

# FARM ANIMAL WELFARE UNDER SCRUTINY: ISSUES UNSOLVED BY THE EU LEGISLATOR

Luca Leone\* 

*In the European Union (EU) innovation society, animal welfare has reached its normative status, together with the increased ethical concerns of citizens and civil society in relation to animal welfare and dignity. However, several problems are impeding welfarism from gaining full traction on the European stage. This paper aims at scrutinizing some of those legal problems, using the ongoing (2019) CAP reform and labelling issues as case studies. Is the process of the CAP reform in line with the aim of fully integrating farm animal welfare into EU agricultural policy? Is animal welfare labelling gaining ground as an ethical-legal tool that certifies the achievement of high standards in livestock farming? These are the questions explored in this contribution. Both a historical perspective of farm animal welfare in Europe and an evaluation at the international level will enrich their analysis. The core argument of this study posits that legal answers to the CAP post-2020 and to animal welfare labelling schemes can legitimate a more sustainable model of EU agriculture. What is needed is a model of agricultural practices capable of aligning citizens' interests with the EU animal welfare strategy 2012-2015, while enhancing and strengthening the Union's normative approach to animal dignity.*

**Keywords:** Animal welfare, CAP, Labelling, Private Standards, TBT Agreement

## TABLE OF CONTENTS

I. INTRODUCTION.....	48
II. A MATTER OF WELFARE .....	54
III. TOWARDS THE CAP POST-2020.....	59
IV. ANIMAL WELFARE STANDARDS AND LABELLING .....	65

---

\* Researcher – Università Cattolica del Sacro Cuore – Faculty of Business and Law – Piacenza (Italy) – luca.leone@unicatt.it. My thanks go to the anonymous reviewers for their precious suggestions and helpful comments, which have further developed my thinking in reshaping the content of this paper. All errors are my own.

1. <i>On the Role of Standards</i> .....	66
2. <i>Labelling Animal Welfare Standards</i> .....	71
V. FINAL REMARKS .....	80

## I. INTRODUCTION

Since the last decade of the 20<sup>th</sup> century, the institutions of the European Union (EU) have always sought – mostly through conventions,<sup>1</sup> as well as horizontal<sup>2</sup> and species-specific legislation<sup>3</sup> – to efficiently deal with the welfare of farm animal species. In doing so, Europe has tried to tackle many of the problems related to it: the protection of laying hens kept in battery cages, transport measures, the welfare of chickens kept for meat production, housing conditions, the traceability of sheep and goats and so on. This assortment of rules was not included among the EU's core values and objectives set out in Articles 2–3 TEU.<sup>4</sup> Instead, it was adopted on the basis

<sup>1</sup> See The European Convention for the protection of animals kept for farming purposes (ETS No. 87) of 1976, revised in 1992 (ETS No. 145); the European Convention for the protection of animals during international transport (ETS No 65) of 1968, revised in 2003 (ETS No 193); the European Convention for the protection of animals for slaughter (ETS No 102) of 1979.

<sup>2</sup> Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes [1998] OJ L 221/23.

<sup>3</sup> For an overview, see Paige M. Tomaselli, 'Detailed Discussion of International Comparative Animal Cruelty Laws' (Animal Legal and Historical Center 2003) <<https://www.animallaw.info/article/detailed-discussion-international-comparative-animal-cruelty-laws>> accessed 22 February 2019; Nicholas K. Pedersen, 'Detailed Discussion of European Animal Welfare Laws 2003 to Present: Explaining the Downturn' (Animal Legal and Historical Center 2009) <<https://www.animallaw.info/article/detailed-discussion-european-animal-welfare-laws-2003-present-explaining-downturn>> accessed 22 February 2019; Peter Stevenson, 'European Union Legislation on the Welfare of Farm Animals (Compassion in World Farming 2012), <<https://www.ciwf.org.uk/media/3818623/eu-law-on-the-welfare-of-farm-animals.pdf>> accessed 22 February 2019.

<sup>4</sup> This legal gap is discussed by Diane Ryland and Angus Nurse, 'Mainstreaming after Lisbon: Advancing Animal Welfare in the EU Internal Market' (2013) 22(3) *European Energy and Environmental Law Review* 101.

of other Treaty objectives, such as the common agricultural policy (CAP), the internal market, the environmental policy and the common commercial policy. Simultaneously, animal sentience gained its normative status in Protocol No. 33, annexed to the 1997 Treaty of Amsterdam.<sup>5</sup> Later, with the adoption of the Lisbon Treaty, the recognition of non-human animals (hereafter 'animals') as sentient beings has been embedded in Article 13 TFEU.<sup>6</sup>

In spite of those legal advancements,<sup>7</sup> however, the institutionalization of cruel practices on farm animals, the scarce regulation of living conditions for some widely-kept animal species (e.g. dairy cows, rabbits, ducks, and turkeys), and the complex problems of the low enforcement of legislation<sup>8</sup> have been obstacles for welfarism to gain ground within Member States. The welfare of several farmed animals, such as broiler chickens, cows, rabbits, trout and salmon, continues to be undermined by problems related to space and resources,<sup>9</sup> while lacking in fulfilment of animals' needs.<sup>10</sup>

---

<sup>5</sup> On this subject, see Tara Camm and David Bowles, 'Animal Welfare and the Treaty of Rome—A Legal Analysis of the Protocol on Animal Welfare and Welfare Standards in the European Union' (2000) 2 *Journal of Environmental Law* 197.

<sup>6</sup> Article 13 TFEU states: 'In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, 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'.

<sup>7</sup> See Jessica Vapnek and Megan Chapman, 'Legislative and Regulatory Options for Animal Welfare' (FAO 2010).

<sup>8</sup> For a deep analysis of these issues, see European Parliament, 'Animal Welfare in the European Union', Policy Department C: Citizens' Rights and Constitutional Affairs (European Union 2017).

<sup>9</sup> *Ibid* 51ff.

<sup>10</sup> In this respect, a new set of standards – the Better Chicken Commitment – has been promoted by the Royal Society for the Prevention of Cruelty to Animals (UK RSPCA) and other groups to spread across food businesses the use of slower growing breeds and to guarantee chicken health and welfare by assuring more space, natural light and more humane methods of slaughter. See RSPCA, 'One billion chickens are slaughtered for meat in the UK each year' (RSPCA 2019) <<https://www.rspca.org.uk/getinvolved/campaign/cheapchicken>> accessed 05 March 2019.

Scholarly criticism has highlighted three significant problems stemming from the EU's progressive legislation on animal welfare. First, a slowdown in the period since 2003 in four distinct areas: the failure to initiate bold new normative patterns; problems with the enforcement of existing laws; the Court of Justice of the EU's (CJEU) lenient approach when ruling on regulation in the area of animal protection; and EU legislatures' shift towards a crackdown on animal extremists.<sup>11</sup> Second, the normative paradox that clearly emerges from the changes that animal welfare legislation has gone through, where rules on the commercial use of animals – relying on the image of animals as products<sup>12</sup> – coexist with rules conveying moral respect for, and protection of, animals as sentient beings.<sup>13</sup> Finally, the acknowledgment that most scientific reports on animal welfare produced by the European Food Safety Authority (EFSA)<sup>14</sup> have not been implemented in legislation.<sup>15</sup>

Against this backdrop, this paper aims at scrutinizing further legal problems that are affecting the EU's normative approach to farm animal welfare, using the ongoing (2019) CAP reform and labelling issues as case studies. The reasons for focusing on these issues are related to their potential contribution to a better implementation of Article 13 TFEU and the increased ethical concerns of consumers and civil society in relation to animal sentience and

---

<sup>11</sup> Pedersen (n 3).

<sup>12</sup> This conception recalls the Kantian thought of animals as 'instruments' in the hands of humans for human ends (Immanuel Kant, *Lectures on Ethics* (trans. Louis Infield) (Harper Torchbooks 1963).

<sup>13</sup> Katy Sowery, 'Sentient Beings and Tradable Product: The Curious Constitutional Status of Animals under Union Law' (2018) 55 *Common Market Law Review* 55.

<sup>14</sup> On the role played by the Authority in the activities related to animal welfare, see Franck Berthe, Philippe Vannier, Per Have, Jordi Serratosa, Eleonora Bastino, Donald Maurice Broom, Jörg Hartung and James Michael Sharp, 'The Role of EFSA in Assessing and Promoting Animal Health and Welfare' (2012) 10 *EFSA Journal* 19.

<sup>15</sup> For example, EFSA, 'The Welfare Risks Related to the Farming of Sheep for Wool, Meat and Milk Production' (2014) 12(12) *EFSA Journal* 1; EFSA, 'The Welfare of Cattle Kept for Beef Production and the Welfare in Intensive Calf Farming Systems' (2012) 10(5) *EFSA Journal* 2669.

dignity<sup>16</sup> – as they emerge from the *End the Cage Age European Citizens' Initiative*.<sup>17</sup>

The new CAP post-2020 could play a key role in the support for a higher commitment to animal welfare, in the pursuit of a sustainable production as promoted by the United Nations' Intergovernmental Panel on Climate Change (IPCC) in its 2019 report on global land use and agriculture.<sup>18</sup> Likewise, using labels to address the ethical factors surrounding the relationship between animal treatment and public concerns might provide appropriate protection of the interests at stake and reach higher levels of standards, while increasing awareness and producing improvements in farming practices, consumer choices and legislation.

In this respect, it may not come as a surprise that after the experience gained through the 2006-2010 Action Plan on the Protection and Welfare of Animals,<sup>19</sup> the current EU 2012-2015 strategy<sup>20</sup> on the matter is following lines of actions aimed at, *inter alia*, optimising synergies with the CAP and

---

<sup>16</sup> Rebeca García Pinillos, Michael Appleby, Xavier Manteca, Freda Scott-Park, Charles Smith and Antonio Velarde, 'One Welfare-A Platform for Improving Human and Animal Welfare' (2016) 179 *Veterinary Record* 412.

<sup>17</sup> Compassion in world farming, 'End the Cage Age' (Compassion in world farming 2019) <<https://www.endthecageage.eu/>> accessed 14 August 2019.

<sup>18</sup> IPCC, 'IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems Summary for Policymakers Approved Draft' (WMO/UNEP 2019) <[https://www.ipcc.ch/site/assets/uploads/2019/08/Edited-SPM\\_Approved\\_Microsite\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2019/08/Edited-SPM_Approved_Microsite_FINAL.pdf)> accessed 14 August 2019.

<sup>19</sup> European Commission, 'Communication from the Commission to the European Parliament, the Council on a Community Action Plan on the Protection and Welfare of Animals 2006-2010' COM(2006) 13 final.

<sup>20</sup> European Commission, 'Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the European Union Strategy for the Protection and Welfare of Animals 2012-2015' COM(2012) 6 final/2. The EC's silence on the repeated requests made by the EP for a new and ambitious animal welfare strategy for the 2016-2020 period (see European Parliament, 'Resolution of 26 November 2015 on a New Animal Welfare Strategy for 2016-2020' (2015/2957(RSP)); European Parliament, 'Report on a European One Health Action Plan against Antimicrobial Resistance (AMR)' (2017/2254(INI)), Point 57) is emblematic of the impasse underpinning the EU approach to the matter.

providing the public with appropriate information. Both of them are meant and boosted as significant initiatives that can strongly enhance the competitiveness of EU agriculture in the near future. Indeed, as the strategy itself affirms,

the diversity of farming systems, climatic conditions, land realities in the different Member States have led to considerable difficulties in agreeing on unitary rules and even more difficulties in ensuring their correct implementation.<sup>21</sup>

However, as intricate as these subjects can be, they bring some significant questions to the forefront. Is the process of the CAP reform in line with the aim of fully integrating farm animal welfare into EU agricultural policy? Is animal welfare labelling gaining ground as an ethical-legal tool that certifies the achievement of high standards in livestock farming? These are the questions explored in this contribution.

To this end, a historical overview of farm animal welfare in Europe will forerun the analysis. This outlook will help identify the theoretical underpinnings of EU legislation, in order to delineate the legal basis that the CAP agenda and rules on standards and labelling rely on. In the face of this scenario, section III will scrutinize the main changes the CAP policy has been going through, by showing positive and negative aspects concerning the protection of farm animal welfare as they stem from the European Parliament's (EP) ongoing work.

Section IV will then focus attention on the relationship and the correlated problems existing between the simultaneous application of private and governmental animal welfare standards. In addressing this issue, the extent to which private standards have the capacity to fuel a 'race to the top'<sup>22</sup> will be analysed, with it now being generally understood that, in certain circumstances at least, they may become *de facto* mandatory. Hence, there will be scope to expand the discussion on labelling to the international arena, with specific reference to the rules of the World Trade Organization (WTO).

---

<sup>21</sup> Ibid 4.

<sup>22</sup> Yoshiko Naiki, 'The Dynamics of Private Food Safety Standards: A Case Study on the Regulatory Diffusion of GLOBALG.A.P.' (2014) 63 (1) International & Comparative Law Quarterly 137.

In particular, attention will be paid to the potentially confusing plethora of animal welfare labels, including consideration as to whether harmonising measures might be appropriate so as to secure an EU-wide label, akin to that for organic produce. As for the international scenario, an elaboration on the opportunities and constraints imposed by the Agreement on Technical Barriers to Trade (TBT) will be presented, given that the distinction between 'technical regulations' and 'standards' under the TBT Agreement are relevant for the present purposes. In the international world trade context, moreover, it will be illustrated how the EU has shown a more animal welfare-oriented approach there than it has domestically.

The following discussion will demonstrate that international trade law and private standards are beginning to encourage dialogue on Union matters related to animal welfare labelling, by building powerful "bridges of knowledge" between public authorities and civil society. To conclude, the final argument of this contribution posits that legal answers to the CAP post-2020 and to animal welfare labelling schemes – as suggested in sections III and IV of this paper – can legitimate a more sustainable model of EU agriculture. Indeed, the concept of sustainability entails, among its multifaceted traits,<sup>23</sup> a model of agricultural practices meant as a supplier of public goods and characterized by a peculiar relationship with the search for quality – such as the demand for the spread of organic farming methods. Sustainability, moreover, is also correlated to a farming method capable of aligning citizens' interests with the EU legal and policy framework on welfarism, while enhancing and strengthening the Union's normative approach to animal dignity.<sup>24</sup> Such a model of EU agriculture can make the humanist and animalist perspectives cohesive in co-producing a more widely shared vision of fair and environmentally sustainable livestock farming in the years to come.

---

<sup>23</sup> On the multifaceted nature underpinning the concept of sustainability, see Marc A. Rosen, 'Issues, Concepts and Applications for Sustainability' (2018) 3 *Glocalism-Journal of Culture, Politics and Innovation* 1.

<sup>24</sup> On the potential underpinning and surrounding the concept of "dignity" in its relationship with animal welfare issues, see Anne Lansink, 'Technological Innovation and Animal Law: Does Dignity Do the Trick?' (2019) 10(1) *European Journal of Risk Regulation* 80.

## II. A MATTER OF WELFARE

From the 1976 Council of Europe Convention<sup>25</sup> to Directive 98/58/EC on the protection of farm animals,<sup>26</sup> EU legal documents on animal welfare have been anchored on a vision of animal welfare science<sup>27</sup> that was far from the developments successively brought to light by applied ethology,<sup>28</sup> cognitive science<sup>29</sup> and neuroscience.<sup>30</sup> These various fields of study have shaped animal ethics – that is the moral reflection concerning animals and human beings – by overcoming the classification of animals as property.<sup>31</sup> In the light of the similarity among beings shown by genetics, biological, evolutionary and behavioural sciences, artificial classifications of species have been opposed by the consideration that 'the real world consists only of individuals who are more or less closely related to each other by virtue of descent from one or more common ancestors'.<sup>32</sup> However, notwithstanding its growing appeal, animal sentience continues to be the fulcrum of inexhaustible *quérelles*, which oppose the theories advocating against all forms of animal exploitation in favour of arguments supporting the use of animals when they are treated humanely.

This last perspective on the animal condition comes from the techno-scientific domain, where the term 'animal welfare' has become an indicator of a characteristic of the individual animal as a potentially measurable state varying from the good or positive to the poor or negative.<sup>33</sup> Defined in these

---

<sup>25</sup> Council of Europe, 'European Convention for the Protection of Animals kept for Farming Purposes' (Strasbourg 1976).

<sup>26</sup> Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes [1998] OJ L 221/23.

<sup>27</sup> For some examples in this regard, see European Parliament (n 8) 16.

<sup>28</sup> Harold W. Gonyou, 'Why the Study of Animal Behavior Is Associated with the Animal Welfare Issue' (1994) 72(8) *Journal of Animal Science* 2171.

<sup>29</sup> Marc Bekoff, Colin Allen and Gordon M. Burghardt (eds), *The Cognitive Animal: Empirical and Theoretical Perspectives on Animal Cognition* (MIT Press 2002).

<sup>30</sup> Robert Francescotti, 'Animal Mind and Animal Ethics: An Introduction' (2007) 11 *The Journal of Ethics* 239.

<sup>31</sup> Gary L. Francione, *Animals, Property and the Law* (Temple University Press 1995).

<sup>32</sup> Robin I.M. Dunbar, 'What's in a Classification?' in Paola Cavalieri and Peter Singer (eds), *The Great Ape Project* (St. Martin's Press 1993) 110.

<sup>33</sup> Donald M. Broom, *Sentience and Animal Welfare* (CABI 2014).

terms, which take into account animals' feelings and needs, together with the possibility for animals to be in harmony with their environment, welfarism has acquired its formal affirmation in the ethical and legal domain. As such, it acts in today's Europe as an instrument of co-production between a value-laden science and a science-based ethics.<sup>34</sup>

This has happened for two reasons. Firstly, the core structure of the EU regulatory framework on animals refers directly to citizens' knowledge and values on the matter. Secondly, there has been a rise of interest and commitment to the 'EU knowledge society'<sup>35</sup> about animal welfare, which includes the use of expert knowledge, increased ethical awareness, and increased legal protection of animals.

This social construction of farm animal welfare<sup>36</sup> has turned welfarism into a matter of societal choice.<sup>37</sup> It finds its roots in the criticism strongly advanced in the 1960s by Ruth Harrison's famous book *Animal Machine*,<sup>38</sup> which argues against the detention, treatment, and suffering of food-producing animals used in intensive farming. After the investigation commissioned in 1965 by the British Government into the problems related to intensive livestock systems, the inquiry committee suggested what would become the best-known 'Five Freedoms', as later modified by the Farm Animal Welfare Council (FAWC).<sup>39</sup> The established freedoms from hunger and thirst, from discomfort, from pain, injury or disease, to express normal behaviour and

---

<sup>34</sup> Mariachiara Tallacchini, 'Gli animali nella "società europea della conoscenza": contraddizioni e prospettive' (2015) 4(12) *Animal Studies* 9.

<sup>35</sup> Brian Wynne et al., 'Taking European Knowledge Society Seriously', Report of the Expert Group on Science and Governance to the Science, Economy and Society Directorate (Office for Official Publications of the European Communities 2007).

<sup>36</sup> The welfare of animals used in experimentation, performing in circuses, confined in zoos, or of companion animals are beyond the remit of this work.

<sup>37</sup> Bettina Bock and Henry Buller, 'Healthy, Happy and Humane: Evidence in Farm Animal Welfare Policy' (2013) 53(3) *Sociologia Ruralis* 390.

<sup>38</sup> Ruth Harrison, *Animal Machine* (CABI 2013).

<sup>39</sup> FAWC (Farm Animal Welfare Council), 'Farm Animal Welfare in Great Britain: Past, Present and Future' (FAWC 2009) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/319292/Farm\\_Animal\\_Welfare\\_in\\_Great\\_Britain\\_-\\_Past\\_\\_Present\\_and\\_Future.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/319292/Farm_Animal_Welfare_in_Great_Britain_-_Past__Present_and_Future.pdf)> accessed 27 February 2019.

from fear and distress, have contributed through the years to the genesis and legitimization of animal welfare science as recognized in today's 'Innovation Union'.<sup>40</sup> From here, the inextricable link between facts and values that pointed to economic, safety and quality purposes<sup>41</sup> has fuelled the normative consideration and attention towards welfarism, helping the establishment and evolution of EU regulation and policy on the matter.

In the agri-food domain, the advent of the bovine spongiform encephalopathy (BSE) crisis, which undermined public confidence in food safety and in policy-making institutions,<sup>42</sup> made animal welfare one of the 'legitimate factors' essential for EU food safety policy – albeit in close connection with animal health – 'for the health protection of consumers and the promotion of fair practices in food trade'.<sup>43</sup> From here, the agricultural product quality policy<sup>44</sup> came to identify welfare among the 'most stringent farming requirements' for high quality foodstuffs.<sup>45</sup> The EU Commission (EC)<sup>46</sup> and the EP<sup>47</sup> strongly called for a framework of labelling being suitable to identify standardised animal health indicators and to encourage informed

---

<sup>40</sup> European Commission, 'State of the Innovation Union 2015', Directorate-General for Research and Innovation (European Union 2015).

<sup>41</sup> Corrado Carenzi and Marina Verga, 'Animal Welfare: Review of the Scientific Concept and Definition' (2009) 8 *Italian Journal of Animal Science* 21.

<sup>42</sup> Matteo Ferrari, *Risk Perception, Culture, and Legal Change. A Comparative Study on Food Safety in the Wake of the Mad Cow Crisis* (Ashgate Publishing 2009).

<sup>43</sup> European Commission, 'White Paper on Food Safety' COM(1999) 719 final, Points 15 and 70.

<sup>44</sup> European Commission, 'Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on agricultural product quality policy' COM(2009) 234 final.

<sup>45</sup> *Ibid* 4.

<sup>46</sup> Commission of the European Communities, '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' COM(2009) 584 final.

<sup>47</sup> European Parliament, 'Resolution on a Community Action Plan on the Protection and Welfare of Animals 2006-2010' (2006/2046(INI)), Points 26, 39 and 42; European Parliament, 'Resolution of 4 July 2012 on the European Union Strategy for the Protection and Welfare of Animals 2012-2015' (2012/2043(INI)), Points 49 and 67.

purchasing decisions consistent with the purposes of the EU's food policy.<sup>48</sup> Furthermore, animal welfare was framed within the CAP agenda as a statutory management requirement for the attribution of direct payments and as a high standard to be adopted for support in the framework of rural development policy.<sup>49</sup>

Article 13 TFEU reflects and summarizes this manifold picture, by balancing the common commitment towards animals' welfare needs with the Member States' religious rites and cultural preferences.<sup>50</sup> From a formal point of view, the disposition represents the mainstreaming of regulatory action and a parameter for the legitimacy of Union acts. This means that, when interpreting Union acts and guaranteeing the free movement of goods under national laws on animal welfare, animal protection should be prevalent, by taking 'legal precedence over all internal market policies' – as the EP itself affirmed.<sup>51</sup>

The importance of animal welfare as a point of general interest has also been confirmed by several rulings of the Court of Justice of the EU (CJEU).<sup>52</sup> In February 2019, for example, the Court ruled that Halal meat from animals slaughtered by religious ritual without having first been stunned cannot be

---

<sup>48</sup> See 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 [2002] OJ L 31/1, Article 5(1).

<sup>49</sup> See Eleonora Sirsi, 'Il benessere degli animali nel Trattato di Lisbona' (2011) 2 *Rivista di diritto agrario*, 220.

<sup>50</sup> For the several interpretations this article conveys, see Kea Ovie, 'Harmonized Approaches in Intensive Livestock Production Systems in Europe' in Gabriela Steier and Kiran K. Patel (eds), *International Farm Animal, Wildlife and Food Safety Law* (Springer 2017).

<sup>51</sup> European Parliament 2012 (n 47) Point 2.

<sup>52</sup> See, for instance, Case C-426/16 *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* EU:C:2018:335; Case C-355/11 *G. Brouwer v Staatssecretaris van Economische Zaken, Landbouw en Innovatie* ECLI:EU:C:2012:353; Case C-189/01 *H. Jippes, Afdeling Groningen van de Nederlandse Vereniging tot Bescherming van Dieren and Afdeling Assen en omstreken van de Nederlandse Vereniging tot Bescherming van Dieren v Minister van Landbouw, Natuurbeheer en Visserij* ECLI:EU:C:2001:420.

labelled organic, as it fails to observe the highest animal welfare standards.<sup>53</sup> As for national laws and practices, the term 'implementation' in Article 13 shall be interpreted as including national regulations affecting the application of Union law.<sup>54</sup> In these terms, a full implementation of Article 13 concurs with increasing public attitude and sensitivity towards the protection of farm animal welfare,<sup>55</sup> which has reached levels of deep awareness<sup>56</sup> amongst EU citizens over the last few years, extending also beyond animal welfare issues to embrace the reduction or even elimination of livestock production.<sup>57</sup>

However, the shift from the idea and legal classification of animals as 'agricultural goods' to their recognition as sentient creatures in Article 13 TFEU does not seem to have reached its full and complete normative guarantee and enforcement. When dealing with ideas and concepts stemming from such a multifaceted issue, in fact, legal thought on animal welfare struggles to find normative tools and ground-breaking solutions. Legislatures still appear stuck on legal anthropocentrism, intertwined with the protectionist view preserving present and future human interests rather than affirming and recognizing animal dignity.<sup>58</sup> In this respect, the analysis of two fields affected by this legal impasse, namely the CAP reform and

---

<sup>53</sup> Case C-497/17 *Oeuvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture et de l'Alimentation and Others* ECLI:EU:C:2019:137.

<sup>54</sup> Adelina Adinolfi, 'Il trattamento degli animali nel diritto dell'Unione europea tra interessi commerciali, protezione ambientale e "benessere": verso lo sviluppo di valori condivisi?' in *Scritti per Luigi Lombardi Vallauri* (Wolters Kluwer-CEDAM 2016), 39.

<sup>55</sup> A final report of the first EU-wide citizens' consultation on future priorities of the EU showed that 1 out of 7 citizens mentioned animal welfare among their hopes for the future EU priorities. 13% of citizens also affirmed that decisions taken at EU level for the welfare of animals would make them prouder to be European. See European Commission, 'Online Consultation on the Future of Europe Second Interim Report' (Kantar Public 2019).

<sup>56</sup> EU DG Health and Food Safety, 'Special Eurobarometer 442 Attitudes of Europeans towards Animal Welfare' (European Commission 2016).

<sup>57</sup> See, for example, Walter Willett et al., 'Food in the Anthropocene: The EAT–Lancet Commission on Healthy Diets from Sustainable Food Systems' (2019) 393(10170) *The Lancet* 447.

<sup>58</sup> Paola Sobbrío, 'The Relationship between Humans and Other Animals in European Animal Welfare Legislation' (2013) *Relations* 33.

animal welfare labelling, will allow reflection on how the solution of some legal aspects pertaining to them could help welfarism to gain full traction in the EU's current regulatory strategy.

### III. TOWARDS THE CAP POST-2020

Despite the several waves of reforms<sup>59</sup> that the CAP has undergone since the 1990s and the huge levels of citizens' involvement and interest in the topic,<sup>60</sup> the CAP has not fully reached effective outcomes on animal welfare issues.<sup>61</sup> Not only is animal welfare not yet perceived as a public good in itself,<sup>62</sup> but CAP's subsidies have also been criticized for leading to the intensification of animal production.<sup>63</sup> Yet, the 2003 CAP reform<sup>64</sup> resulted in a more animal welfare-orientated policy, by introducing the 'meeting standards' payment –

---

<sup>59</sup> For a deep and critical overview on the matter, see Joseph A. McMahon and Michael N. Cardwell (eds), *Research Handbook on EU Agriculture Law* (Edward Elgar Publishing 2015).

<sup>60</sup> ECORYS, 'Modernising and Simplifying the CAP. Summary of the Results of the Public Consultation' (European Commission-DG AGRI 2017).

<sup>61</sup> Compassion in World Farming, 'Animal Welfare Article of the Treaty on the Functioning of the European Union is Undermined by Absence of Access to Justice' (Compassion in World Farming, December 2014) <<https://www.ciwf.org.uk/media/7427367/article-13-tfeu-undermined-by-lack-of-access-to-justice-december-2014.pdf>> accessed 17 March 2019.

<sup>62</sup> The concept of "public goods" as goods non-excludable and non-rival entered the CAP in 2007 in the environmental context through greening under Pillar I.

<sup>63</sup> Eurogroup for Animals, 'EU Citizens Want Future CAP to Improve Animal Welfare' (Eurogroup for Animals, 12 July 2017) <<https://www.eurogroupforanimals.org/eu-citizens-want-future-cap-improve-animal-welfare>> accessed 12 March 2019).

<sup>64</sup> See Organisation for Economic Co-operation and Development (OECD), 'Analysis of the 2003 CAP Reform' (OECD Publications 2004).

to help farmers adapt to EU animal welfare standards based on minimum legislative requirements<sup>65</sup> – and enhanced animal welfare payments.<sup>66</sup>

After the specific support of Regulation 1257/1999<sup>67</sup> and the 2009 Direct Payment Regulation<sup>68</sup> for the practice of enhanced animal welfare standards, farm animal welfare in agriculture emerged in the EC's 2010 Communication on the CAP reform.<sup>69</sup> The section pertaining to one of the objectives of the (then) future CAP stressed the obligation for farmers to respect the high standards relating to animal welfare objectives requested by EU citizens.<sup>70</sup> One year later, the EP called for the new CAP to comply with Directive 98/58<sup>71</sup> due to the positive impact animal-welfare-friendly methods of production have on animal health, food quality and food safety.<sup>72</sup> The reformed CAP instruments adopted for the period 2014-2020, however, have been described as an 'opportunity missed [...] to continue along the path of

---

<sup>65</sup> See Council Regulation (EC) No. 1783/2003 of 29 September 2003 amending Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) [2003] OJ L270/70.

<sup>66</sup> Reg. 1783/2003. Both of the above-mentioned payments were embedded in Council Regulation (EC) No. 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2005] OJ L 277/1, Article 20(c)(i) and Article 40.

<sup>67</sup> Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations [1999] OJ L 160, Chapter VI.

<sup>68</sup> Council Regulation (EC) No. 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers [2009] OJ L 30, Article 68(1)(iv).

<sup>69</sup> European Commission, 'Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. The CAP towards 2020: Meeting the Food, Natural Resources and Territorial Challenges of the Future' COM(2010) 672 final.

<sup>70</sup> *Ibid* 7.

<sup>71</sup> European Parliament, 'Resolution of 23 June 2011 on the CAP towards 2020: Meeting the Food, Natural Resources and Territorial Challenges of the Future' (2011/2051(INI)), Point 41.

<sup>72</sup> *Ibid* Point 42.

animal welfare reform advocated by Fischler in 2003'.<sup>73</sup> Two peculiar aspects are in dispute in this context: the cross-compliance system and the Rural Development Regulation.<sup>74</sup>

The cross-compliance system, which correlates most CAP payments<sup>75</sup> to compliance with other rules on animal welfare, includes provisions for protecting calves<sup>76</sup> and pigs<sup>77</sup> and the general farm animals Directive. One concern pertains to the exception stated for those farmers who participate in the small farmer's scheme<sup>78</sup> under the Direct Payments Regulation.<sup>79</sup> In the event of non-compliance, this provision could prevent farmers who go beyond the minimum statutory management requirements from taking advantage of respecting animal welfare standards.<sup>80</sup> The exception might thus negatively affect the welfare of food producing animals.

As for the CAP rural development policy, concerns revolve around the 'animal welfare payments' (measure 14), which provide support for high standards of animal husbandry. This voluntary measure, renewable annually

---

<sup>73</sup> Diane Ryland, 'Animal Welfare in the Reformed Common Agricultural Policy: Wherefore Art Thou?' (2015) 17(1) *Environmental Law Review* 22, 43.

<sup>74</sup> Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 [2013] OJ L 347, Article 33.

<sup>75</sup> Direct payments, payments for restructuring and conversion of vineyards and green harvesting, and area related payments and animal welfare payments.

<sup>76</sup> Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves [2008] OJ L10/7, Articles 3 and 4.

<sup>77</sup> Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs [2008] OJ L47/5, Articles 3 and 4.

<sup>78</sup> Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008 [2013] OJ L 347, Article 92 para 2.

<sup>79</sup> Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 [2013] OJ L 347, Article 61.

<sup>80</sup> Ryland (n 73) 34.

from one to seven years, has not led Member States to robustly devote their budget to improving standards for animal agriculture.<sup>81</sup> In fact, although Article 33 of Regulation 1305/2013 recognises payments to farmers undertaking animal welfare commitments related to areas such as water, feed and animal care, housing conditions and outdoor access, in the CAP 2014–2020 only 35 out of 118 rural development programmes included measure 14.<sup>82</sup>

According to the assessment carried out in 2018 by the EU Court of Auditors on compliance with animal welfare legislation, the 'Animal Welfare' measure's cost-effectiveness was reduced because

it supported farms that did not respect certain minimum standards on pig welfare, there was a risk of deadweight due to overlap with the requirements of private schemes, and the common monitoring framework lacked indicators for improvements in animal welfare.<sup>83</sup>

The Court hence suggested challenging Member States on the use of the animal welfare measure in sectors where there is evidence of widespread non-compliance (such as pig tail docking), as well as the exchange of good practices and impact indicators for animal welfare measure for the programming period post-2020.

Working on the simplification and modernisation of the CAP, in 2017 the EC adopted *The Future of Food and Farming* policy document,<sup>84</sup> which focuses on challenges, objectives, and possible avenues for a "future-proof" CAP pointing to more sustainable agriculture. The proposed new model of the CAP is expected to be simpler, smarter and more modern, as well as suitable for facing critical health issues, such as those related to antimicrobial resistance (AMR) caused by inappropriate use of antibiotics. As regards animal welfare, the final aim is related to a better application of EU rules on

---

<sup>81</sup> Olga Kikou, 'CAP and Animal Welfare: Simply Incompatible' (EURACTIV, 22 February 2016) <<https://www.euractiv.com/section/agriculture-food/opinion/cap-and-animal-welfare-simply-incompatible/>> accessed 12 March 2018.

<sup>82</sup> European Court of Auditors, 'Animal Welfare in the EU: Closing the Gap between Ambitious Goals and Practical Implementation' (2018) Special Report No 31.

<sup>83</sup> Ibid 50.

<sup>84</sup> Commission, 'Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. The Future of Food and Farming' COM(2017) 713 final.

the matter, while bolstering standards through voluntary initiatives both within and outside Europe.<sup>85</sup> After the EP's 2018 Resolution<sup>86</sup> supporting this scenario and – of note – calling for the recognition of animal welfare as a 'public good', on 1 June 2018 the EC adopted a legislative proposal<sup>87</sup> delineating the plausible pattern for the CAP after 2020.

A positive change comes from establishing animal welfare as a clear objective under the policy's Pillar I.<sup>88</sup> The cross-compliance system is replaced by that of conditionality, which links full receipt of CAP support to the compliance by beneficiaries with basic standards concerning, *inter alia*, animal welfare. Specifically, under the system of conditionality, Article 11 states that

an administrative penalty shall be imposed on beneficiaries receiving direct payments [...] who do not comply with the statutory management requirements under Union law and the standards for good agricultural and environmental condition of land established in the CAP Strategic Plan [...] relating to [...] animal welfare.

Despite improvements compared to the current CAP and the public involvement requested when creating Member States' CAP Strategic Plans,<sup>89</sup> the Eurogroup for Animals disapproved of the proposal as it 'fails to effectively promote animal welfare'.<sup>90</sup> Specific concerns stressed by the NGO regard: the non-mandatory nature of pursuing animal welfare

---

<sup>85</sup> Ibid 24.

<sup>86</sup> European Parliament, 'Resolution of 30 May 2018 on the Future of Food and Farming' (2018/2037(INI)).

<sup>87</sup> Commission, 'Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council' COM(2018) 392 final.

<sup>88</sup> Ibid Article 6.

<sup>89</sup> Ibid Article 94.

<sup>90</sup> Eurogroup for Animals, 'CAP Takes One Small Step for Animal Welfare, When a Giant Leap is Required' (Eurogroup for Animals, 5 June 2018) <<https://www.eurogroupforanimals.org/cap-takes-one-small-step-for-animal-welfare-when-a-giant-leap-is-required>> accessed 13 March 2019.

measures/practices;<sup>91</sup> the lack of a defined budgetary allocation; the linkage of subsidies to farms' size rather than to farms' contribution towards animal and environment friendly production; and the lack of sufficient time in forming and approving National Strategic Plans. Also, the NGO Compassion in World Farming criticised the proposal for delivering a mere 'business-as-usual approach' that ends up fostering intensification and the productivist model, which increases flexibility without increasing accountability.<sup>92</sup>

Against these criticisms, the amendments voted for on 14 February 2019 by the EP's Committee on the Environment (ENVI Committee) went towards favouring welfarism in livestock farming.<sup>93</sup> Four major aspects were in fact addressed: the reduction of the density<sup>94</sup> of farms for which beneficiaries receive subsidies in order not to keep animals in extreme confinement; the ineligibility of industrial farm animal production for rural development funds; the adoption of a regulatory definition for 'Concentrated Feeding Operations' (CAFOs) as buildings where animals are confined and deprived of outdoor access; and the inclusion of the poultry directives and the regulation on slaughter (for animals killed on farms) to the mechanism of conditionality.

Although applauded for boosting the shift towards a 'more humane CAP'<sup>95</sup> inclined to promote animal friendly livestock farming, this series of amendments have not been taken into account by the Committee on

---

<sup>91</sup> In this regard, however, it is worth noticing that effectively mandatory animal welfare obligations are to be imposed by conditionality (albeit on a limited scale).

<sup>92</sup> Four Paws in Europe, 'CAP Proposal Fails EU Citizens on Animal Welfare' (Four Paws in Europe, 16 August 2018) <<https://www.vier-pfoten.eu/our-stories/eu-press-releases/cap-proposal-fails-eu-citizens-on-animal-welfare>> accessed 13 March 2019.

<sup>93</sup> Eurogroup for Animals, 'The European Parliament's Committee on the Environment Votes for more Humane CAP' (Eurogroup for Animals, 18 February 2019) <<https://www.eurogroupforanimals.org/the-european-parliaments-committee-on-the-environment-votes-for-a-more-humane-cap>> accessed 15 March 2019.

<sup>94</sup> Density (also called 'stocking density' or 'livestock density') refers to the number of animals kept on a given space.

<sup>95</sup> In this way, Eurogroup for Animals (n 93).

Agriculture (AGRI Committee). Its votes<sup>96</sup> adopted in April 2019 still appear somewhat problematic. They include, on the one hand, an amendment enabling good animal welfare practices in the food chain and, on the other hand, an eco-schemes incentive programme encouraging farmers who want to receive CAP subsidies to go beyond legal standards when it comes to the treatment of animals. As they are likely to encourage intensive farming production across Europe, rather than fostering a smarter agricultural sector, a much stronger commitment towards animal welfare is hoped for and strongly encouraged<sup>97</sup> to foster genuine higher welfare farming practices.

#### **IV. ANIMAL WELFARE STANDARDS AND LABELLING**

Whether the current reforms to implement the CAP post-2020 have the potential to strongly support the welfare of animals reared for food, the use of labelling to address animal welfare issues does represent a further legal pathway for overcoming the shortfalls of the CAP agenda. In light of this, the two topics explored below concern the increasing use of public and private animal welfare standards and the correlated need to label them on food products. Two main arguments will be posited in this respect.

The first argument holds that, although private standards may potentially undermine the "integrity" and implementation of public standards, it is worth noticing, on the other hand, that private initiatives can fuel a quality threshold to exceed public standards, leading to what has been termed a 'race to the top'.<sup>98</sup> It follows that public/private-sector partnerships have all the potential to create a two-way dialogue between public and private standards

---

<sup>96</sup> Jan Jakubov, 'Protecting Farmers and Quality Products: Vote on EU Farm Policy Reform Plans' (European Parliament News, 01 April 2019) <<https://www.europarl.europa.eu/news/en/press-room/20190401IPR34586/protecting-farmers-and-quality-products-vote-on-eu-farm-policy-reform-plans> > accessed 09 May 2019.

<sup>97</sup> Eurogroup for Animals, 'Baby Steps for Animal Welfare in the CAP – But Boat Missed for Systemic Change' (Eurogroup for Animals, 2 April 2019) <<https://www.eurogroupforanimals.org/baby-steps-for-animal-welfare-in-the-cap-but-boat-missed-for-systemic-change>> accessed 09 May 2019.

<sup>98</sup> Naiki (n 22).

that is capable of positively and efficaciously impacting on the welfare of food-producing animals in agriculture.

As for the issue of farm animal welfare labelling, a radical shift may come from using labelling as a "citizenship factor", where the reality of animal farming in the supply chain would emerge "literally", together with a renovated way of informing consumers about animal welfare credentials for animal products. Indeed, by conveying the implementation of standards, labels give consumers the opportunity to express their ethical considerations when making food choices.<sup>99</sup> From here, the purposes underpinning labelling schemes rely on consumer empowerment and information provision, while potentially triggering the achievement of higher animal welfare standards in livestock production systems.

### *I. On the Role of Standards*

Over the last three decades, an assortment of private animal welfare assurance schemes<sup>100</sup> have been initiated by the processing industry

---

<sup>99</sup> Morven G. McEachern and Gary Warnaby, 'Exploring the Relationship between Consumer Knowledge and Purchase Behaviour of Value-based Labels' (2008) 32 *International Journal of Consumer Studies* 414.

<sup>100</sup> In the light of the proliferation and evolution of private agri-food standards and the emergence of multiple organisations setting them, scholarly work has distinguished four key dimensions of diversity: 1) private company standards versus collective private standards; 2) standards for risk management versus standards for product differentiation; 3) standards directly linked to brands/symbols that are communicated to consumers ('visible' standards) versus business-to-business standards ('invisible' standards); and 4) standards that are set nationally versus standards that are set internationally (Spencer Henson and John Humphrey, 'Understanding the Complexities of Private Standards in Global AgriFood Chains' (2010) 46(9) *Journal of Development Studies* 1628). However, notwithstanding such an assortment of legal instruments, some common features allow to combine the vast array of them. Firstly, all standards involve measurements, and all of them constitute points of comparison. Secondly, they are always interconnected with economic activity, involving judgements about acceptability and the economic consequences deriving from their adoption. Moreover, they inevitably reflect social values and policy decisions, including values regarding health, trade, safety and the environment. Finally, standards provide norms for performance and acceptable deviations from it, so as to be associated with the idea of excellence

(slaughterhouses and dairy plants), primary producers' organisations (farmers' organisations), retailer chains, and various non-governmental organisations.<sup>101</sup> The force driving this normative flourishing<sup>102</sup> is mostly related to strategic considerations linked to retailer firms' reputation<sup>103</sup> in terms of proposing products of a high quality and safety,<sup>104</sup> as well as the need to respond to consumers' demand for animal-friendly products.<sup>105</sup> Examples of private schemes span from the Soil Association standards,<sup>106</sup> to the RSPCA Freedom Food Scheme<sup>107</sup> covering every aspect of animals' lives, to the GLOBALG.A.P. Integrated Farm Assurance (IFA) Standard, that is built on a system of modules enabling those producers that agree with its terms of reference.<sup>108</sup>

From a legal stance, the "hybrid nature" of animal welfare standards in agriculture relies on their voluntary status becoming *de facto* mandatory in

---

when they are used (Liora Salter, *Mandated Science. Science and Scientists in the Making of Standards* (Kluwer Academic Publishers 1988) 20-24).

<sup>101</sup> Isabelle Veissier, Andrew Butterworth, Bettina Bock and Emma Roe, 'European Approaches to Ensure Good Animal Welfare' (2008) 113 *Applied Animal Behaviour Science* 279.

<sup>102</sup> For an insightful analysis on the rise of private standards, see Fabrizio Cafaggi and Andrea Renda, 'Public and Private Regulation. Mapping the Labyrinth' (2012) CEPS Working Document No 370.

<sup>103</sup> Nicky Amos and Rory Sullivan, 'The Business Benchmark on Farm Animal Welfare' (BBFAW 2018) <[https://www.agrociwf.fr/media/7435685/bbfaw\\_report\\_2018.pdf](https://www.agrociwf.fr/media/7435685/bbfaw_report_2018.pdf)> accessed 06 March 2019.

<sup>104</sup> Carolina T. Maciel, *Public Morals in Private Hands? A Study into the Evolving Path of Farm Animal Welfare Governance* (Wageningen University 2015).

<sup>105</sup> Frauke Pirscher, 'Consuming for the Sake of Others: Whose Interests Count on a Market for Animal-friendly Products?' (2016) 29 *Journal of Agricultural and Environmental Ethics* 67.

<sup>106</sup> Soil Association, 'What are Organic Standards?' (Soil Association 2019) <<https://www.soilassociation.org/our-standards/what-are-organic-standards>> accessed 10 May 2019.

<sup>107</sup> RSPCA Assured, 'Good Welfare is Good Business' (RSPCA Assured 2019) <<https://www.berspcaassured.org.uk/>> accessed 10 May 2019.

<sup>108</sup> GLOBALG.A.P., 'A Modular Approach to Integrated Farm Assurance' (GLOBALG.A.P. 2019) <[https://www.globalgap.org/uk\\_en/for-producers/globalg.a.p./integrated-farm-assurance-ifa/](https://www.globalgap.org/uk_en/for-producers/globalg.a.p./integrated-farm-assurance-ifa/)> accessed 10 May 2019.

order for producers to gain access to the global food market.<sup>109</sup> As such, regulatory concerns have emerged as regards to the credibility, multiplicity and often lack of transparency of private standards developed so far,<sup>110</sup> due to the fact that private businesses' main priority is normally stakeholder profit rather than any corporate social responsibility. Further problems are correlated to the added cost implications<sup>111</sup> for, on the one hand, small and medium sized enterprises and farmers in developing countries to comply with private regulations and, on the other, for consumers that have to pay a higher price for the final product.

Moreover, this "normative toolbox" has evolved alongside the science-based public standards contained in the World Organisation for Animal Health's (OIE) Terrestrial Animal Health Code<sup>112</sup> (TAHC), which embeds general guiding principles for the welfare of animals in livestock production systems. What characterizes these international standards is their regular update – as new scientific information comes to light – through established transparent and democratic procedures that require the final approval of the World Assembly of Delegates at the OIE General Assembly.<sup>113</sup>

The co-existence of standards having a different nature poses questions of utmost significance.<sup>114</sup> Are private standards all science-based or partly market driven? Must public and private types of governance systems be

---

<sup>109</sup> Diane Ryland, 'Animal Welfare Standards in Agriculture: Drivers, Implications, Interface?' in Mariagrazia Alabrese, Margherita Brunori, Silvia Rolandi and Andrea Saba (eds), *Agricultural Law* (Springer 2017).

<sup>110</sup> Simon J. More, Alison Hanlon, Joanna Marchewka and Laura Boyle, 'Private Animal Health and Welfare Standards in Quality Assurance Programmes: A Review and Proposed Framework for Critical Evaluation' (2017) *Veterinary Record* doi: 10.1136/vr.104107.

<sup>111</sup> WTO, 'Private Standards and the SPS Agreement (2007) Note by the Secretariat. G/SPS/GEN/746.

<sup>112</sup> OIE, 'International Terrestrial Animal Health Code: Section 7 Animal Welfare' (OIE 2016), <<https://www.oie.int/standard-setting/terrestrial-code/>> accessed 10 May 2019.

<sup>113</sup> See OIE, 'OIE Animal Welfare Standards' (OIE 2019) <<https://www.oie.int/animal-welfare/an-international-network-of-expertise/>> accessed 31 August 2019.

<sup>114</sup> Elena Fagotto, 'Private Roles in Food Safety Provision: The Law and Economics of Private Food Safety' (2014) 37(1) *European Journal of Law & Economics* 83.

considered as complementary or in competition with each other? Explorations into such intricate quandaries are beyond the scope of this contribution. What is worth noticing here is that, although private standards may potentially impede OIE standards from being fully implemented, it is also true that private initiatives have the potential to push farmers to reach standards that are higher than the public international ones.<sup>115</sup> This sort of competition would surely turn out to be fruitful for the improvement and strengthening of farm animal welfare. This implies that for a successful regulatory diffusion, local contexts must be properly taken into account, to preserve diversity and reinforce the scientific basis of OIE standards.

This could be achieved through some sort of play of balances between private and public forces and values that mutually reinforce and re-shape each other, in order to effectively and legitimately co-operate within the agri-food chain. In this way, the flexibility of market-driven tools can point to the higher animal welfare standard agri-produce, albeit under the standardisation and oversight of science-based public tools.<sup>116</sup> This bidirectional relationship would be beneficial in preventing private animal welfare assurance schemes from conflicting with the public standards of the OIE, thus allowing each institution's values to co-exist and to be properly and efficaciously protected.<sup>117</sup>

An illustration of this may be found in the ISO technical specification 'ISO/TS 34700:2016, Animal welfare management – General requirements and guidance for organizations in the food supply chain'.<sup>118</sup> Following the cooperation agreement signed in 2011 with OIE, this technical specification is intended as a soft law tool of governance for business operators in the food supply chain to drive trade objectives and animal welfare in parallel, building a normative bridge of commitment on animal

---

<sup>115</sup> Naiki (n 22).

<sup>116</sup> Ryland (n 73).

<sup>117</sup> Carsten Daugbjerg and Linda C. Botterilli, 'Ethical Food Standards Schemes and Global Trade: Paralleling the WTO?' (2012) 31 *Policy* 307.

<sup>118</sup> ISO, ISO/TS 34700:2016. *Animal Welfare Management – General Requirements and Guidance for Organizations in the Food Supply Chain* (ISO Technical Committee for Food Products, Dember 2016) <<https://www.iso.org/standard/64749.html>> accessed 13 May 2019.

welfare management issues.<sup>119</sup> It supports the food and feed industry in developing an animal welfare plan that is aligned with the principles of the OIE TAHC and ensures the welfare of farm animals across the supply chain.

Undoubtedly, the voluntary character of such "soft" (not legally binding) tools poses intricate problems concerning their implementation and enforcement.<sup>120</sup> Nonetheless, although their lack of binding force may reduce the level of enforcement on the short-term, a rigid compliance with their prescriptions cannot be prevented, due to the reasons for their creation and spread. From this perspective, soft law can be considered mostly law rather than soft, becoming itself binding for the actors involved. Once it is set up in these terms, soft law is no longer in sharp opposition to hard law, but is rather bound to it in a complementary function.

In such a normative frame, ISO compliance constitutes a way for food business operators to demonstrate their commitment to animal welfare management, as their products meet the stringent, internationally recognized animal welfare standards set by the OIE. Moreover, as ISO standards respect the principles of openness, transparency, impartiality and consensus – as well as those of effectiveness, relevance and coherence – agreed to by the WTO's TBT committee, their use do not create obstacles to international trade.<sup>121</sup> What follows is that higher animal welfare standards are gradually becoming a prerequisite to enhancing business efficiency and profitability, while satisfying international markets and meeting consumers' needs and expectations.<sup>122</sup>

---

<sup>119</sup> Sandrine Tranchard, 'New ISO Specification for Better Management of Animal Welfare Worldwide' (ISO, 1 December 2016) <<https://www.iso.org/news/2016/12/Ref2147.html>> accessed 13 May 2019.

<sup>120</sup> For a general overview on this matter, see Linda Senden, *Soft Law in European Community Law* (Hart Pub Ltd 2004).

<sup>121</sup> IEC/ISO/ITU, 'International Standards & Trade Agreements' (IEC/ISO/ITU 2019) <[https://www.iso.org/files/live/sites/isoorg/files/standards/benefits\\_of\\_international\\_standards/WSC\\_International\\_Standards\\_%26\\_trade\\_agreements\\_2018.pdf](https://www.iso.org/files/live/sites/isoorg/files/standards/benefits_of_international_standards/WSC_International_Standards_%26_trade_agreements_2018.pdf)> accessed 02 September 2019.

<sup>122</sup> William Avis, 'Promotion of Animal Welfare in Commercial Agriculture' (2018) 4KD Helpdesk Report <[https://assets.publishing.service.gov.uk/media/5af97121ed915d0df19690c6/Promotion\\_of\\_animal\\_welfare\\_in\\_commercial\\_agriculture.pdf](https://assets.publishing.service.gov.uk/media/5af97121ed915d0df19690c6/Promotion_of_animal_welfare_in_commercial_agriculture.pdf)> accessed 31 August 2019.

## 2. Labelling Animal Welfare Standards

Alongside these initiatives, the simultaneous rise of markets for animal friendly products (including organic, freedom food, free range etc.) is triggering the demand for regulating animal welfare labelling.<sup>123</sup> Indeed, animal welfare logos in-store and on-pack that are multiplying in the marketplace often represent the consumer interface of a regulatory scheme.

At the international level, the TBT Agreement differentiates between the "technical nature" of the label<sup>124</sup> – which makes it able to interfere with the free movement of goods<sup>125</sup> – from standards by the fact that compliance with

---

<sup>123</sup> Mara Miele and John Lever, 'Civilizing the Market for Welfare Friendly Products in Europe? The Techno-ethics of the Welfare Quality Assessment' (2013) 48 *Geoforum* 63.

<sup>124</sup> According to international (GATT/WTO system) and EU business law, labelling rules are 'technical rules,' namely technical specifications 'contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures' (Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services [2015] OJ L 241, Article 1(c)). According to the TBT Agreement, "technical regulations" are 'mandatory laws or provisions specifying the characteristics of products, the processes or production methods for creating products or the terminology, symbols, packaging, marking, or labelling requirements for products' (TBT Agreement, Annexure 1.1, Apr. 15 1994, 1868 U.N.T.S. 120).

<sup>125</sup> For instance, the dispute on "Beef Hormone" that broke out between the EU and the US following the enacting of Directive 96/22, forbade the use of hormones to feed cattle, and created a non-tariff barrier for beef-trading countries such as the US and Canada. Provided that they labelled beef to inform the customer on the presence of hormones, after losing in appeal, the EU suggested the removal of the import ban. In view of the US refusal, the EU decided to keep the ban, facing severe commercial sanctions. (On this matter, see Denise Prévost, 'The Role of Science in Mediating the Conflict between Free Trade and Health Regulation at the WTO: The EC – Biotech Products Dispute' in Marjolein B.A. van Asselt, Michelle Everson and Ellen Vos (eds), *Trade, Health and the Environment. The European Union Put to the Test* (Routledge Taylor & Francis Group 2014). In 2009, after a series of WTO dispute consultations, settlement panels, arbitration proceedings, and

the former is mandatory, while with the latter it is voluntary.<sup>126</sup> In such a view, single national laws on labelling that require non-harmonized mandatory rules might be included in the category of the so-called 'technical barriers to trade'. This normative distinction has led the EU to proceed very cautiously in implementing animal welfare regulations without violating WTO rules. As clear as the distinction between mandatory versus voluntary compliance may appear, however, the question of when a measure is a technical regulation and when it is a standard remains an open and controversial issue. Two disputes concerning the WTO's approach to animal welfare are exemplary in this respect.

In the *US – Tuna I*<sup>127</sup> and *II*<sup>128</sup> cases, a threshold issue was whether the US measure that monitored and enforced a private voluntary label on tuna, the 'dolphin-safe' label,<sup>129</sup> fell within the definition of a 'technical regulation'. While, in the first case, the Panel took a pro-trade approach, by considering the US measure as a technical regulation because it contained some mandatory features, in 2012 the Appellate Body held that the dolphin safe label was consistent with the TBT. Significantly, not only did the Appellate Body determine that intentionally setting nets on dolphins is 'particularly harmful' to them,<sup>130</sup> it also found that the measure's goal to protect dolphins was legitimate and as such could justify restricting trade.<sup>131</sup> Put differently,

---

formal appeals, the EU signed a memorandum of understanding (MOU), granting market access to US exports of beef raised without the use of growth promotants. The United States, instead, have suspended higher duties for imported EU products listed under the dispute (see Renée Johnson, 'The U.S.-EU Beef Hormone Dispute' (2015) CRS Report <<https://fas.org/sgp/crs/row/R40449.pdf>> accessed 09 May 2019).

<sup>126</sup> See the TBT Agreement, Annex I.

<sup>127</sup> *WTO United States: Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products – Report of the Panel* (2011) WT/DS381/R, para 2.12.

<sup>128</sup> *WTO United States: Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products - Report of the Appellate Body* (2012) WT/DS381/AB/R, para 303-06.

<sup>129</sup> Dolphin Protection Consumer Information Act, 16 U.S.C. § 1385(d)(1) (1999) (providing for the use of a voluntary "Dolphin Safe" label if certain criteria are met, such as prohibiting intentional setting on dolphins for tuna harvested in the ETP).

<sup>130</sup> See *US–Tuna Report of the Appellate Body*, para. 289, 297.

<sup>131</sup> *Ibid* para 341-42.

the TBT Agreement recognised the possibility for governments to set labelling schemes with technical requirements to meet the (non-exhaustive) list of 'legitimate objectives', which include measures to protect animal life or health or the environment.<sup>132</sup> Although referring to wildlife, this line of reasoning – permitting countries' laws to distinguish between production methods as they relate to animals – may also be considered applicable to farm animal practices and measures prohibiting certain practices that are more harmful to animals.<sup>133</sup>

Certainly, the interrelation of lay knowledge in this field with the everyday practices of eating and shopping constitutes a big challenge to the emergence of labelling as a method of farm animal welfare governance.<sup>134</sup> The use of ethical labels is in fact connected to motivation and understanding, which are inevitably affected by tacit ethical imperatives (such as shopping, eating, cooking, and care of self),<sup>135</sup> demographic characteristics, and country differences.<sup>136</sup> It has been shown, for instance, that animal welfare labelled products – such as meat and dairy products communicating animal welfare

---

<sup>132</sup> However, it was not until 2018 that the *US-Tuna II* case was finally resolved in favour of the full WTO-compatibility of the 'dolphin-friendly' label, after a 2015 appeal by Mexico concerning the US regime establishing the conditions (namely, the 'eligibility criteria,' the 'certification requirements' and the 'tracking and verification requirements') for labelling tuna products as 'dolphin safe' (See WTO, 'United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products' (WTO 2019) <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds381\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm)> accessed 27 June 2019).

<sup>133</sup> Andrew Lurié and Maria Kalinina, 'Protecting Animals in International Trade: A Study of the Recent Successes at the WTO and in Free Trade Agreements' (2015) 30(3) *American University International Law Review* 431.

<sup>134</sup> Adrian B. Evans and Mara Miele, 'Enacting Public Understandings: The Case of Farm Animal Welfare' (2019) 99 *Geoforum* 1.

<sup>135</sup> Adrian Evans and Mara Miele, 'Between Food and Flesh: How Animals Are Made to Matter (and not matter) within Food Consumption Practices' (2012) 30(2) *Environment and Planning D-Society and Space* 298.

<sup>136</sup> Klaus G. Grunert, Sophie Hieke and Josephine Wills, 'Sustainability Labels on Food Products: Consumer Motivation, Understanding and Use' (2014) 44 *Food Policy* 177.

standards – can lead to positive consumer reactions,<sup>137</sup> in spite of the socio-economic constraints pertaining to the costs associated with labels.<sup>138</sup>

At the same time, however, it is also true that an overload of information could negatively affect the adequacy of the information itself,<sup>139</sup> which is particularly true in cases where an EU animal welfare labelling scheme overlaps with other quality standards (such as organic farming or environmental protection). Simplification and the framing of information are instead considered as adequate and useful tools through which to provide citizens with clear and meaningful information, in the light of the insights coming from behavioural sciences literature.<sup>140</sup> Yet, to date, a plethora of animal welfare labelling schemes – variously focusing on animal welfare only (e.g. Freedom Food, Neuland), on aspects including animal welfare (e.g. organic certification, Label Rouge), or on aspects with positive side effects of animal welfare (e.g. Protected Designation of Origin Certification) – continues to proliferate across Europe.

The German Animal Welfare Association, for instance, has developed a two-level (basic and premium) voluntary animal welfare label for fattening pigs, with the aim of strengthening consumer confidence in livestock farming and ensuring openness and transparency along the entire production chain.<sup>141</sup> In alliance with partners from industry, academia and the extension services, the label – used throughout Germany – is based on high standards that provide

---

<sup>137</sup> Carolien Hoogland, Joop de Boer and Jan J. Boersema, 'Food and Sustainability: Do Consumers Recognize, Understand and Value On-package Information on Production Standards?' (2007) 49 *Appetite* 47.

<sup>138</sup> While the costs of mandatory labelling are generally passed on to all consumers, in a voluntary scheme, those who wish to have the information pay for it.

<sup>139</sup> To address this issue, the UK charity Compassion in World Farming is campaigning for clear food labelling, by providing consumers with a quick guide on how to read the labels available on animal products. See Compassion in World Farming, 'Know Your Labels' (Compassion in World Farming 2019) <<https://www.ciwf.org.uk/your-food/know-your-labels/>> accessed 13 May 2019.

<sup>140</sup> Cass R. Sunstein and Lucia A. Reisch (eds), *The Economics of Nudge* (Routledge 2017).

<sup>141</sup> Federal Ministry of Food and Agriculture, 'The BMEL supports introduction of an independent animal welfare label' (Federal Ministry of Food and Agriculture 2019) <[https://www.bmel.de/EN/Animals/AnimalWelfare/\\_Texte/Tierschutzlabel.html](https://www.bmel.de/EN/Animals/AnimalWelfare/_Texte/Tierschutzlabel.html)> accessed 13 May 2019.

better animal welfare for housed animals. Likewise, voluntary labelling and registration systems have been developed by *Agrarmarkt Austria Marketing GmbH* (AMA-Marketing) for animal production.<sup>142</sup> Their hallmark lies on the three pillars of high quality, transparent origin and independent inspections.

Against this unharmonized landscape, moreover, a further issue comes from the fact that the EU has been showing over the years a more animal welfare-oriented approach on the international stage than it has domestically. In 1998, for instance, the CJEU ruled that a Member State observing the 1988 Recommendation concerning cattle<sup>143</sup> could not

rely on Article 36 of the Treaty and, in particular, on the grounds of public morality, public policy and/or the protection of the health or life of animals laid down therein, in order to justify restrictions on the export of live calves with a view to preventing those calves from being reared in the veal crate systems used in other Member States.<sup>144</sup>

This ruling is clearly emblematic of how, at least in that period, the EU took trade interests as its point of departure, thus limiting the possibility for Member States to address non-economic interests as opposed to the objectives of free trade.<sup>145</sup>

In 2009, in contrast, the EU law banning the import and export of most products made from seals<sup>146</sup> was aimed in part at improving animal health and welfare, while grounding animal protection on widely held ethical beliefs about the nature of cruelty towards animals. Specifically, Regulation 1007/2009 was justified by the acknowledgment that the hunting of seals had generated concerns among EU citizens and governments due to the 'pain,

---

<sup>142</sup> See ANCO, 'ANCO Knowledge: What Matters to Quality Pork Producers' (ANCO, 11 July 2016) <<https://www.anco.net/pig-production-quality-pork-producers/>> accessed 15 May 2019.

<sup>143</sup> Council of Europe, Recommendation concerning cattle adopted by the Standing Committee on 21 October 1988.

<sup>144</sup> Case C-1/96 *The Queen v Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming Limited* ECLI:EU:C:1998:113.

<sup>145</sup> For an analysis of the judgment, see Katrin Vels, 'Trade Restrictions on Animal Welfare Grounds in the European Union' (2004) RGSL Working Papers No 18.

<sup>146</sup> Regulation (EC) 1007/2009 of the European Parliament and of the Council of 16 September 2009 on Trade in Seal Products [2009] OJ L 286/36.

distress, fear and other forms of suffering which the killing and skinning of seals' impose.<sup>147</sup> In the WTO dispute settlement process<sup>148</sup> (*EC-Seal Products*) that arose on this matter, Canada and Norway contested the EU ban as a trade restrictive measure violating WTO law since it was based on anti-cruelty concerns. The Panel, however, recognised it as a measure falling within the ambit of public morals under Article XX(a) of the 1994 General Agreement on Tariffs and Trade (GATT).<sup>149</sup> It also affirmed that the protection of public morals related to seal hunting is a legitimate objective pursuant to the TBT Agreement.<sup>150</sup>

With animal welfare thus acknowledged as a matter of public morals, the "relative character" attributed to the concept of public morals itself has been key to base the former on traditions, values, or sensitivities of public opinion, rather than on scientific tests.<sup>151</sup> In this way, the 'animal turn' – namely, the phenomenon in the natural and social sciences that has focused intellectual attention on the status of animals and on human relationships with them – has made its way into international law.<sup>152</sup>

As a consequence, in light of the EU's unharmonized labelling framework and the potential pathway that occurred at an international level, a stronger commitment towards animal welfare labelling could represent a turning point for governance system and market regulation in the EU. As early as in 2007, the Council acknowledged the need to introduce 'a label to recognise compliance with EU and/or recognised equivalent animal welfare standards,

---

<sup>147</sup> Ibid Recital 4.

<sup>148</sup> *WTO European Communities: Measures Prohibiting the Importation and Marketing of Seal Products – Report of the Appellate Body* (2014) WT/DS400/AB/R, WT/DS401/AB/R, para 2.196, 5.138.

<sup>149</sup> Ibid para 7.639

<sup>150</sup> Ibid para 7.419-420.

<sup>151</sup> Xavier Fernández-Pons and Carolina Lembo, 'The Case EC – Seal Products: The WTO Dispute Settlement System Before a "Trilemma" Between Free Trade, Animal Welfare, and Rights of Indigenous Peoples' in Alberto do Amaral Júnior, Luciana de Oliveira Sá Pires and Cristiane Lucena Carneiro (eds), *The WTO Dispute Settlement Mechanism* (Springer 2019).

<sup>152</sup> Katie Sikes, 'Globalization and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection' (2016) 5(1) *Transnational Environmental Law* 55.

including the possibility of voluntary animal welfare labelling'.<sup>153</sup> The following impact assessment,<sup>154</sup> carried out in 2009 by what was then known as the Directorate-General for Health and Consumers<sup>155</sup> (DG SANCO), identified the harmonised requirements for voluntary animal welfare claims and/or a Community animal welfare label as the most feasible options to be implemented. As the EC acknowledged,

improved information among consumers offers the prospect of a virtuous cycle where consumers create a demand for food products sourced in a more animal welfare friendly manner, which is transmitted through the supply chain back to the primary producer.<sup>156</sup>

Perhaps the establishment of the new 'Platform on Animal Welfare'<sup>157</sup> to (among other things) share information and encourage dialogue on Union matters related to animal welfare might contribute to build "bridges of knowledge" between authorities and civil society. This is because innovation – understood in its broad meaning – entails a comprehensive and evolutionary approach to food information, aimed at 'covering information provided also by other means than the label'.<sup>158</sup> It must be said, however, that

---

<sup>153</sup> Council of the European Union, 'Press Release. 2797th Council Meeting Agriculture and Fisheries' (2007) 15.

<sup>154</sup> European Commission, 'Commission staff Working Document accompanying the Report from the Commission to the European Parliament, the Council, the 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' SEC(2009) 1432.

<sup>155</sup> The current name is Directorate-General for Health and Food Safety (*DG SANTE*).

<sup>156</sup> European Commission, 'Commission staff Working Document accompanying the Report from the Commission to the European Parliament, the Council, the 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' COM(2009) 584 final, 2.

<sup>157</sup> Commission Decision of 24 January 2017 establishing the Commission Expert Group "Platform on Animal Welfare" [2017] OJ C 31/61.

<sup>158</sup> Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC,

labelling still remains the most useful means through which to make an informed choice in the agri-food market.

To date, the only EU-wide system of compulsory labelling on animal welfare is that for table eggs, based on the EU legislation for laying hens.<sup>159</sup> Although the EU strategy 2012-2015 on animal welfare does not plan to extend compulsory labelling on animal welfare beyond eggs, several proposals<sup>160</sup> have been advanced for mandatory animal-welfare labelling, also in light, from a legal viewpoint, of its compatibility with WTO rules,<sup>161</sup> as the *US-Tuna II* dispute exemplifies.

Against the lack of clarity, credibility and standardization that animal-welfare disclosure seems to be affected by, a harmonised labelling program within market regulation<sup>162</sup> is considered suitable to, first, reduce transaction costs in consumers' search for high-welfare animal products; second, offer retailers attractive logistical simplicity; and third, improve consumers' ability to compare information, while increasing their valuation of enhanced-welfare animal products. Harmonization, additionally – be it reached at

---

Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 [2011] OJ L 304, Recital 14. On this Regulation, see Alessandra Di Lauro, 'Labels, Names and Trade Marks' in Luigi Costato and Fernando Albisinni, *European and Global Food Law* (Wolters Kluwer 2016); Silvia Bolognini, 'Linee-guida della nuova normativa europea relative alla "fornitura di informazioni sugli alimenti ai consumatori"' (2012) 4 *Le nuove leggi civili commentate* 613.

<sup>159</sup> Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens [1999] OJ L 203.

<sup>160</sup> Sean P. Sullivan, 'Empowering Market Regulation of Agricultural Animal Welfare through Product Labeling' (2013) 19 *Animal Law* 391.

<sup>161</sup> RSPCA, 'Responding to the Government's Consultation on Health and Harmony: The Future for Food, Farming and the Environment in a Green Brexit' (2004) 9 <[https://www.rspca.org.uk/webContent/staticImages/Downloads/RSPCA\\_Responses\\_Brexit.pdf](https://www.rspca.org.uk/webContent/staticImages/Downloads/RSPCA_Responses_Brexit.pdf)> accessed 13 May 2019.

<sup>162</sup> Paul T.M. Ingenbleek, David Harvey, Vlatko Ilieski, Victor M. Immink, Kees de Roest and Otto Schmid, 'The European Market for Animal-Friendly Products in a Societal Context' (2013) 3(3) *Animals (Basel)* 808.

national (as requested by the Italian NGO Legambiente<sup>163</sup>) or supra-national level (as suggested by the Federation of Veterinarians of Europe<sup>164</sup> (FVE)) – may provide through its organisational structure a continuous monitoring of claim compliance through the enhanced-welfare producers' pursuit of their own self-interests.<sup>165</sup>

To this end, the Farm Animal Welfare Forum<sup>166</sup> (FAWF) has called for mandatory, clear and unambiguous labelling of all animal-derived products according to method of production, so as to give consumers information on the potential for high welfare that the farming system offers when the system is well-managed. Such universal and harmonised labelling would ensure maximum transparency about the provenance of animal-based foods and the welfare of the animals that produced them. Others suggested, instead, the adoption of a labelling scheme in the form of a certified logo or a rating system to align consumers' consumption habits with their farm animal welfare preferences.<sup>167</sup> Further proposals<sup>168</sup> supported the design of a label

---

<sup>163</sup> CIWF Italia, 'Metodo di allevamento in etichetta: una bussola per acquisti consapevoli' (CIWF Italia 2019) <[https://action.ciwf.it/page/36021/data/1?supporter.appealCode=CAPWE\\_IT0119&utm\\_campaign=labelling&utm\\_source=link&utm\\_medium=media](https://action.ciwf.it/page/36021/data/1?supporter.appealCode=CAPWE_IT0119&utm_campaign=labelling&utm_source=link&utm_medium=media)> accessed 31 August 2019.

<sup>164</sup> According to FVE, the introduction of EU-wide Animal Welfare Labelling should involve essential basic principles, such as higher ranked labels for animal friendly housing, the promotion of this labelling by the market, and the widespread of this information to consumers. See FVE, 'Recommendations of the FVE on Animal Welfare Labelling', FVE/08/doc/036 <[https://www.fve.org/cms/wp-content/uploads/fve\\_08\\_036\\_concept\\_paper\\_aw\\_labeling\\_jan09.pdf](https://www.fve.org/cms/wp-content/uploads/fve_08_036_concept_paper_aw_labeling_jan09.pdf)> accessed 31 August 2019.

<sup>165</sup> Brian Roe and Ian Sheldon, 'Credence Good Labeling: The Efficiency and Distributional Implications of Several Policy Approaches' (2007) 89 *American Journal of Agricultural Economics* 1020.

<sup>166</sup> FAWF, 'Labelling Food from Farm Animals. Methods of Production Labels for the European Union', A Paper for Consultation with Stakeholders <[http://www.fawf.org.uk/sites/default/files/2018-09/FAWF\\_Labelling\\_Food\\_FIN\\_AL.pdf](http://www.fawf.org.uk/sites/default/files/2018-09/FAWF_Labelling_Food_FIN_AL.pdf)> accessed 13 May 2019.

<sup>167</sup> Ariane Kehlbacher, Richard Bennett and Kelvin Balcombe, 'Measuring the Consumer Benefits of Improving Farm Animal Welfare to Inform Welfare Labelling' (2012) 37 *Food Policy* 627.

<sup>168</sup> Paola Fossati, 'Labeling Animal Welfare, Empowering Citizens' Ethics' (2011) Intervention at the *International Conference Innovating Food, Innovating the Law. An*

providing the maximum amount of animal welfare information, for example about animal-treatment practices.

All these ideas exemplify the potentiality for animal welfare labelling to restore a more trustworthy relationship between consumers and foods and food companies, as well as to rethink and reshape the concept of traceability. The flourishing of a (sort of) "ethics traceability" could allow EU citizens' ethical considerations to surface, contributing to enhancing and reinforcing awareness of animal distress, while fostering technological changes towards more welfare-friendly forms of husbandry.

## V. FINAL REMARKS

Animals deserve protection according to two criteria, namely value and subjectivity.<sup>169</sup> In spite of much more attention than in the past towards animals' feelings and needs, the EU legal framework currently in force remains paradoxical in its facets. Due to a form of compassion approach to the matter – largely focused on human sentiment and the importance of animals for citizens' well-being – EU animal law does not yet rely on an innovative model of human-animal relationship that might favour human moral responsibility and agency toward animals.<sup>170</sup> Although animal welfare emerges in the EU regulatory framework as a recognised legal obligation, it is neither fully meant as an alignment between science and society nor fully guaranteed by a complete implementation of Article 13 TFEU.<sup>171</sup> From this

---

*Interdisciplinary Approach to the Challenges in the Agrifood Sector* <<https://www.slideshare.net/FondazioneBassetti/06-innovating-food-innovating-the-law-paola-fossati>> accessed 06 March 2019.

<sup>169</sup> Value-based protection is part of the broader framework of biodiversity protection; subjectivity is ascertained through the study of central nervous systems and behaviours (biology, neurology, and ethology). Luigi Lombardi Vallauri, 'La questione animale come questione filosofico-giuridica' (2014) 2 *Rivista di filosofia del diritto* 521, 523.

<sup>170</sup> Richard L. Cupp, 'Moving Beyond Animal Rights: A Legal/Contractualist Critique' (2009), *Legal Studies Research Paper Series Paper Number 2009/11*, 27-84.

<sup>171</sup> Mariachiara Tallacchini, 'Dignità, etica science-based, democrazia: la tutela animale nella società europea della conoscenza' in Giuseppe A. Chizzoniti and Mariachiara Tallacchini (eds), *Cibo e religioni: diritto e diritti* (Libellula 2010).

perspective, intellectual and practical efforts of dialogue with public powers may give animal welfare those forms of civic accreditation it still lacks.

The domains our analysis has focused on may fruitfully contribute to the prosperity and resilience of future farming practices in their approach to animal dignity. As regards the future "CAP architecture", the ongoing work by the EP is hoped to foster a smarter and more sustainable agricultural sector, taking into full consideration the knowledge value of animal sentience. In particular, there is scope for optimising synergies between the future CAP and the overall animal welfare legislation, by boosting the system of conditionality and making animal welfare one of the specific objectives of rural development between 2021 and 2027.<sup>172</sup> These actions will permit efforts to 'improve the response of EU agriculture to societal demands on [...] animal welfare,'<sup>173</sup> as set forth by the proposals for the CAP's post-2020 period. As for welfarism-related information, a paradigm shift may come from using labelling as a matter of "ethical citizenship", suitable to reflect the ethical and critical nature of food consumption, while bolstering compliance by farmers and food business operators with high animal welfare standards.

In this respect, for instance, the new 2018 Regulation on organic farming<sup>174</sup> appears to suitably fit in with the perspective of enhancing animal welfare standards in EU farming, supporting farmers in adopting sustainable agricultural practices and empowering citizens through labelling. Indeed, as

---

<sup>172</sup> See European Court of Auditors (n 82) 9.

<sup>173</sup> European Commission, 'The Future Is Rural: The Social Objectives of the Next CAP' (European Commission, 18 February 2019) <[https://ec.europa.eu/info/news/future-rural-social-objectives-next-cap-2019-feb-15\\_en](https://ec.europa.eu/info/news/future-rural-social-objectives-next-cap-2019-feb-15_en)> accessed 21 December 2019.

<sup>174</sup> Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 [2018] OJ L 150. The new Regulation represents solely the 'Basic Act' on organic agriculture, as the details of the legal text are planned to be developed in 2019 and 2020 throughout delegated and implementing acts. For its genesis and analysis, see Luca Leone, *Organic Regulation—A Legal and Policy Journey between Europe and the United States* (Libellula 2019); Nicola Lucifero, 'Il regolamento (UE) 2018/848 sulla produzione biologica. Principi e regole del nuovo regime nel sistema del diritto agroalimentare europeo' (2019) *Rivista di diritto agrario*, 477.

Recital 3 of the new Regulation 2018/848 explicitly affirms, 'the objectives of the organic production policy are embedded in the objectives of the CAP'. By depicting the organic field as 'an overall system of farm management and food production that combines best environmental practices, a high level of biodiversity, the preservation of natural resources and the application of high animal welfare standards,<sup>175</sup> the reformed legal framework allows for the health and well-being of farm animals to gain terrain within the agri-food domain. In fact, the legal text recognises the need to take any 'preventive measures at every stage of production, preparation and distribution, where appropriate [...] to avoid negative effects on [...] animal health'.<sup>176</sup>

From the ban of chemically produced allopathic medicinal products (including antibiotics),<sup>177</sup> to the promotion of housing conditions and husbandry practices satisfying animals' behavioural needs, up to the guaranteeing of permanent access to open-air areas for exercise,<sup>178</sup> the new rules aim at avoiding or keeping to a minimum any suffering, pain or distress at all stages of animals' lives.<sup>179</sup> In such a perspective of 'contributing to high animal welfare standards and, in particular, to meeting the species-specific behavioural needs of animals,<sup>180</sup> the EU organic logo<sup>181</sup> comes as the symbol that brings and embeds peculiar guarantees about high standards of animal welfare.

Certainly, problems in the regulation exist and may neglect animal welfare considerations. The perpetuation of poor animal management practices – such as breeding, tethering and mutilation – can end up undermining, rather than ensuring, consumer confidence in organic animal products across the EU. At the same time, though, the specific conditions requested for those

---

<sup>175</sup> Ibid Recital 1. The general principles which organic production relies on are listed in Article 5.

<sup>176</sup> Ibid Recital 24 and Article 3(4).

<sup>177</sup> Ibid Recital 43.

<sup>178</sup> Ibid Recital 44.

<sup>179</sup> Ibid Annex II, Part II.

<sup>180</sup> Ibid Article 4, let. e.

<sup>181</sup> Ibid Article 33.

practices<sup>182</sup> – together with the quest for additional rules<sup>183</sup> for bovine, ovine, caprine, and equine animals (as well as for poultry, rabbits and bees)<sup>184</sup> – are emblematic of the increasing attention the EU legislator is devoting towards achieving higher animal welfare standards in more sustainable farming practices.

Beyond the field of organics, as this contribution has explored, the definition – at national or communitarian level – of a unique, voluntary, species-specific labelling that makes the husbandry method explicit is strongly supported as a further proactive step towards the welfare of animals reared for food. It is meant as a compass that can orient consumers' purchases and facilitate informed choices, by promoting those farming systems that are more respectful of animals and provide them with better living conditions. Such a form of labelling – in the Italian NGO Legambiente's words – is what puts citizens in contact with what occurs at the first step of the agri-food chain, as well as with the animal from which food comes from.<sup>185</sup> Regulation on food information is emblematic in this regard. It suggests providing Union consumers, in the context of a future Union strategy for the welfare of animals, with information on the stunning of animals, because of the increasing interest in implementing the animal welfare rules at the time of slaughter.<sup>186</sup>

In conclusion, addressing the legal issues related to the CAP post-2020 and labelling could permit animal welfare questions to be properly addressed and integrated into the EU food policy (or 'Common Food Policy'<sup>187</sup>), in the pursuit of more sustainable methods of husbandry in EU agriculture. A well-

---

<sup>182</sup> Ibid Recital 44.

<sup>183</sup> For example, requirements for stocking density, minimum surfaces and characteristics, as well as technical requirements for housing.

<sup>184</sup> Reg. 2018/848, Recital 45.

<sup>185</sup> This vision is at the core of the petition launched by the NGOs Compassion in World Farming (CIWF) and Legambiente in January 2019. See CIWF Italia (n 161).

<sup>186</sup> Reg. 1169/2011, Recital 50.

<sup>187</sup> Olivier De Schutter, 'Towards a Common Food Policy for the European Union. The Policy Reform and Realignment that is Required to Build Sustainable Food Systems in Europe' (IPES FOOD Panel-International Panel of Experts on Sustainable Food Systems 2019).

structured CAP framework, together with harmonized labelling rules, can definitely help define the "normative identity" of EU philosophy on animal welfare, allowing the humanist and animalist perspectives to converge and interact with each other. Both citizens' faith in legislators and animal industry's competitive advantage can only benefit from EU legislation and policy that are positively constructive in approaching farm animal welfare and dignity.