

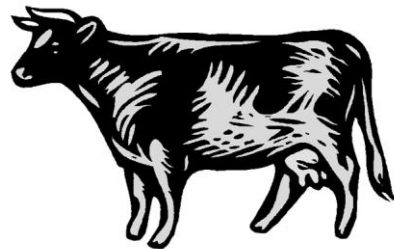


Ethical impact on EU animal welfare policies: the example of Article 13

*Etisk påverkan på djurskyddspolicies i EU: exemplet Artikel
13*

Elisabeth Tjärnström

Ethology and Animal Welfare Programme



Swedish University of Agricultural Sciences
Department of Animal Environment and Health
Ethology and Animal Welfare programme

Skara 2010

Student report 336

*Sveriges Lantbruksuniversitet
Institutionen för husdjurens miljö och hälsa
Etologi och Djurskyddsprogrammet*

Studentarbete 336

ISSN 1652-280X



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Elisabeth Tjärnström

Student report 336, Skara 2010

Grund C, 15 hp, Etologi och djurskyddsprogrammet, Självständigt arbete i biologi, kurskod EX0520

Instructor: Bo Algiers, Department of Animal Environment and Health, Faculty of Veterinary Medicine and Animal Science, Swedish University of Agricultural Sciences; P.O. Box 234, 53223 Skara, Sweden.

Supporting instructor: Maria Ferrara, European Commission, Directorate General for Health and Consumers, Unit D5 Animal Welfare, Rue Froissart 101, 1040 Brussels, Belgium.

Examiner: Frida Lundmark, Department of Animal Environment and Health, Faculty of Veterinary Medicine and Animal Science, Swedish University of Agricultural Sciences; P.O. Box 234, 53223 Skara, Sweden.

Keywords: animal welfare, Lisbon Treaty, policies, animal ethics

Sveriges lantbruksuniversitet

Fakulteten för veterinärmedicin och husdjursvetenskap

Institutionen för husdjurens miljö och hälsa

Avdelningen för etologi och djurskydd

Box 234, 532 23 SKARA

E-post: hmh@slu.se, **Hemsida:** www.hmh.slu.se

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Abstract

On December 1st 2009 the Lisbon Treaty entered into force, and through Article 13, the recognition of animals as sentient being was given a more visible part in the very core of EU law. This was an effect of a political decision to commit to the issue, partly because of the will to further harmonize the EU market, but also due to increased societal concern for the wellbeing of animals. Over the last decades, ethical awareness is growing in many countries, one reason being new scientific discovery. This influences legislators and policy makers to take proper action, and in this way, ethics and science often work together as the very basis for the development of new legislation and policies. There is yet to be seen what the actual consequences of Article 13 will be, since the legal obligation remains the same and there are still some reservations in it. However, the increased visibility of animal welfare as an issue and the fact that it is today included in- and cohesive with many other policy areas, gives it weight and legitimacy as an EU agenda. Article 13 will probably be able to work as an anchor for new policy initiatives in animal welfare, and as a means to stress proper implementation of existing legislation. There are however future challenges ahead for those who work with promoting animal welfare, both in the EU and at other levels, because of the need to integrate it with economic growth and competitiveness. Keys to further success for EU animal welfare policies include increased collaboration with other areas in order to develop a common understanding and more cohesive goals, as well as having clear arguments and a solid scientific basis.

Sammanfattning

Den första december 2009 trädde Lissabonfördraget i kraft, och genom Artikel 13 fick erkännandet av djur som kännande varelser en mer synlig plats i själva kärnan av EU:s lagstiftning. Detta var en effekt av ett politiskt ställningstagande att ta sig an frågan ännu mer, delvis på grund av viljan att ytterligare harmonisera marknaden i EU, men även på grund av ett ökat engagemang för djurs välbefinnande bland EU:s invånare. De senaste decennierna har den etiska medvetenheten vuxit i många länder, bland annat på grund av nya vetenskapliga upptäckter. Detta har i sin tur påverkat beslutsfattare, vilket visar på hur etik och vetenskap samspelar och bildar en del av grunden för ny lagstiftning. Det återstår att se vad effekterna av Artikel 13 verkligen kommer att bli i praktiken, då den inte egentligen innebär någon hårdare laglig förpliktelse samt fortfarande innehåller vissa förbehåll. Det är dock så att djurs välfärd i och med Artikel 13 blivit en synligare fråga, och detta tillsammans med faktumet att den idag är integrerad i-, och sammanhängande med många andra policyområden, ger frågan vikt och legitimitet i EU:s agenda. Artikel 13 kommer troligen att kunna fungera som en stöttepelare för nya djurskyddsinitiativ, och som en hjälp för att understryka att nuvarande lagstiftning efterföljs ordentligt. Samtidigt finns det många utmaningar att tackla framöver för de som arbetar för djurskydd/djurvälfärd, både i EU och på andra plan, bland annat på grund av behovet att integrera frågan med ekonomisk tillväxt och konkurrenskraft. Ledord för att Europeiska djurskyddspolicys ska fortsätta att vara framgångsrika, är bland annat att samarbeta ännu mer med andra områden för att uppnå ett slags samförstånd och mer samverkande mål. Andra nycklar är att ha tydliga argument och en stark vetenskaplig grund.

Abbreviations:

EC: European Commission

OIE: World Organisation for Animal Health

EU: European Union

FAO: Food and Agriculture Organization of the United Nations

EFSA: European Food Safety Authority

DG: Directorate General

MEP: Member of the European Parliament

CAP: Common Agricultural Policy

CoE: Council of Europe

IFC: International Finance Corporation of the World Bank Group

SPS (agreement): Sanitary and Phytosanitary (agreement)

WTO: World Trade Organization

GATT: General Agreement on Tariffs and Trade

NGO: Non-Governmental Organization

1. INTRODUCTION

There is a growing focus on animal welfare in European society, which can be said to reflect a general increase in ethical concerns and awareness (EC, 2006:1). According to the European Commission, issues such as animal welfare have even become part of a "cultural attitude" for European society (EC, 2006:1). The recognition of animals as sentient beings is the basis for every activity that the European Commission carries out in the field of animal welfare (Gavinelli & Ferrara, 2009). According to the same authors, animals have an intrinsic value in our society, and in turn, society has a duty to protect and ensure them a good life. The ultimate goal of policy-makers is therefore to give proper attention to-, and increase understanding of this moral duty, and to make society aware of the ethical value of animals and the need to care for them respectfully (Gavinelli & Ferrara, 2009). European Institutions have also a political responsibility towards the citizens to ensure a respectful treatment of animals, all these aspects making animal welfare a valid point on the EU agenda (Gavinelli & Ferrara, 2009). In line with the European approach, the World Organisation for Animal Health (OIE) recognise that "*animal welfare is a complex, multi-faceted public policy issue that includes important scientific, ethical, economic and political dimensions*", aspects which need to be taken into account in the EU policy-making process (EC, 2006:1).

According to Main et al. (2009), science, ethics and policy are the three main approaches to animal welfare, since the concept includes scientific components of assessing welfare, philosophical matters about human actions and responsibilities towards animals, and the issues of defining minimum standards and promoting improvements by policies and legislation. The relationship between these three components is also evident in the fact that results from scientific research together with ethical analysis, often work together as a basis for legislation and policies (Main et al., 2009).

1.1. Background

1.1.1. Lisbon Treaty

In the light of enlargement and a Europe in change, there was a need for an amendment of the Amsterdam Treaty that entered into force in 1999 (EC, 2010:1). With the Lisbon Treaty the constitutional framework was reviewed and updated, with the main aim to "*enhance the efficiency and democratic legitimacy of the Union and improve the coherence of its action*" (EC, 2010:1). One way of increasing democracy is the inclusion of "European Citizen's Initiative", meaning that at least one million citizens from a significant number of Member States can initiate a topic to be dealt with by the European Commission (EC, 2010:1). Some other changes include more power to the European Parliament, legal binding of the Charter of Fundamental Rights, and an increased emphasis on climate change combat (EC, 2010:1). There is also focus on increased safety and transparency, while making the EU a stronger international force (EC, 2010:1). The Lisbon Treaty came into force on December 1st 2009 and constitutes an Article stating that because animals are recognised as sentient beings, full regard should be paid to their welfare requirements in certain policy areas (EC, 2010:1).

1.1.2. Article 13

Article 13 can be found in Title II of the Treaty under "Provisions having General Application", and states that: *"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"* (EC, 2007:1).

1.1.3. Animal ethics

According to Main et al. (2009), animal welfare ethics is all about examining the morality of human actions towards the other animals. The recognition of animals as "sentient beings" meaning that they have the ability to feel and suffer, implies that we have duties and responsibilities towards them and makes animal welfare a moral issue (Webster, 2007). Anthony (2003) states that us humans have for centuries excluded the other animals from the moral realm and created boundaries to shut them out, based for instance on the perception that they lack intellect, rationality or a language similar to ours. These have all been seen as criteria for moral value, and thus, a common opinion has been that they have no (Anthony, 2003). Recently however, there has been an increased questioning of this view (Webster, 2007).

In the two most recent amending Treaties (Amsterdam and Lisbon), there is a clear recognition of animals as sentient beings. For this to be stated in the very basis of EU law, reflects that there is now a consensus among most Europeans that because animals can feel in a way that is homologous to us, we have a responsibility of taking good care of them (EC, 2006:2). However, there are many different moral views upon our relationship with animals and what that implies (Webster, 2007). Broglio (2009) claims that animal feelings or sentience, represent the main ethical motive for enhancing animal welfare and preventing cruelty to animals, and in the EU, a widely-held view is that the use of animals by humans is acceptable provided that it is humane (Hemsworth, 2007). According to Webster (2007), ethics is a complex issue since consensus cannot be met on what is universally right or wrong. Instead what we have to deal with is what the majority of society can agree upon as morally acceptable (Webster, 2007). This is something that tends to change over time, and over the past decades there has been a change in many people's attitudes to animals, partly due to an increased knowledge of the way animals can suffer (Garner, 2010). Hemsworth (2007) also points out that animal ethics today is not just about what duties we have towards other animals, but also about duties towards the people involved in animal use, as well as towards society in general.

1.1.4. Animal Welfare Science

Although belief in animal sentience is not a new idea, it has recently been given a greater rational support through the demonstration of behavioural, physiological and neurological similarities between animals and humans, stemming from biological research since the 18th century through to the present day (see e.g. Lawrence, 2008). Scientific evidence helps advancing the moral status of animals, and is important in determining people's attitudes towards them (Mejdell, 2006). This and the fact that animal welfare science inevitably

includes ethical considerations, for example in order to say what a "good life" constitutes, make the link between animal welfare science and ethics evident (Appleby and Sandoe, 2002). Furthermore, the linkage is apparent in the origin of animal welfare science, which according to Duncan & Fraser (1997), was something that arose from society's moral concerns about the way animals were treated. These concerns grew along with increased intensification and mechanization, and a change from farming to production from the 1950's onward (Duncan & Fraser, 1997). According to Keeling (2005), the scientific definitions of animal welfare most frequently used nowadays are by Broom (1996) stating that: *"An animal's welfare is its state as regards to its attempts to cope with its environment"*, and Duncan (1996): *"Welfare depends on how the animal feels"*.

Welfare encompasses the animal's health and general physical condition, its mental state, its biological fitness and its ability to cope with any adverse effects of the environment in which it finds itself (Gavinelli & Ferrara, 2009). Good animal welfare practices include prevention and treatment of disease and injury, prevention and mitigation of pain, distress and other negative states, and providing diets and living conditions that are suited to the needs and nature of animals (FAO, 2010). Even though animals have been domesticated for a long time, they still have not had time to adapt to all the living conditions we provide them with, leading to problems with compromised welfare and productivity (Hemsworth, 2007). Mejdell (2006) means that there is danger in aiming to produce big quantities of cheap food for an increasing human population, since the production systems often used come with a high risk of stress, disease and suffering for the animals. According to the Worldwatch Institute (2004) in Rawles (2006), global meat production has increased more than fivefold since 1950, and factory farming is the fastest growing method of animal production worldwide (Rawles, 2006). At the same time however, there is in today's society an increasing desire to have animal production that is ethically, practically and economically sustainable (Keeling, 2005).

Many welfare issues cross disciplinary boundaries and thus research in the field has had to become multidisciplinary (Lawrence, 2008). A current trend in welfare science is to focus less on design criteria in the environment, and more on animal- and outcome-based measures such as for example body condition scores (Keeling, 2005). There is also much research ongoing regarding methods to assess welfare in a credible and feasible manner (Main et al., 2009). Welfare can be influenced by many factors and thus measures include physiological-, immunological-, productivity- and behavioural indicators (Main et al., 2009).

1.1.5. EU policy making

Both at national, European and international levels, legislation in the area of animal welfare is increasing, mainly because of public concern and scientific progress (Blandford & Fulponi, 1999; EC, 2006:1). The EU has within the last decades adopted a series of legislation regarding animal welfare, including for example the protection of animals -kept for farming purposes, -during transport, -at the time of killing, and -used for scientific purposes (EC, 2010:2). The welfare of wild animals is part of the legislation through for example a directive on zoo animals and initiatives prohibiting the trade in seal products (EC, 2010:3). Although the welfare of pet animals does not fall under the responsibilities of the EU legislator, the EU has also recently banned the import and intra-community trade of cat and dog fur products (EC, 2010:4). Science as well as ethical considerations have

been and still are important basis for evolving European policies and legislation from something that before simply aimed at ensuring animal protection by avoiding unnecessary pain and suffering, to actual promotion of a "good life" for them (Gavinelli & Ferrara, 2009). According to the same authors, what constitutes a good animal life and what our duties to them are, are ethical questions that constitute the very core of animal welfare (see also Nordenfelt, 2009). Ethical reflections are also present in deciding which parameters to use as measures of animal welfare, and how to interpret the results (Fraser, 2003). However, the latest available scientific information is the most important basis for new policies and recommendations, and lack of information should indicate which areas need to be prioritised (EC, 2006:1).

Policy making in the European Commission has led the way to integrate animal welfare in other areas of public concern, such as animal health, food safety and sustainability (Gavinelli & Ferrara, 2009). The same authors state that different initiatives have been taken to make policy formulation in the animal welfare sector more inclusive and consultative. According to them it is also important to consider that animal welfare is a "horizontal issue", meaning that many different areas are affected by it and that cooperation is essential to generate progress in the field. In European policy-making, factors such as socio-economics, environment, tradition and ethics, have to be considered and integrated in order to reach efficient and widely acceptable decisions (Gavinelli et al., 2007). An open and constructive debate with the public and stakeholders is most necessary, and it is also important for legislation to be transparent and comprehensive in order to be successfully implemented (Gavinelli & Ferrara, 2009). Another important objective for EU policy makers is to make sure that policies and legislation are constantly evolving and updated to reflect evolving societal values (Gavinelli & Ferrara, 2009).

In Europe there is a tendency to move away from legislation as the main mechanism for improvement, towards a more collective action including all parties with interests in animal welfare (Lawrence, 2008). Two examples are animal welfare standards incorporated in many farm assurance schemes as prerequisites for producers to find markets for their products, and business corporations that have developed their own welfare guidelines (Lawrence, 2008). These developments are often achieved with input from scientists, and there is continuing policy interest in applying science to provide answers to specific animal welfare issues (Lawrence, 2008). For the EU, EFSA's risk assessments provide decision-makers with a sound scientific basis for new policy improvements and initiatives (Algers, 2009; Smulders, 2009). Recently, 13 new reports have been published, covering e.g. fish welfare during stunning and slaughter and on the farm for different species (EFSA, 2010).

1.2. Objective

The Lisbon Treaty now constitutes a part of the updated legal basis of the European Union, and in it, the matter of animal welfare has been moved from a Protocol to an Article (number 13) (EC, 2007:1). Many people involved in the animal welfare field now wonder what the practical effects will be of this amendment, if any. This is a question of particular interest to the European Commission, since this is the executive body of the EU, responsible for proposing, upholding and verifying the implementation of the legislation (EC, 2010:5). An analysis of Article 13 and its possible effects and impact, could be of assistance when reflecting on how future initiatives and actions could and should be adjusted in order to be most successful. Therefore, this is the main aim of this paper. To be

able to make this analysis one need firstly to look at whether there are any legally significant changes and implications of the Article. It is also relevant to elucidate what is currently happening in the field of animal welfare, and since it is an issue that spans over-, and is part of many other areas of interest, it is also crucial to look beyond happenings in just this field to concurrent as well as sometimes conflicting trends and interests. The interconnectedness between science, ethics and policy, stated above as important components of animal welfare, is also discussed, since an understanding of this is another aspect related to the future of EU animal welfare work and policy making.

1.3. Questions

The questions that will be answered are as follows:

1. -What is the meaning and significance of Article 13?
2. -What is the possible impact of Article 13 on EU animal welfare work and policies?
3. -Are there any ethical implications of this amendment?

2. METHODOLOGY

An inventory and inquiry of EU policies and documents together with interviews and discussions with staff of the European Commission, led to a compilation over current trends and phenomenon affecting the field of animal welfare. This together with information from other international animal welfare actors and bits of relevant scientific literature, was the basis of the analysis.

3. FACTORS DETERMINING AN EVENTUAL IMPACT

3.1. The legal significance

3.1.1. Location

A similar text as the one in Article 13 could be found in the previous Treaty, however, it has now been upgraded from a Protocol (annexed to the Treaty) to an Article (a provision having general application), and is thus situated in the main part of the Treaty (EC, 2007:1). According to Commission Official* (2010), this does not in fact change its legal status, but is more likely a result of a political decision to make the issue more visible. An increased visibility gives however the matter of animal welfare more weight and stronger legitimacy, which could imply a more binding nature to the recognition of animals as sentient beings, and thus able it to work as a premise for legal reasoning (Commission Official, 2010). It will probably also be able to function as a strong basis for negotiations with policy areas that may have other priorities, and as a foundation for future initiatives in animal welfare (Commission Official, 2010). The placing in the Treaty puts animal welfare on equal footing with other key principles mentioned in the same title e.g. to promote

* The views in this paper expressed by Commission Officials may not in any circumstances be regarded as an official position held by the European Commission, but are based on personal experience and not on jurisprudence or judgements of the Court of Justice. According to Article 19 of the Treaty on European Union, it remains the exclusive competence of the European Court of Justice to interpret EU law authoritatively.

gender equality, guarantee social protection, protect public health, combat discrimination, promote rural and sustainable development, ensure environmental and consumer protection and protect personal data (EC, 2007:1). These are all topics that should be considered "generally" in EU policy making, and as of the adoption of the Lisbon Treaty, animal welfare as an issue should be given the same status and priority (EC, 2007:1).

3.1.2. Wording

It is however interesting to notice that the wording differs between these topics. Some are written "must be integrated", others "taken into account" and regarding animal welfare: "pay full regard" (EC, 2007:1). It is also interesting to reflect upon what "paying full regard" actually means in practice, i.e. in what way this should be done. One of the main ways to include different aspects into the developing of policies, is through the process of Impact Assessment. Before the Commission proposes a new initiative that has a substantial political impact, an Impact Assessment has to be carried out in order to assess the potential economic, social and environmental consequences of the proposal (Commission Official, 2010). This is a process that highlights advantages and disadvantages of policy initiatives, and works as grounds for the political decision-making. This also enhances coherence across policy areas and is part of the aim to mainstream policy, i.e. make them more inclusive of each other (Commission Official, 2010). Animal welfare should always be considered when new policies might affect it, as is stated both in the Impact Assessment Guidelines (under the pillar of Environmental Protection, see EC 2009:2), and in the Treaty (EC, 2007:1). Article 13 does not imply that animal welfare have to be considered to a greater extent than it was already supposed to. However, it could probably be used as a means to further stress that it is really being done (Commission Official, 2010).

Another way of paying regard to animal welfare in practice, is by the Inter- and Intraservice consultation (within and with other DG's) that is an obligatory part of decision-making in the Commission (Commission Official, 2010). In these processes, other services of the Commission are consulted and can have their say about a proposal, and this is an important platform to stress animal welfare considerations (Commission Official, 2010). It is also common practice to consult and listen to the stakeholders who speak "on behalf of" the animals, which is yet another way of including inputs on animal welfare in the policy development. According to Commission Official (2010), it could also be relevant to look at the Explanatory Memorandum that always accompany a legal draft in the process of adoption. There it is possible to read about the work behind the proposal and everything that has been considered in the decision-making, for instance whether animal welfare aspects have been taken into account or not (Commission Official, 2010).

Compared to the similar text in the previous Treaty, in Article 13 three new policy areas have been included: fisheries, technological development and space policies (EC, 2007:1). This makes the matter more inclusive, however, the EU still operates under the principle of conferred competences and subsidiarity, meaning that the Member States have some national freedom in dealing with "sensitive issues" such as animal welfare, that risk conflicting with the country's norms, traditions and culture (EC, 2007:1). In the Article, it is stated that respect should be paid to "*the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage*" (EC, 2007:1). According to Commission Official (2010), it is hard to grasp exactly what falls under that scope, since it is in fact not determined in advance

but more by a case to case analysis. These “exceptions” from the emphasis on animal welfare, make it possible for Member States to defend certain practices that some might consider questionable from a welfare point-of-view (Commission Official, 2010).

3.2. Actions in the animal welfare area

3.2.1. EU activities

In 2006 the Commission adopted the first Community Action Plan on the Protection and Welfare of Animals (2006-2010), which was the first document where the different aspects of the EU policy on animal welfare were summarized (EC, 2006:2). It described strategic lines and future actions in the field, and is currently subject to an ongoing evaluation of the EU policy on animal welfare (EC, 2010:6). This evaluation is an important step in establishing a new EU strategy on animal welfare, to be adopted hopefully by the end of 2011 (EC, 2010:6). In the European Parliament, an independent evaluation of the same Action Plan has been carried out, mainly by the Swedish MEP Marit Paulsen (EP, 2010). It highlights what should be prioritised in the coming strategy, some of the suggested initiatives being: addressing welfare issues in all animals, better enforcement of current legislation, solutions to solve trade distortions and unfair competition both within Member States and with third countries, more resources provided to research on animal welfare as to provide a sound basis for EU initiatives, the creation of a coordinated European scientific network for animal welfare, and to make animal welfare initiatives more consistent within other policy areas such as agriculture, biodiversity and environment (EP, 2010). Maybe the most important initiative however, is the one of a general EU animal welfare law, which should be adopted as to "reflect Article 13 and provide horizontal mechanisms for protecting all animals" (EP, 2010). Another EU activity that could have a large impact on animal welfare is the revision of the Common Agricultural Policy which is due 2013 (EC, 2010:7). Animal welfare is already included in it as a top priority, but it is yet to be seen what measures will be included in the new revision so as to strengthen the considerations (EC, 2010:7). There is also an ongoing plan to launch a new animal health law in 2011, where animal welfare principles should be considered (EC, 2010:8).

3.2.2 Council of Europe

The Council of Europe started its work on animal protection in the 1960's, and their Conventions were the first international legal instruments to lay down ethical principles for the transport, farming and slaughtering of animals, as well as for the use of them as pets and in experiments (CoE, 2010). These Conventions constituted a basis for European legislation both at national and EU level, and still influence it by working as a reference on certain issues. Behind the Council's work on animal welfare is an emphasis on respect for animals as an important ideal in the CoE Member States, and as "one of the obligations upon which human dignity is based" (CoE, 2010). At the moment however, the Council has suspended its activities in the area, meaning that there will be no further developments in their areas of responsibility (CoE, 2010). Nonetheless, according to personal communication with Dr David Pritchard, Chairman of the Standing Committee of the Convention for the Protection of Animals kept for Farming Purposes (T-AP) (100521), the legal obligation of the Conventions remain and Member States can still be questioned for not implementing them.

3.2.3. OIE

The World Organisation for Animal Health (original name Office International des Epizooties, OIE) is today the internationally recognised standard setting body for animal health. Within its global mandate to improve animal health worldwide for terrestrial and aquatic animals, the OIE has also adopted international guidelines on animal welfare (Vallat & Pastoret, 2009). It has 175 Member Countries and Territories which makes it a highly representative and influencing force. The OIE works within the framework of the WTO SPS Agreement, in order to “safeguard the food supply and ensure the health security of the world trade in animals and animal products” (Vallat & Pastoret, 2009). The same authors state that it is the connection with health that is the basis for OIE's commitment to address welfare issues. Health is affected by poor welfare in many ways, but mainly because of the negative impacts that stress has on the immune system (Main et al., 2009). Initially, OIE's work prioritised animals farmed on land, but the field is widening to include e.g. laboratory animals, fish, wildlife and stray dogs (OIE, 2010). Although the OIE standards only cover certain aspects of animal welfare and are not binding for the member countries, their endorsement and implementation have signalled a near-global acceptance of animal welfare as a significant issue (OIE, 2010). Moreover, the OIE standards on animal welfare represent a tool and a reference point to discuss animal welfare in bilateral or multilateral trade agreements (Thiermann & Babcock, 2005).

3.2.4. FAO

The Food and Agriculture Organization of the United Nations works mainly to defeat world hunger and is the leader of international efforts in this scope (FAO, 2010:1). In practice they help developing countries and countries in transition to modernize and improve agriculture, forestry and fisheries practices, in order to ensure good nutrition for all (FAO, 2010:1). The FAO has since founded in 1945 had a special focus on development of rural areas, and works increasingly in the animal welfare field because of the way improved welfare practices correspond with aims to promote rural development and diminish world hunger (FAO, 2009; FAO, 2010:2). In 2006 they also released the report "Livestock's long shadow", regarding the impact of the livestock sector on the environment (FAO, 2006).

3.2.5. IFC

The International Finance Corporation is the private sector arm of the World Bank Group, and works as *"the largest multilateral provider of financing for private enterprises in developing countries"* (IFC, 2010). In 2006 they launched a "Good Practice Note on Animal Welfare in Livestock Operations" (IFC, 2006:1), and ever since then they have worked for the promotion of good welfare standards as a means of creating business opportunities for their clients (IFC, 2010). In their opinion, animal welfare can help them improve their businesses and gain competitive advantage, due to increased productivity and a change in consumer preference (IFC, 2006:2). They also see this work as a part of their mission to contribute to development in the world's poorest countries, since many people in rural areas rely on animals for their livelihood (IFC, 2006:1). Good standards of animal welfare are also considered a prerequisite for sustainable agricultural production, which according to the IFC create opportunities for trade worldwide (IFC, 2006:1).

3.2.6. National examples

Some countries in the EU as well as globally, take own initiatives to strengthen their animal welfare legislation and display an increased concern for animal welfare by for instance banning practices such as farming of fur animals. Examples are Great Britain and Austria, where there is already a complete ban on fur farming (Djurens Rätt, 2009). Other examples are the ban on piglet castration without anaesthesia in Norway and Switzerland (Djurens Rätt, 2010), and the conventional cages for laying hens that has been banned in both Switzerland and Sweden for decades (Sandoe & Christiansen, 2008). An international example is Chile, who was the first country to agree on voluntary collaboration on animal welfare with the EU, within the scope of the SPS bilateral agreement (Caporale et al., 2005). In this context, Chile has represented an example for its region, leading other Latin American countries to establish technical collaborations and networking on animal welfare. Following this trend, Chile adopted a national general law on the protection and welfare of animals in 2009 (BCN, 2009).

3.3. Concurrent interests

Animal health is a key component of animal welfare and vice versa (Vallat & Pastoret, 2009) and can therefore be used as a strong argument for improving welfare. The EU Animal Health Strategy for 2007-2013 is based on the principle that "prevention is better than cure", with the aim to put greater focus on precautionary measures, disease surveillance, controls and research (EC, 2007:2). This increases focus on animal welfare and highlights the way bad health and wellbeing in animals negatively affect the health of humans, as well as economy. To promote healthier animals is increasingly crucial for public health, since both the number of people in the world and the animals we use constantly grow in numbers, meaning that we come in contact with, and affect each other in many ways (Vallat & Pastoret, 2009). The same authors state that it has become easier for pathogens to circulate with increased globalisation and consumerism, making people vulnerable to diseases that originate in animals. This is stressed in the White Paper on Food Safety (adopted in 2000), wherein animal welfare was fully integrated in the EU food chain policy (EC, 2000). In this paper it is also stated that improved welfare can lead to not only reduced incidence of disease, but also higher yields and better product quality (EC, 2000).

In order to further enhance the advantage that EU food products have in terms of high quality, protection of animal welfare is included in the top priorities of the Common Agricultural Policy (EC, 2010:7). In the CAP it is stated that animals are healthier and produce better food if they are well treated, wherefore the policy offers incentives to farmers to improve their animals' welfare. There is a trend towards more self-regulation which is supposed to stimulate producers to achieve a higher level of welfare and get them involved in welfare-initiatives (EC, 2010:7). In the CAP there is also the principle of cross-compliance which means that farmers have to live up to certain standards to receive direct farm payments.

Health and food safety are also linked to consumer issues. The Consumer Policy Strategy for 2007-2013 aims to empower consumers, enhance their welfare and protect their interests (EC, 2007:3). Lately there is evident increase in public concerns about animal welfare (e.g. Lawrence, 2008; Main et al., 2009; Blandford & Fulponi, 1999), and there is a growing number of people paying attention to animal welfare issues in many countries

(Main et al., 2009). European citizens rank animal welfare highly in terms of importance (on average 8 out of 10) and believe that animal friendly products are healthier and of higher quality (Blokhuys et al., 2008). According to Gavinelli et al. (2007), European consumers think of farm animal production not just as a means of food, but as something fundamental to other key social goals such as food safety and quality, safeguarding environmental protection, sustainability, and enhancing the quality of life in rural areas. According to Rollin (2001), this emerges from changes in animal use as well as in social demography and culture, and one important reason is according to Lawrence (2008) the growing acceptance that animals are sentient. Some consumers also express concerns regarding the possible lack of empathy in modern farming practices, due to intensification and mechanization (Bock et al., 2007).

Fraser (2001) believes that society expects farmers to look after their animals with diligence and care, and points out that public trust and approval of husbandry systems is highly based on this. Modern production methods, with their more industrial, factory-like farming systems challenge these notions, which can lead to diminished trust expressed by consumers (Bock et al., 2007). For retailers and brands, it becomes more and more important that they are trusted, which can lead to investment in their good names and in procedures to maintain it (Brom, 2006). The relationship between consumers and food products is fragile, since the market for a certain product can easily collapse if consumers doubt the safety of it (Vallat & Pastoret, 2009). The industry has therefore an interest in responding adequately to concerns expressed by their consumers (Brom, 2006). Many people express the will to pay more for welfare-friendly products, it has however been noticed that people's views are not always reflected in their consuming habits (e.g. Mejdell, 2006). A reason for this can be that information about the products is often not available, making it difficult for consumers to make informed decisions (Eurobarometer, 2005).

Animal welfare also complies with the EU priorities to enhance sustainable practices and to promote rural development. According to Keeling (2005) as well as Rawles (2006), to ensure an acceptable level of animal welfare is an integral part of any form of sustainable agriculture and also interconnected with issues such as environmental protection, resource and cost efficiency, biodiversity and global justice (Rawles, 2006). In developing countries, improved welfare practices can help fight poverty and malnutrition, since many small-scale farmers depend on the health of their animals for their livelihood (Vallat & Pastoret, 2009). These practices also often lead to improvements in animal production, which generate increased business profitability and better trade opportunities (IFC, 2006:2).

3.4. Conflicting interests

The EU is a major player in global agricultural trade as the biggest importer and exporter of agricultural products, and there is an increased volume of trade in animal products, both within the EU and with third countries (DG TRADE, 2010:1). An important challenge in trade is to reconcile different standards within an open trading environment, and it can be difficult to satisfy differences in societal values without generating trade conflicts (Blandford & Fulponi, 1999). An example of this is the problems that can arise when animal welfare standards differ and are higher for domestic production than for exporting countries. To avoid trade restrictions it is important to discuss whether trade agreements can and shall acknowledge differences in values and beliefs among different countries. (Blandford & Fulponi, 1999). A key issue is to define the desired animal welfare standards

and then analyze the implications for both domestic and international markets (Blandford & Fulponi, 1999). According to the same authors, these conflicts are best avoided by working towards the adoption of international welfare standards, preferably in the framework of bilateral or multilateral agreements. The EU has been pressing for issues such as animal welfare to be discussed in current negotiations on a new WTO agreement on Agriculture (DG TRADE, 2010:1). Today, the only way that animal welfare as an issue could possibly be considered, is by the appeal of article 20 of the GATT where it is said that exceptions that permit the restriction of trade can be made to the agreement for moral or cultural reasons (Blandford & Fulponi, 1999). In the same article it is also said that exceptions could be made if it is necessary in order to protect human, animal or plant life or health. According to the same authors it is today however difficult to restrict trade to satisfy domestic concerns, since it is likely to be questioned by other countries and does not yet have a good legal justification. But on the other hand, many countries stress that ethical issues such as animal welfare should be considered due to their importance to consumers and society at large (Blandford & Fulponi, 1999). In addition to this issue, there is still a common view that animal welfare is difficult to measure, and there is not yet a strong consensus on how welfare measuring is best carried out in practice (Commission Official, 2010).

In the Europe 2020 Strategy, a top priority for the EU is to recover from the financial crisis and "get back and stay on track" (EC, 2010:9). A vision is for the Union to reach "smart, sustainable and inclusive growth", and one way of doing this to be more competitive by the means of e.g. increased business opportunities, productivity and trade (EC, 2010:9). In the Strategy it is also stated that the European Commission intends to "*enhance key policies and instruments such as the single market, the budget and the EU's external economic agenda*" in order to deliver the objectives. Since resources are quite scarce, prioritisation has to be made in many areas, and another means of regaining economic growth and competitiveness is by promoting research, innovation and technological development (EC, 2010:9). One important issue in relation to this is the deliberations between biotechnology and innovation of new practices that risk being deteriorating to animal welfare.

4. DISCUSSION

4.1. Implications of Article 13

The recognition of animals as sentient beings has with Article 13 gained a stronger position on the EU agenda, and its increased visibility should give the issue more weight and legitimacy. This could allow it to function as a basis for further policy initiatives in animal welfare, and as a means to stress enforcement and proper implementation of existing legislation. It will be something to fall back on in negotiations, and should increase some confidence in European animal welfare policy-makers. Article 13 also places animal welfare among other prioritised issues. The wording in the various Articles differs however, which makes it hard to tell if they will in practice be paid equal consideration. The legal obligation to consider animal welfare is not stronger in the new Treaty, however, according to Commission Official (2010), there is a stronger "legal clarity" in being placed in the general provisions compared to the annexed protocols. Even though compliance with Article 13 is in fact legally binding, the fact that the wording of it is quite open to interpretation unfortunately still does not make it possible to hold anyone accountable for ignoring it (unless the Secretary General judges the Impact Assessment to be insufficient).

It is therefore up to EU animal welfare promoters, including the European Commission, to be proactive and present in the development of different policies and, if they risk having negative consequences for animal welfare, stress compliance with Article 13 at an early stage in the process. This makes it important to have sufficient resources for taking part in Impact Assessments and different consultations.

4.2. The future of EU animal welfare work and policies

As it is today, animal welfare is a relatively narrow issue that risk getting overlooked, one reason being that it is still commonly viewed as being difficult to measure. If eventually more consensus is reached on which are the most feasible and valid welfare measures, this would certainly facilitate the implementation of Article 13. It should therefore be a top priority for the European Commission to continue to support and develop projects such as the Welfare Quality Project, which aim to develop a common understanding and credible and practicable welfare measures (see Welfare Quality, 2010). Commonly accepted welfare measures would also facilitate the development of welfare labelling, something that is an essential means to allow consumers to make well-informed decisions when they buy animal products. Considering the important role that consumers have in shaping what is available on the market, they should have access to the information they need in order to choose according to their values.

The future of EU animal welfare work and policies can be described as a bit dualistic. On one hand there is quite a lot that indicate preference and focus being given to other areas of interest. On the other hand however, there is evident societal development towards ethical awareness and concern in the wellbeing of animals, animal welfare is integrated in many other EU agendas and policies, and there are many strong initiatives proposed for the coming years. An increasing number of large organisations and corporations worldwide commit to work with animal welfare, and much fruitful collaboration is ongoing with the aim to spread knowledge and develop good welfare practices. Initiatives to improve animal welfare through capacity-building and a more outcome-based approach, will continue to be valuable tools for further spreading of improved animal welfare. Animal welfare standards can benefit for instance economic development, animal health, biodiversity and sustainable development (Europe for Animal Welfare, 2006). This is something that should continue to be stressed, particularly in future negotiations when resources are scarce and other agendas might need to be prioritised. In order to reach a common understanding and get policy areas to comply with Article 13, it is also important to increase cooperation with them, particularly if they have conflicting interests. Animal welfare agendas and policies will have to be clear, well reinforced, and continue to be based on science.

Europe is really in a time of change, and is as written in the Europe 2020 Strategy currently facing many challenges, especially in the light of the recent financial crisis (EC, 2010:9). Many areas need action and resources, and in the Strategy some of the main targets outlined are to work for a more competitive economy with increased productivity, trade and an open market. The main long-term challenges are globalisation, pressure on resources and to combat climate change and poverty, one of the solutions being promoting research and innovation (EC, 2010:9). This might imply a risk that animal welfare as an issue will not be as prioritised as others, but at the same time, improvements in animal welfare are often cohesive with other important aims. In the Europe 2020 Strategy, ethics is very much present, and strong values, democratic institutions, consideration for economic,

social and territorial cohesion and solidarity, are some mentioned examples of "European strengths" (EC, 2010:9). What is interesting to notice, is that most of these examples are present in the same part of the Lisbon Treaty as Article 13. The link between animal welfare and ethical values in Europe could therefore be used to further stress it as an area that needs to be prioritised. The 2020 Strategy also aims to turn the EU into a "smart, sustainable and inclusive economy", in which animal welfare policies could certainly have a role to play.

4.3. Challenges ahead

Bearing in mind that the EU is now eager to rebuild its economic strength and growth, one of the main reasons for the increased weight that Article 13 has been given is probably to harmonise the EU market. As stated earlier, problems arise when animal welfare standards differ among countries regarding fair competition and equal trade opportunities. Since countries with stricter animal welfare legislation are not keen to impair it, and also because of increased societal pressure, the EU chooses instead to try to enhance animal welfare in all the Member States. This is an example of how a sometimes conflicting issue such as trade, actually can help improving animal welfare, at least in countries which did not already have strong welfare legislation.

If the Member States strive to find a common acceptable standard, this would reduce conflict and promote and reinforce the EU internal market. It is however an important challenge for the EU to decide whether free trade and equal standards as to promote fairer business competition should come first, or whether the Member States should still have some freedom to have even stricter legislation than the EU minimum requirements. Impairment of legislation in the Member States would certainly not benefit the welfare of any animal. In order for the EU to be able to compete and trade with third countries, it seems also crucial to aim for higher welfare standards worldwide. If the gap between standards in the EU and the rest of the world is too big, there will continue to be discontent among those who feel that it is more costly to have higher welfare standards. An important objective for the future is therefore further efforts to try to incorporate animal welfare in the trade area.

The ongoing enlargement of the EU implies challenges in animal welfare policies in terms of making them compatible with all the different ethnicities and cultures of today's society (Horgan, 2006; EC, 2006:1). One aspect of this is that all the new Member States have to comply with and implement the EU animal welfare standards, which in many cases means a great improvement. However, in Article 13 there are still the reservations regarding religious rites, cultural traditions and regional heritage, which can be said to hollow the strength of it to some extent. There are already some practices in Member States, such as bullfighting, which is not up to date with the current level of acceptable welfare standards in Europe, and thus gives conflicting signals to both national governments and the public. With enlargement there might be even more cases and discussions of what falls under the scope of these reservations. If EU animal welfare work is to be credible this is something that has to be further discussed, and even though it is part of the problems with subsidiarity and maybe something that the EU should not "meddle in", it is important for Member States to have good justification for continuing with practices that are compatible with a lower level of animal welfare.

Certain topics of animal protection still remain under the responsibility of the Member States, for instance the use of animals in competitions, shows, cultural or sporting events or as pets, and the management of stray dogs (EC, 2010:2). There might however be a broadened responsibility ahead for EU animal welfare policies. New areas are included in the scope of Article 13, and in for instance fisheries and technological development, much is happening but welfare considerations are relatively new. A challenge will be to convince and pressurise these areas to comply with Article 13, both for welfare policy makers within the EU, but also for NGOs and other members of stakeholder consultations. With reference to Article 13 and recent research as presented by for instance EFSA reports, the obligation of the new policy areas to consider animal welfare could and should be stressed.

4.4. Widening the scope of EU animal welfare actions

The inclusion of fisheries in Article 13 is one sign of how scientific development and discovery works as a basis for legislation. Evidence of fish sentience is recent (see EFSA, 2009) and therefore not very widespread. There need to be an understanding of the scientific basis of legislation in order for it to be well received and implemented, especially in fields where traditions and habits might be cemented. It is therefore highly important for scientific findings to reach out, both to legislators, industry and the public. Another field that is relatively new and rapidly expanding is the field of biotechnology, which implies new ethical issues in terms of animal integrity and consumer scepticism. These issues are likely to become increasingly important, as innovation and technological development are prioritised areas in the Europe 2020 Strategy (EC, 2010:9). In the Strategy it is stated that this must be encouraged in order for Europe to keep up and be able to compete with other international forces. Some also think that biotechnology can be used as a means to safeguard the environment and meet demands for cheap and plentiful food. However, many people consider new biotechnologies to be fragile in terms of animal welfare and ethics (Blandford & Fulponi, 1999; Eurobarometer, 2006). In this debate it will be important for animal welfare advocates to point to Article 13 and have an active discussion with those promoting for instance cloning.

Another way that EU animal welfare policies might have to cover a wider scope is if European citizens through the "Citizen's Initiative" will call for new policy domains. They might in the future request for policy initiatives concerning animals that are not already included in EU legislation, however, the initiatives must fall under the scope of the Treaty and function as a way of implementing it (Commission Official, 2010). In a way this would be good since there is animal welfare legislation lacking in some areas, however, if the scope widens too much without sufficient resources, prioritisation has to be made risking decreased efforts in another areas. A widened scope might also be the case because of the suspended animal welfare activities of the CoE. Some areas covered by the CoE regulations are not yet covered by the EU, and if the EU will be supposed to "take over" some CoE duties in the field this might mean a broader responsibility. Also, some of the CoE's ongoing work was updating current Conventions and to develop recommendations for new scope such as fish, and since this has now been put on hold there might be a gap in what is needed, unless EU policies develop sufficiently and become more inclusive (Commission Official, 2010). One way of making it easier for EU animal welfare policy makers to prioritise where efforts and actions are most needed, would be to further develop the Animal Welfare Risk Assessment methodology (AWRA) (see Algers, 2009).

4.5. Ethics as a basis for policy making

In Europe, there has been a trend over the past decades towards increased ethical awareness, something that is reflected and expressed in Article 13. This shows that citizens/consumers are an important force in the development of new legislation and in many cases strive to bring their values into legislation so as to make sure that it corresponds to them. Since moral concerns in people often increase with greater knowledge of scientific findings, it is important that these are properly communicated. As people grow more aware of animal sentience and what it implies in terms of our actions and responsibilities towards them, they will also continue to look to legislators and policy makers to set adequate standards. Therefore there has to be an ongoing open communication between scientists, the public and legislators. The inclusion of a recognition of animals as sentient beings in the Lisbon Treaty, is a way in which the legislation gets an ethical perspective, and Article 13 could be seen as one step towards better animal welfare standards, both in Europe and globally. Animal welfare promoters and policy makers will however have to continue to be very smart and diplomatic in order to succeed and get initiatives accepted with minimal conflict of interest. It will continue to be a challenge, but with Article 13 as an anchor, there should be confidence in the legitimacy and rootedness of such efforts.

4.6. Reflections on the making of this paper

This paper is most useful as a compilation on current trends and factors affecting the development of EU animal welfare work and policy making. This analysis could hopefully have a part in making EU animal welfare work and policies updated and prepared for future challenges. This paper could also provide a basis for further analysis on e.g. how, if and in which areas Article 13 will be implemented, particularly regarding the three new policy areas included in the scope. Interesting topics for future research and analysis could also be how differences in formulation actually affect the practical outcome of legislation, how EU legislation can best make sure that it reflects current societal morals, how animal welfare is best integrated in other policy areas, and which benefits could come from developing the AWRA methodology as well as cost-benefit analysis of good animal welfare practices.

Improvements to the methodology might have included a more thorough legal analysis as well as discussions/interviews with more people working in different areas about what they see as the main obstacles for including animal welfare in their policies. A topic such as this require much time and knowledge of the underlying mechanisms and procedures of EU work and legislation, and the main limitations were lack of time and previous knowledge.

5. CONCLUSION

1. Article 13 states that the Union and its Member States have to pay full regard to animal welfare in their formulating and implementing of certain policies. Three new policy areas have been included, thus making the scope wider. While doing that however, they still need to respect some national customs and traditions regarding legislation, administration, culture, religion and regional heritage. Article 13 does not imply any stronger legal obligation for the concerned policy areas to consider animal welfare, however, the new

placing makes the issue more visible and puts animal welfare on equal footing with topics such as equality, consumer- and environmental protection, and sustainable development.

2. For future EU animal welfare work and policies, Article 13 will presumably be able to work as a basis and an anchor for the promotion of new initiatives. It might be used as a means to stress the importance of adequate resources for the development of new policies, as well as for the implementation of existing ones. There are some new policy areas included in Article 13, meaning a broader responsibility for those who monitor animal welfare compliance in the EU. The Article is a sign of a greater political commitment to animal welfare, however, there will still be some challenges ahead related to for instance "conflicting" interests, lack of resources and the principle of subsidiarity.

3. The recognition of animals as sentient beings implies that we have moral responsibilities towards them. An increased visibility and legal clarity of this recognition, is partly a consequence of increased societal concerns about animal welfare and thus Article 13 is a sign of ethical values being expressed in legislation. As science progresses, the moral status of animals increases, implying the need for legislation that sufficiently safeguard their welfare. This is an example of how science, ethics and policies are linked together, and something that is useful to bear in mind for all who wish to promote the matter of animal welfare at a political level.

Acknowledgements

I would like to thank Bo Algers for valuable mentoring and optimism, and the whole Animal Welfare Unit D5 in the Directorate General for Health and Consumers of the European Commission for welcoming and teaching me throughout this whole experience. I am particularly grateful to Maria Ferrara in Unit D5 for all her help and guidance. I have also had to consult a couple of European Commission Officers, who have provided me with useful insights and information. These persons are however not referred to by name because of Commission secrecy.

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