, focusing also on its 'constitutional aspects' and, in particular, on the newly introduced Article 13 of the Treaty on the Functioning of the European Union (TFEU), expressly dealing with animal welfare and on its interpretation by the Court of Justice of the European Union (CJEU). The second part of the article deals with the new initiatives of the Commission on animal welfare. Some conclusive remarks follow.

CONTENT. 1. Preliminary remarks – 2. EU law on animal welfare and Article 13 TFEU – 3. The new strategy of the Commission and the enforcement of the existing legislation – 4. Conclusions

1. Preliminary remarks

«A popular saying, unauthoritatively ascribed to Mahatma Gandhi, has it that the greatness of a nation and its moral progress can be judged by the way its animals are treated. If that is the case, then the matter under consideration warrants particular attention».

This is the *incipit* of the Opinion delivered (on 21 January 2016) by Advocate General (AG) Nils Wahl in a case (*Masterrind*)¹ on the interpretation of the EU rules

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1 C-469/14.

on the protection of animals during transport.

The AG, with his very unusual (for a legal Opinion) opening paragraph, effectively gives a sense of the increased relevance and significance that ‘animal welfare’ has gained in the cultural, ethical, and legal debate² in Europe and worldwide. He also gives an insight into the issues raised, both at a philosophical and legal level, on whether animals should be understood as objects of human ownership, or as holders of independent interests.³

Notwithstanding that no specific competence is conferred upon the Union by the Treaties, a European policy (in cooperation with the Member States) has been developed to protect and improve the living conditions of animals.

This is clearly reflected in the several Regulations and Directives adopted over the years, in addition to the other Policy Papers from the different EU institutions concerned (Commission, Parliament, Council),⁴ dealing with the welfare of animals.

All in all, the EU policy on animal welfare is aimed at striking a balance between the various interests at stake within the internal market and the interests of animals as ‘sentient beings,’ in the context of an ever-increasing awareness and concern for the way in which animals are treated and of an open debate on their legal status.

It should also be emphasised that the Commission made it clear that EU legislation on the protection of animals is also contributing to foster the proper functioning of the internal market, by harmonising the relevant standards to avoid competitive distortions (*Evaluation of the EU Policy on Animal Welfare and Possible Policy Options for the Future* – Final Report).⁵

Indeed, the EU policy on animal welfare is part of the strategy for the integration of the internal market as its objective is to strike a balance between the businesses’

2 A debate, which traces back to ancient Greek philosophy.

3 If not even legal rights.

4 See, in this respect, the website of the European Commission: https://ec.europa.eu/food/animals/welfare_en.

5 The evaluation was commissioned by the Directorate General for Health and Consumers (DG SANCO) of the European Commission under the terms of the framework contract between GHK Consulting and the same DG SANCO, December 2010, available at: <http://www.eupaw.eu/>, p. 1.

interest to generate a profit and other non-economic interests, such as consumer and environmental protection or public health, from this very particular point of view.

Despite the commitment of EU institutions and the fact that the Union has dedicated on average approximately 70 million euros per year⁶ to support animal welfare, still much remains to be done, as outlined in the Commission Communication, *on the European Union strategy for the protection and welfare of animals (2012-2015)*,⁷ adopted in February 2012.

In particular, among the issues that should be dealt with to enhance animal welfare, the Commission acknowledges the lack of enforcement of EU legislation in numerous areas.⁸

This is due, *inter alia*, to the difficulty of applying the same sector specific rules to Member States having different weather conditions, land realities, farming systems; furthermore, Member States often do not take sufficiently effective measures and do not apply enough resources to give effect to the provisions aimed at fostering animal welfare.

Taking these findings into consideration, the Commission proposes a new strategy, having at its core the simplification of the legal framework and the promotion of a better compliance with the legislation in place, in particular through the launch of a new initiative, namely the setting up of the 'EU Platform on animal welfare' (the Platform).

6 The data cover the period 2000-2008. Communication from the Commission to the European Parliament, the Council and the European economic and social Committee, of 15 February 2012, *on the European Union Strategy for the Protection and Welfare of Animals 2012-2015*, COM(2012) 6 final/2, footnote n. 14.

7 Communication from the Commission to the European Parliament, the Council and the European economic and social Committee, of 15 February 2012, *on the European Union Strategy for the Protection and Welfare of Animals 2012-2015*, cit., *passim*.

8 «There are areas where no specific EU legislation exists or the existing general requirements are difficult to apply and are not likely to have practical effects. Moreover, many stakeholders lack sufficient knowledge about animal welfare and consumers lack appropriate information [...]». Communication from the Commission to the European Parliament, the Council and the European economic and social Committee, of 15 February 2012, *on the European Union strategy for the protection and welfare of animals 2012-2015*, cit., par 2.

The Platform is an ‘Expert Group’⁹ whose key task is to assist and advise the Commission on issues relating to the application of EU law on animal welfare, and also to facilitate the exchange of information, experience and best practices amongst the various stakeholders (both public and private).

The Platform is then followed by a more technical initiative, namely the establishment of a network of Reference Centres; each Centre is aimed at providing support and assistance to the Member States in carrying out official controls, in relation to a specific area of animal welfare. Further, each Centre should make available its scientific and technical expertise, carry out studies and develop methods to assess the welfare level of animals, as well as to improve it.

2. EU law on animal welfare and Article 13 TFEU

Animal welfare has since long been on the political agenda of the European Union and of the previous Community. Starting from the 1970s, several international Conventions have been signed and made part of EU law, in relation to farmed animals,¹⁰ pets,¹¹ wildlife,¹² etc.

Directives and Regulations¹³ have been adopted over the past years to cover different aspects of animal welfare: the protection of animals kept for farming purposes,¹⁴

9 «Commission expert groups are consultative entities set up by the Commission or its services, comprising at least six public and/or private-sector members, which are foreseen to meet more than once. The role of expert groups is to provide advice and expertise to the Commission and its services (...). Communication from the President to the European Commission, of 10.11.2010, *framework for Commission expert groups: horizontal rules and public register*, C(2010) 7649 final.

10 European Convention, *for the protection of animals kept for farming purposes*, of 10 March 1973, approved and made part of EU law by Council Decision 78/923/EEC, of 19 June 1978, *concerning the conclusion of the European Convention for the protection of animals kept for farming purposes*, OJ L 323, 17 November 1978. See also, the European Convention, *for the protection of animals for slaughter*, 1979.

11 European Convention, *for the protection of pet animals*, 13 November 1987.

12 Convention, *on the conservation of migratory species of wild animals*. The Convention was signed in 1979 (19 September) and entered into force in 1983.

13 For all the relevant information, see the website of the European Commission.

14 Council Directive 98/58/EC of 20 July 1998, *concerning the protection of animals kept for farming purposes* (OJ L 221, 8 August 1998).

during transport,¹⁵ at the time of killing,¹⁶ or used for scientific purposes,¹⁷ but also the keeping of calves,¹⁸ pigs,¹⁹ laying hens²⁰ and broilers,²¹ or the wildlife in zoos.²² In 2007, Regulation no. 1523/2007²³ was adopted to ban the placing on the market (as well as the import to or the export from the Union) of cat and dog fur and products containing such fur; whereas, in 2009, the EU adopted Regulation no. 1223/2009²⁴ to prohibit the placing on the market of cosmetic products where the final formulation or the ingredients are subject to animal testing; and so on.

Unsurprisingly, a vast body of case-law was developed by the CJEU on the interpretation and application of these rules.²⁵

15 Council Regulation (EC) no. 1/2005, *on the protection of animals during transport* (OJ L 3, 5 January 2005).

16 Council Regulation (EC) no. 1099/2009, *on the protection of animals at the time of killing* (OJ L 303, 18 November 2009). See, in this respect, Commission Implementing Regulation (EU) 2018/723, of 16 May 2018, *amending Annexes I and II to Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing as regards the approval of low atmospheric pressure stunning*.

17 Directive 2010/63/EU of the European Parliament and the Council, *on the protection of animals used for scientific purposes* (OJ L 276, 20 October 2010).

18 Council Directive 2008/119/EC, *laying down minimum standards for the protection of calves* (OJ L 10, 15 January 2009).

19 Council Directive 2008/120/EC, *laying down minimum standards for the protection of pigs* (OJ L 47, 18 February 2009).

20 Council Directive 1999/174/EC, *laying down minimum standards for the protection of laying hens* (OJ L 203, 3 August 1999).

21 Council Directive 2007/43/EC, *laying down minimum rules for the protection of chickens kept for meat production* (OJ L 183, 12 July 2007).

22 Council Directive 1999/22/EC, *relating to the keeping of wild animals in zoos* (OJ L 94, 9 April 1999). See in this respect also, Council Regulation (EC) n. 338/97, of 9 December 1996, *on the protection of species of wild fauna and flora by regulating trade therein*, OJ L 061, 3 March 1997.

23 Regulation (EC) n. 1523/2007 of the European Parliament and of the Council, of 11 December 2007, *banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur*, OJ L 343, 27 December 2007.

24 Regulation (EC) n. 1223/2009 of the European Parliament and of the Council, of 30 November 2009, *on cosmetic products*, OJ L 342/59, 22 December 2009.

25 Just as an example, see the decisions of the CJEU: *Masterrind*, 28 July 2016, Case C-469/14; *Rubach*, 16 July 2009, Case C-344/08; *Sofia Zoo*, 4 September 2014, Case C-532/13.

In 2009, the Treaty of Lisbon introduced a specific provision on animal welfare, Article 13 of the TFEU, drawing on Declaration no. 24 *on the protection of animals*, annexed to the Final Act of the Treaty on European Union (Maastricht Treaty) and on Protocol no. 33 *on protection and welfare of animals*, introduced with the Treaty of Amsterdam.²⁶ Both the Declaration and the Protocol called upon EU institutions and Member States to take into consideration the welfare of animals when drafting and implementing legislation and policies.

By recognising animals as ‘sentient beings,’ Article 13 TFEU offers a first legal answer to the question on whether animals should be regarded as objects of rights vested in their human owners or holders of independent interests, and therefore recognised a particular legal status and accorded an even limited legal protection.

Given that Article 13 TFEU makes it clear that animals are not ‘objects,’ this provision requires the Union and the Member States to pay full regard to the welfare requirements of animals in formulating and implementing some EU policies²⁷ (in particular, the ‘internal market’ policy), while respecting the legislative or administrative national rules relating to religious rites, cultural traditions and regional heritage.

As it is apparent, Article 13 TFEU does not provide a definition of ‘animal welfare’²⁸ or of ‘sentient being’; nor it specifies whether in the above-mentioned policies, animal welfare has to prevail over the other interests at stake or has to be balanced with them and under which conditions.

26 «The high contracting parties, desiring to ensure improved protection and respect for the welfare of animals as sentient beings, have agreed upon the following provision which shall be annexed to the Treaty establishing the European Community, in formulating and implementing the Community’s agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage». For a comment, see, T. CAMM-D. BOWLES, *Animal welfare and the treaty of Rome – legal analysis of the protocol on animal welfare and welfare standards in the European Union*, in *Journal of environmental law*, 2000, p. 197.

27 Agriculture, fisheries, transport, internal market, research and technical development and space.

28 In this respect, it is worth noting that the European Convention, *for the protection of pet animals*, of 13 November 1987, indicates (Art. 3) the basic principles for animal welfare: «1 Nobody shall cause a pet animal unnecessary pain, suffering or distress. 2 Nobody shall abandon a pet animal».

In that regard, it should be borne in mind that this provision sets a limit to animal protection, identified in respect of Member States' religious rites, cultural traditions and regional heritage.²⁹

All things considered, the wording of Article 13 TFEU leaves many unanswered questions concerning the legal value of the provision and the effects that can derive from it. Arguably, replies to such questions can be found in the CJEU case-law on the interpretation of the same Article 13 TFEU and of the 'constitutional provisions' pre-dating the amendment introduced by the Lisbon Treaty, such as the aforesaid Declaration n. 24 and Protocol no. 33 *on protection and welfare of animals*.

In that regard, it may be worth focusing on the CJEU judgment of 12 July 2001, issued in the *Jippes case*.³⁰ Interestingly, in this case the CJEU is called upon to decide if animal welfare can be considered as a 'general principle of EU Law.'

A Dutch Court refers to the Court for a preliminary ruling on whether the ban on vaccination (accompanied by sanitary slaughter) in case of autobrakes of the foot-and-mouth disease, imposed by the relevant European rules, can be considered unlawful because contrary to the 'principle of animal welfare.'

The applicants contend that a general principle of EU law exists to the effect that 'save in so far as may be necessary, animals are not to be exposed to pain or suffering and their health and welfare are not to be impaired.'³¹

They maintain that the principle forms part of the collective legal consciousness³² and of the European legal order, due to the intention expressed by the Member

29 V. ZENO-ZENCOVICH, *Law, beauty and wrinkles. Firm points and open issues after the EU cosmetics Regulation*, in V. ZENO-ZENCOVICH (eds) *Cosmetici. Diritto, regolazione, bio-etica*, Roma Tre Press, Roma 2014, p. 9, at 16.

30 C-189/01.

31 Par. 36.

32 Legal scholars point out in this respect that: «a general principle of EU law may firstly originate from sources of written law; provisions of the Treaties or of secondary legislation which are regarded by the CJEU a manifestation of general principles. Sometimes the Court of Justice infers general principles of law from the "Treaty system" rather than from a single EU law provision [...]». Also [...] «the existence of a general principle is inferred by the Court of Justice as a principle common to the laws of the member States [...]. In this regard it is necessary to point out that the EU Court of Justice has never declared it to be necessary – for a general principle to be considered a general principle of EU law – that the principle concerned should be present in all, or even in most of the legal systems of the member States. It was in fact, at times, considered sufficient that the principle was present in only one of the system examined,

States and the Community (EU) in ratifying the various Conventions (on animal welfare) and in adopting specific legislation on the matter (as well as from the above-mentioned Protocol no. 33).

The conclusion reached by the CJEU is that ‘animal welfare’ is not to be regarded as a general principle of Community law (EU law), nor does it form part of the objectives of the EU Treaties.

Legal scholars refer to as general principle of EU law: «the yardstick against which the legality of measures adopted within the field of Community law is to be measured.»³³ Furthermore, it is also argued that: «as occurs in all national legal orders, also in EU legal order the main function of general principles of law has been, from the very beginning, to allow EU judges to fill in the gaps in EU legal order. The general principles of EU law aim at assisting judges and public administrations in the interpretation of written norms whose meaning is uncertain or unclear; this is the reason why such principles are binding on members States as primary law.»³⁴

The legal consequence of considering animal welfare as a general principle would be that all the relevant regulations should be considered unlawful if they failed to achieve an effective protection of animals. Bringing this argument to the extreme, one could even argue that the mere ‘use’ of animals should be subject to a justification.

If animal welfare is not to be regarded as a general principle of EU law, nonetheless, the CJEU makes it clear (consistently with its previous case-law)³⁵ that the interests of the Community (EU) indeed include the health and protection of animals (EU), which are also amongst the requirements of public interest that the Community (EU) institutions must take into account in exercising their powers (*United Kingdom*

if it fitted well with achieving the objectives of the Treaties. [...]». D. U. GALETTA, *General principles of EU law as evidence of the development of a common European legal thinking: the example of the proportionality principle (from the Italian perspective)*, in H.-J. BLANKE - P. CRUZ VILLALÓN - T. KLEIN - J. ZILLER (eds), *Common European legal thinking. Essays in honor of Albrecht Weber*, Springer, Heidelberg 2016, p. 221, at 223.

33 E. SPAVENTA, *Case C-189/01 H. Jippes*, in *Common market law review*, 39, 2002, p. 1159, at 1163.

34 A. ADINOLFI, *I principi generali nella giurisprudenza comunitaria e la loro influenza sugli ordinamenti degli Stati membri*, in *Rivista italiana di diritto pubblico comunitario*, 3-4, 1994, p. 521

35 *Holdijk and Others*, 21 May 1981, joined Cases C-141/81 to 143/81; *Hedley Lomas*, 23 May 1996, Case C-5/94; *Compassion in World Farming*, 19 March 1998, Case C-1/96; *Mondiet*, 24 November 1993, Case C-405/92.

v Council);³⁶ Protocol no. 33 seeks to reinforce this obligation, whose fulfilment can be verified, in particular, in the context of a review of the proportionality of the measure in question.

As a matter of fact, it has to be borne in mind that Article 36 TFEU³⁷ indicates the protection of animals as one of the general interest grounds that can be taken as justifications³⁸ for national measures restricting the free movement of goods between Member States. In other words, a national restrictive measure does not breach the EU single market rules if it pursues the objective of protecting animals and it is necessary and proportionate to that end.

In sum, the welfare of animals, in the view of the CJEU, is not a fundamental principle of EU law or an objective of the EU Treaties, however, it is a 'legitimate objective in the public interest'³⁹ that must be taken into account and balanced with the other interests at stake.

The CJEU confirms this view in the judgments issued after the introduction of Article 13 TFEU,⁴⁰ as it is clearly pointed out by Advocate General M. Bobek, in its Opinion delivered on 17 March 2016, in the case *European Federation for Cosmetic Ingredients*,⁴¹ where he makes it clear that: «there is a manifest value statement on the part of the Union, at both primary and secondary levels of EU law, [...] nonetheless, as with other values, animal welfare is not absolute» [...].⁴²

In other words, animal welfare is a *value* that has to be promoted and fostered, as it is expressly stated, *inter alia*, by Recital n. 2 of Directive 2010/63/EU *on the pro-*

36 *United Kingdom v Council*, 23 February 1988, Case C-131/86, par. 17.

37 «The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property». [...].

38 *Viamex Agrar Handel e ZVK*, 17 January 2008, joined Cases C-37/06 and 58/06.

39 See, to that effect, *Viamex Agrar Handel and ZVK*, cit., par. 22, and *Nationale Raad van Dierenkwekers en Liefhebbers and Andibel*, 19 June 2008 Case C-219/07, par. 27.

40 *Zuchtvieh-Export GmbH*, 23 April 2015, Case C-424/13, par. 35.

41 C-592/14.

42 Parr. 20 and 21.

tection of animals used for scientific purposes.⁴³ «Animal welfare is a value of the Union that is enshrined in Article 13 of the TFEU.»

As a matter of fact, it is interesting to note that the CJEU is willing to use Article 13 TFEU to justify an extensive interpretation of the rules which are aimed at protecting animals.⁴⁴

Therefore, Article 13 TFEU is hardly revolutionary and legal scholars point out that despite its introduction, within the EU legal system, animals still seem to be attributed a dual status, that of ‘sentient beings’ and ‘products’ or more precisely ‘goods’ (which in accordance with the CJEU case-law are products ‘which can be valued in money and which are capable, as such, of forming the subject of commercial transactions’).⁴⁵

Nonetheless, Article 13 TFEU is certainly an important step toward a more effective protection of animals, because it clarifies (hopefully conclusively), that they are not ‘objects’ and that animal welfare is a value that has to be upheld.

This clearly raises important legal and ethical issues that have to be dealt with, not only at a European level, but also at a national one. In this respect, Article 13 TFEU is substantially part of the legal ‘constitutional’ framework of the Member States; consequently, the protection of animals has indirectly been incorporated into the their shared legal and ethical values that must be consistently taken into account by policy makers, judges and public authorities.

3. The new strategy of the Commission and the enforcement of the existing legislation

Over the past few years, the Commission adopted several instruments⁴⁶ that grouped the various aspects of the EU policy on animal welfare and indicated a comprehensive European strategy, by proposing lines of action to reconcile animal welfare with economic interests.

More in particular, with the *Communication on the European Union Strategy*

43 OJ L 276/33.

44 *Brouwer*, 14 June 2012, Case C-355/11.

45 *Commission v Italy*, 10 December 1968, Case C-7/68.

46 *Community Action Plan on the Protection and Welfare of Animals 2006-2010*.

for the Protection and Welfare of Animals (2012-2015),⁴⁷ the Commission identifies «the main common drivers that affect the welfare status of animals in the Union»⁴⁸ and indicates the strategic actions that should be taken.

The Commission acknowledges that the Union has been adopting or adapting specific pieces of legislation to specific problems to the effect that some regulations contain provisions that are too general to have practical effects and that welfare requirements do not cover all animal species or all the emerging problems and issues.

Hence, the Commission considers the possibility of introducing a simplified EU legislative framework, setting out animal welfare principles for all animals kept in the context of an economic activity. The new framework should also promote simplification, reduction of administrative burden and the valorisation of welfare standards as a means to enhance competitiveness of the EU food industry.

According to the Commission, the establishment of general principles in a consolidated revised EU legislative framework could contribute to the simplification of the animal welfare *acquis* and ultimately *facilitate its enforcement*.

As a matter of fact, the lack of enforcement of the EU legislation by the Member States is still common in a number of areas; some of them do not take sufficient measures to inform stakeholders, to train official inspectors, to perform checks and to apply sanctions.⁴⁹

As a result, numerous EU legislative provisions on animal welfare have not been fully applied and have not delivered the intended effects.

The Commission makes it clear that it considers the issue of compliance as a matter of priority. In this respect, among other things,⁵⁰ with the Communication *on the*

47 COM/2012/06 final.

48 P. 4.

49 Communication from the Commission to the European Parliament, the Council and the European economic and social Committee, of 15 February 2012, *on the European Union strategy for the protection and welfare of animals 2012-2015*, cit., p. 4.

50 In accordance with the Commission, consumers, stakeholders and the general public still lack appropriate information on animal welfare aspects. Hence, it is necessary to raise awareness of respect for animals, to promote responsible ownership and to inform consumers about the relevant EU legislation. In this respect, the Commission plans to launch a study to map out the current animal welfare education and information activities (both at a national

European Union Strategy for the Protection and Welfare of Animals,⁵¹ following up on previous Policy Papers,⁵² the Commission expresses its intention to set up a European network of *Reference Centres for animal welfare*, based on a central coordination institute acting in cooperation with a network of national research institutions located in the Member States.

The Centres should provide technical support for the development and implementation of animal welfare policies, and ensure that the competent authorities (especially at a national level) receive coherent and uniform technical information on the way the EU legislation has to be implemented.

By its Decision of 24 January 2017,⁵³ the Commission set up the EU 'Platform on animal welfare.' This 'Platform' is an 'Expert Group'⁵⁴, consisting of 75 members representatives of the competent authorities of the Member States⁵⁵ responsible for animal welfare; international intergovernmental organisations; the European Food Safety Authority; business and professional organisations carrying out activities at the EU level in the food supply chain where animals or animal products are involved as well as in the keeping of animals for other farming purposes; organisations from the civil society; and also independent experts from academic and research institutes.⁵⁶

In accordance with Article 2 of the Decision, the 'Platform' assists the Com-

and European level); moreover, it plans to promote transnational information campaigns or educational initiatives on animal welfare.

51 Cit.

52 For example, the establishment of European Reference Centres had already been discussed by the Commission in the: Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Options for animal welfare labelling and the establishment of a European Network of Reference Centres for the protection and welfare of animals*, of 28 October 2009, COM(2009)584 final, Art. 8.

53 *Establishing the Commission Expert Group 'Platform on Animal Welfare'*, 2017/C 31/12, OJEU C 31/61, 31 January 2017.

54 See, *infra*, footnote n. 9.

55 States that are members of the agreement on the European Economic Area (EEA).

56 In practice, forty members have been appointed by the Director General for Health and Food Safety following a call for applications to represent business and professional organisations, organisations from civil society and independent experts from research institutes. Thirty-five members represent public institutions such as competent authorities, international organisations working on animal welfare and the European Food Safety Authority.

mission with the development of coordinated actions to foster the implementation and application of EU law on animal welfare and its correct understanding.

The Platform should also encourage dialogue between competent authorities, businesses, civil society, academia, scientists, international organisations, etc., on topics related to animal welfare. A further task of the Platform is to foster a more affective and correct application of EU law, by promoting exchange of experiences and good practices, scientific knowledge and innovations.

Article 3 provides that, in general, the Commission may consult the ‘Platform’ on any matter related to animal welfare relevant for the Union.

The Platform may also appoint a maximum of five observers.⁵⁷

As for its functioning, the Platform meets twice a year, working in relation to specific areas and on specific projects; it regularly invites other fora or stakeholders to present their initiatives and activities, acting as a hub for connecting the various spheres where animal welfare is debated at an international level.

The Platform aims at assisting the Commission in its objectives which include a better implementation of the EU animal welfare legislation and the promotion of EU standards at the global level.

The Platform could also develop activities where there is no specific EU legislation or activities in order to promote good animal welfare practices. This could be done through the production of guidance documents on specific issues or on more general topics, such as animal welfare labelling.

It is worth noting that the activities and meetings of the Platform are public and available online as podcasts.

During its second meeting, the Platform launched the first Reference Centre for Animal Welfare, in accordance with its above-mentioned documents from the Commission and the Official Controls Regulation (EU) 2017/625.⁵⁸

In particular, recital no. 73 of the Controls Regulation states that «for the per-

57 For example, Switzerland has been granted an observer status within the Platform.

58 Regulation (EU) 2017/625 of the European Parliament and of the Council, of 15 March 2017, *on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products*, OJ L 95, 7 April 2017.

formance of official controls and other official activities, which are aimed at identifying possible violations to the rules [...] in the field of animal welfare, the competent authorities should have access to updated, reliable and consistent technical data, to research findings, new techniques and the necessary expertise for the correct application of Union legislation applicable in those two areas. For that purpose, the Commission should be able to designate, and rely on the expert assistance of, European Union Reference Centres for the authenticity and integrity of the agri-food chain and for animal welfare.»

Hence, Article 95 of the Official Controls Regulation (whose heading is *Designation of European Union Reference Centres for animal welfare*) spells out that: «the Commission shall, by means of implementing acts, designate European Union Reference Centres for animal welfare that shall support the activities of the Commission and of the member States in relation to the application of the rules for welfare requirements for animals» (no. 1).

The Centres have to be designated following a public selection process (Article 95, n. 2), and are responsible for the supporting task of providing scientific and technical expertise to relevant national networks and bodies in the area of animal welfare; of developing or coordinating the development of methods for the assessment of the level of welfare of animals and for the improvement of the welfare of animals; of carrying out scientific and technical studies on the welfare of animals used for commercial or scientific purposes; of conducting training courses for staff of the national scientific networks or bodies, for staff of the competent authorities and for experts from third Countries; of disseminating research findings and technical innovations and collaborating with Union research bodies (Article 96 - *Responsibilities and tasks of European Union Reference Centres for animal welfare*).

On 5 March 2018, following a public selection process,⁵⁹ a consortium formed by the Wageningen Livestock Research (the Netherlands), the Friedrich Loeffler Institute (Germany) and the Department of Animal Science at Aarhus University (Denmark) was designated by the Commission as the first European Union Reference Centre for

59 Call for selection and designation of the first European Union Reference Centre for animal welfare, 13 October 2017, available at: https://ec.europa.eu/info/news/first-eu-reference-centre-animal-welfare-call-selection-launched-2017-oct-17_en.

Animal Welfare (Commission Implementing Regulation (EU) 2018/329).⁶⁰

This first Centre will focus on pig welfare since improving the enforcement of the legislation of pigs is one of the Commission's priorities in the area of animal welfare. Its designation will be reviewed every five years. The specific tasks of the Centre will be defined in the annual or multiannual work programs established in conformity with the objectives and priorities of the relevant work programs adopted by the Commission.

4. Conclusions

With the support and cooperation of the Member States, the EU institutions have been promoting animal welfare for more than forty years.

The aim of the EU policy on animal welfare is to reconcile the interests of the various actors on the market with the interest of 'individual' animals to improve the quality of their lives, and not to be subject to degrading treatments or exposed to pain and suffering.

The policy has a multifaceted approach, which goes from raising awareness amongst consumers and the public at large of respect of animals, to the creation of a level playing field through the harmonisation of standards and requirements, in order to avoid 'animal welfare dumping' that could (*inter alia*) adversely affect the well-functioning of the competitive market.

Evidently, this is a very ambitious goal due to the considerable economic and non-economic interests at stake, the balance of which is often in practice left to the CJEU and its discretion in the interpretation of the law.

A major step forward was made with the introduction of Article 13 TFEU, which clearly dispels any doubt about the current legal status of animals under EU law (at least in theory). What this provision states is that animals are not 'objects' but 'sentient beings,' and should be treated as such.

The interpretation of Article 13 TFEU (and of the previous 'constitutional' provisions) made by the CJEU reveals that the protection of animals' interests and the

⁶⁰ Commission Implementing Regulation (EU) 2018/329, of 5 March 2018, *designating a European Union Reference Centre for Animal Welfare*, C/2018/1223, OJ L 63, 6.3.2018.

promotion of their well-being is not considered a fundamental principle of EU law. Yet, animal welfare is a 'public interest' that must be taken into consideration by the EU institutions and Member States (or in general by public authorities) when formulating or applying their policies and making their decisions.

Even though animals can still be the object of legal rights (of humans), in principle their well-being should be negatively affected only under a (strict?) legal test of necessity and proportionality; the conflicting interests of animals and individuals should be carefully weighed up.

Over the last few years, the Commission adopted a series of documents to encourage further debate on the future developments of the policy, with a particular focus on its strengths and weaknesses.

The attention of the Commission is centred, more specifically, on the correct enforcement of the already existing rules and on the promotion of new initiatives, such as the 'EU Platform on animal welfare', which in fact is aimed at fostering the correct application of EU law on animal welfare both at a national and European level; and the Reference Centres, which are expected to provide technical support.

In conclusion, much has been done at a European level to foster the protection of animals and still much remains to be done, in particular when it comes to the correct application and enforcement of the relevant EU principles and rules.

Having said that, the author of this article holds the opinion that the creation of a specific forum of discussion, such as the EU Platform (that is a means whereby experts can share information and experience) and the introduction of the EU Reference Centres that make available their technical expertise, can be viable initiatives to further the protection of animals across the EU. All in all, these mechanisms should target each and every problem in the regulatory process and in the subsequent process of application of the enacted rules. This approach should be aimed at avoiding contrasts by promoting cooperation and dialogue at all levels to achieve an ever-increasing protection of animals and a more integrated and ethical internal market.

However laudable and far-reaching the efforts made by the EU institutions to improve the well-being of animals may be, it is evident that all the moral dilemmas inherent in the protection of animal welfare still remain unresolved. However, dealing with these dilemmas is something that goes beyond the possibilities of legal scholars.
