Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (Text with EEA relevance)

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament[(1)],

Having regard to the Opinion of the European Economic and Social Committee[(2)],

After consultation of the Committee of the Regions,

Whereas:

(1) Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing[(3)] establishes common minimum rules for the protection of animals at the time of slaughter or killing in the Community. That Directive has not been substantially amended since its adoption.

(2) Killing animals may induce pain, distress, fear or other forms of suffering to the animals even under the best available technical conditions. Certain operations related to the killing may be stressful and any stunning technique presents certain drawbacks. Business operators or any person involved in the killing of animals should take the necessary measures to avoid pain and minimise the distress and suffering of animals during the slaughtering or killing process, taking into account the best practices in the field and the methods permitted under this Regulation. Therefore, pain, distress or suffering should be considered as avoidable when business operators or any person involved in the killing of animals breach one of the requirements of this Regulation or use permitted practices without reflecting the state of the art, thereby inducing by negligence or intention, pain, distress or suffering to the animals.

(3) The protection of animals at the time of slaughter or killing has been covered by Community law since 1974, and was substantively reinforced by Directive 93/119/EC. However, large discrepancies have been observed between the Member States in implementing that Directive and major welfare concerns and differences susceptible to affect competitiveness between business operators have been pointed out.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1099/2009. (See end of Document for details)*

(4) Animal welfare is a Community value that is enshrined in the Protocol (No 33) on protection and welfare of animals annexed to the Treaty establishing the European Community (Protocol (No 33)). The protection of animals at the time of slaughter or killing is a matter of public concern that affects consumer attitudes towards agricultural products. In addition, improving the protection of animals at the time of slaughter contributes to higher meat quality and indirectly has a positive impact on occupational safety in slaughterhouses.

(5) National law concerning the protection of animals at the time of slaughter or killing has an impact on competition and, accordingly, on the operation of the internal market in products of animal origin included in Annex I to the Treaty establishing the European Community. It is necessary to establish common rules in order to ensure the rational development of the internal market in those products.

(6) The European Food Safety Authority (EFSA), established by Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety[(4)], has adopted two opinions on the welfare aspects of the main systems of stunning and killing of certain species of animals, namely on the welfare aspects of the main systems of stunning and killing the main commercial species of animals, in 2004, and on the welfare aspects of the main systems of stunning and killing applied to commercially farmed deer, goats, rabbits, ostriches, ducks, geese and quail, in 2006. Community law in this area should be updated to take into account those scientific opinions. Recommendations to phase out the use of carbon dioxide for pigs and the use of waterbath stunners for poultry are not included in this Regulation because the impact assessment revealed that such recommendations were not economically viable at present in the EU. However, it is important to continue this discussion in the future. To this end, the Commission should prepare and submit to the European Parliament and to the Council a report on the various stunning methods for poultry, and in particular multiple-bird waterbath stunners. Furthermore, other recommendations should be excluded from this Regulation because they refer to technical parameters that should be part of implementing measures or Community guidelines. Recommendations on farm fish are not included in this Regulation because there is a need for further scientific opinion and economic evaluation in this field.

(7) In 2007, the World Organisation for Animal Health (OIE) adopted the Terrestrial Animal Health Code which includes guidelines for the slaughter of animals and for the killing of animals for disease control purposes. Those international guidelines contain recommendations concerning the handling, restraining, stunning and bleeding of animals in slaughterhouses and the killing of animals in cases of outbreak of contagious diseases. Those international standards should also be taken into account in this Regulation.

(8) Since the adoption of Directive 93/119/EC, Community food safety legislation applicable to slaughterhouses has been profoundly amended by the adoption of Regulation (EC) No 852/2004 of the European Parliament and of the Council of

29 April 2004 on hygiene of foodstuffs[5] and Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin[6]. Those Regulations emphasise the responsibility of food business operators to ensure food safety. Slaughterhouses are also subject to a pre-approval procedure whereby the construction, layout and equipment are examined by the competent authority to ensure that they comply with the corresponding technical rules on food safety. Animal welfare concerns should be better integrated into slaughterhouses, their construction and layout, as well as the equipment used therein.

(9) Official controls in the food chain have also been reorganised by the adoption of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules[7] and Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption[8].

(10) Conditions under which animals kept for farming purposes are killed have a direct or indirect impact on the market for food, feed or other products and on the competitiveness of the business operators concerned. Therefore, such killing operations should be covered by Community law. However, traditionally farmed species such as horses, donkeys, cattle, sheep, goats or pigs can also be kept for other purposes, such as, for example, pets, animals for shows, work purposes, or sports. Where the killing of animals of such species produces food or other products, those operations should fall within the scope of this Regulation. Consequently, the killing of wild or stray animals for population control purposes should not fall within the scope of this Regulation.

(11) Fish present substantial physiological differences from terrestrial animals and farmed fish are slaughtered and killed in a very different context, in particular as regards the inspection process. Furthermore, research on the stunning of fish is far less developed than for other farmed species. Separate standards should be established on the protection of fish at killing. Therefore, provisions applicable to fish should, at present, be limited to the key principle. Further initiatives by the Community should be based on a scientific risk assessment for the slaughter and killing of fish performed by EFSA and taking into account the social, economic and administrative implications.

(12) It is an ethical duty to kill productive animals which are in severe pain where there is no economically viable way to alleviate such pain. In most cases, animals can be killed respecting proper welfare conditions. However, under exceptional circumstances, such as accidents in remote locations, where competent personnel and equipment cannot reach the animals, complying with optimal welfare rules could prolong their suffering. In the interest of the animals it is, therefore, appropriate to exclude emergency killing from the application of certain provisions of this Regulation.

(13) Occasionally animals can be dangerous for human beings, possibly putting human life at risk, inflicting serious injuries or transmitting deadly diseases. Preventing those risks is usually performed through the proper restraining of animals but it may also be necessary to kill dangerous animals to end such risks in certain circumstances. Under those

circumstances, the killing cannot always be performed under the best welfare conditions due to the emergency. Therefore, it is necessary to derogate from the obligation to stun or immediately kill the animals in those cases.

(14) Hunting or recreational fishing activities take place in a context where conditions of killing are very different from the ones used for farmed animals and hunting is subject to specific legislation. It is therefore appropriate to exclude killings taking place during hunting or recreational fishing from the scope of this Regulation.

(15) Protocol No (33) underlines the need to respect the legislative or administrative provisions and customs of the Member States relating, in particular, to religious rites, cultural traditions and regional heritage when formulating and implementing the Community's policies on, *inter alia*, agriculture and the internal market. It is therefore appropriate to exclude from the scope of this Regulation cultural events, where compliance with animal welfare requirements would adversely affect the very nature of the event concerned.

(16) In addition, cultural traditions refer to an inherited, established, or customary pattern of thought, action or behaviour which includes in fact the concept of something transmitted by, or acquired from, a predecessor. They contribute to fostering long-standing social links between generations. Provided that those activities do not affect the market of products of animal origin and are not motivated by production purposes, it is appropriate to exclude the killing of animals taking place during those events from the scope of this Regulation.

(17) The slaughter of poultry, rabbits and hares for private domestic consumption is not performed on a scale likely to affect the competitiveness of commercial slaughterhouses. Similarly, the necessary efforts required from public authorities to detect and control such operations would not be proportionate to the potential problems to be solved. It is, therefore, appropriate to exclude those operations from the scope of this Regulation.

(18) Derogation from stunning in case of religious slaughter taking place in slaughterhouses was granted by Directive 93/119/EC. Since Community provisions applicable to religious slaughter have been transposed differently depending on national contexts and considering that national rules take into account dimensions that go beyond the purpose of this Regulation, it is important that derogation from stunning animals prior to slaughter should be maintained, leaving, however, a certain level of subsidiarity to each Member State. As a consequence, this Regulation respects the freedom of religion and the right to manifest religion or belief in worship, teaching, practice and observance, as enshrined in Article 10 of the Charter of Fundamental Rights of the European Union.

(19) There is sufficient scientific evidence to demonstrate that vertebrate animals are sentient beings which should therefore fall within the scope of this Regulation. Reptiles and amphibians, however, are not animals commonly farmed in the Community and it would not, therefore, be appropriate or proportionate to include them within its scope.

(20) Many killing methods are painful for animals. Stunning is therefore necessary to induce a lack of consciousness and sensibility before, or at the same time as, the animals are

killed. Measuring the lack of consciousness and sensibility of an animal is complex and needs to be performed under scientifically approved methodology. Monitoring through indicators, however, should be carried out to evaluate the efficiency of the procedure under practical conditions.

(21) Monitoring stunning efficiency is mainly based on the evaluation of consciousness and sensibility of the animals. The consciousness of an animal is essentially its ability to feel emotions and control its voluntary mobility. Despite some exceptions, such as electro-immobilisations or other provoked paralysis, an animal can be presumed to be unconscious when it loses its natural standing position, is not awake and does not show signs of positive or negative emotions such as fear or excitement. Sensibility of an animal is essentially its ability to feel pain. In general, an animal can be presumed to be insensitive when it does not show any reflexes or reactions to stimulus such as sound, odour, light or physical contact.

(22) New stunning methods are regularly developed and proposed on the market in order to face the new challenges of the farming and meat industry. It is, therefore, important to authorise the Commission to approve new stunning methods while keeping a uniform and high level of protection for animals.

(23) Community guidelines are a useful tool to provide business operators and competent authorities with specific information on the parameters to be used in order to ensure a high level of protection for animals while keeping a level playing field for business operators. It is, therefore, necessary to authorise the Commission to draw up such guidelines.

(24) Depending on how they are used during the slaughtering or killing process, some stunning methods can lead to death while avoiding pain and minimising distress or suffering for the animals. Other stunning methods may not lead to death and the animals may recover their consciousness or sensibility during subsequent painful procedures. Such methods should, therefore, be completed by other techniques that lead to certain death before the recovery of the animals. It is, therefore, essential to specify which stunning methods need to be completed by a killing method.

(25) The conditions under which animals are stunned and the results of such stunning vary in practice due to many factors. Regular assessment of the outcome of stunning should therefore be made. For that purpose, business operators should establish a representative sample to check the efficiency of their stunning practices, taking into account the homogeneity of the group of animals, and other critical factors, such as the equipment used and the personnel involved.

(26) Some stunning protocols may prove to be sufficiently reliable to irreversibly kill the animals in all circumstances if specific key parameters are applied. In such cases, the need for checks for stunning would appear unnecessary and disproportionate. It is therefore appropriate to provide for the possibility to grant derogations from the obligations regarding checks on stunning when there is sufficient scientific evidence that a given stunning protocol provides for irreversible death to all animals under certain commercial conditions.