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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the protection of animals during transport and related operations, amending Council Regulation (EC) No 1255/97 and repealing Council Regulation (EC) No 1/2005

{COM(2023) 770 final} - {SEC(2023) 397 final} - {SWD(2023) 401 final} - {SWD(2023) 402 final}

Subsidiarity Grid

(for the revision of the EU legislation on the protection of animals during transport)

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The legal bases of the legislative proposal are Article 43 and 114 of the Treaty on the Functioning of the European Union (TFEU). – Article 43 provides the basis for the EU legislative measures on the Common Agricultural Policy, qualified by the Lisbon Treaty as shared competence between the EU and its Member States. – Article 114 provides the legal basis for the establishment and functioning of the internal market and the approximation of provisions laid down by the law, regulation or administrative actions in this respect.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of animal welfare legislation, the Union's competence is shared with the Member States.
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2[1]: - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
The impact assessment report takes into account the input from a range of stakeholder consultation activities: - an Inception Impact Assessment[2] was open for feedback from 6 July 2021 until 24 August 2021 and received a total of 983 feedback; - a public consultation[3] was held from 15 October 2021 until 21 January 2022 with almost 60 000 responses; - the Commission organised a one-day conference on 9 December 2021[4] which included one panel on the specific challenges of animal welfare during transport (Panel 3). - as part of the external study carried out to support the impact assessment, various targeted consultation activities have been carried out, including: - 9 exploratory interviews and 43 interviews for the six case studies;

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN

[2] Available on the European Commission Have Your Say platform : https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12950-Animal-welfare-revision-of-EU-legislation_en

[3] Available on the European Commission Have Your Say platform : https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12950-Animal-welfare-revision-of-EU-legislation/public-consultation_en

[4] European Commission, *EU Animal welfare today & tomorrow, an opportunity for stakeholders to validate the preliminary findings of the Fitness Check of the current EU animal welfare legislation*.

- one survey which gathered 68 responses;
- two focus groups and one workshop which brough together a total of 130 participants.

- The Commission also created a thematic sub-group of experts on the protection of animals during transport under the EU animal welfare platform who met 10 times since March 2022;
- Finally, the Commission met with key stakeholders in regular ad-hoc meetings.

Further details on these activities are outlined in the impact assessment report (Annex 2)
Finally, the Eurobarometer on the Attitudes of Europeans towards animal welfare was published in 2023[5], following the 2005 and 2015 publications[6].

The explanatory memorandum and the impact assessment report contain a section on the principle of subsidiarity, see replies to question 2.2 below.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

Animal transport is often of a cross-border nature. 1.4 billion animals are transported each year with a cross-border movement within the EU Member States. Therefore, it affects the functioning of the internal market and the identified animal welfare problems including their underlying drivers occur across the EU, albeit to a different degree in different Member States. Finally, the identified animal welfare problems have transboundary consequences including threats to public health, such as AMR.

Action taken at national level is not expected to lead to considerably improved animal welfare and would only partially be able to meet citizens' concerns. It is very unlikely that 27 Member States would legislate in a coherent way on the animal welfare requirements linked to transport given the already existing regulatory fragmentation. Action at national level would lead to further fragmentation of requirements and increased differences in the levels of animal welfare between EU Member States. Although current EU rules on protection of animals during transport have brought some harmonisation to the sector, Member States continue to adopt their own differing rules on the transportation of animals. Member States also apply certain provisions and enforce rules differently, thereby creating obstacles to the smooth functioning of the internal market. Furthermore, national rules cannot apply to operators from other Member States and therefore, thereby rendering cross-border movements a driver for lower animal welfare standards.

Animal welfare requirements linked to transport at EU level require a harmonised approach and thus can effectively be regulated at EU level. With a homogenous set of rules, the revision would provide uniform and clearer requirements for the transport of animals and a better use available of technologies. The revision would thus ensure a level-playing field for operators within the single market, facilitate intra-EU trade of animals and provide more efficient regulatory oversight. Hence, the high EU standards on animal welfare would be more easily and coherently promoted at the global level.

[5] European Commission, Directorate-General for Health and Food Safety, *Attitudes of Europeans towards animal welfare – Report*, Publications Office of the European Union, 2023. https://data.europa.eu/doi/10.2875/872312.

[6] European Commission, Directorate-General for Health and Food Safety, *Attitudes of EU Citizens towards Animal Welfare - report,* European Commission, 2015, https://data.europa.eu/doi/10.2875/884639; European Commission, Directorate-General for Health and Food Safety, *Attitudes of consumers towards the welfare of farmed animals,* European Commission, 2005, Attitudes of Europeans towards Animal Welfare - June 2005 - - Eurobarometer survey (europa.eu)

Considering these elements, EU action is justified: it would achieve a consistent approach more effectively and efficiently than Member States acting independently.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

Measures only adopted at national level would result in Member States having their own, differing legislation which would lead to further fragmentation and distortions of competition and therefore injure the single market. Additionally, provisions at European scale will more effectively match citizens' expectations and lower the risk of zoonosis and antibiotic resistance.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The identified animal welfare problems and their underlying drivers occur across the EU. Animal transport is often of a cross-border nature. 1.4 billion animals are transported each year with a cross-border movement within the EU Member States.
Furthermore, national rules cannot apply to operators from other Member States and therefore, cross-border movements would be a driver for lower animal welfare standards.
Finally, the identified animal welfare problems have transboundary consequences including threats to public health, such as AMR.
The problems and drivers have been quantified in the impact assessment to the extent possible. In any event, the drivers and problems will likely continue to grow.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty[7] or significantly damage the interests of other Member States?

Differing legislation adopted at national level has resulted – and will continue to result – in a further partitioning of the internal market and uneven playing field, which jeopardizes the integrity of the internal market. Although current EU rules on protection of animals during transport have brought some harmonisation to the sector, Member States continue to adopt their own differing rules on the transportation of animals, sometimes stricter than the current EU legislation. Member States also apply certain provisions and enforce rules differently, thereby creating obstacles to the smooth functioning of the internal market. Furthermore, national rules cannot apply to operators from other Member States. Therefore, cross-border movements would be a driver for lower animal welfare standards.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

Currently, rules on the protection of animals during transport are already harmonised by Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport. The legislation leaves sufficient some room for Member States to adapt to their own national/regional situation, including allowing for stricter national rules to apply (within certain limitations).

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

The identified animal welfare problems arising from their transport under sub-optimal conditions,

[7] https://europa.eu/european-union/about-eu/eu-in-brief_en

the limited requirements to protect cats and dogs during transport, as well as the problems linked to the low uptake of new technologies, all occur across the EU, albeit to a different degree in different Member States (affecting remote, rural areas more than urban areas). The variations in the intensity of these problems are explained by the underlying regulatory drivers.
There is evidence that differences in implementation and enforcement still create obstacles to effective harmonisation, thus to the achievement of comparable levels of animal welfare. In addition, diverging measures in Member States or regions are in place for the trade concerning cats and dogs, and other animal transports, also leading to different levels of animal welfare.

(e) Is the problem widespread across the EU or limited to a few Member States?

The problems are affecting all Member States albeit to a different extent.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

There is evidence that the terms used in the Transport Regulation are not defined and are interpreted differently, hampering coherent enforcement. This is further aggravated by insufficient common definitions. Furthermore, although the Official Controls Regulation provides for a more harmonised approach, the risk-based approach used for official controls and the different levels of resources that Member States put into such controls contribute to the variations in enforcement.
Thus, the revision seeks to bring animal welfare requirements closer to the latest scientific evidence and make rules easier to enforce, including through digitalisation.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

There is an overall consensus among competent authorities regarding the adequacy of identified animal welfare problems, the objectives specified by the initiative and the necessity to streamline, clarify and extend the current legislative framework.
Diverging views, however, were expressed by Member States: some pointed to potential challenges with the limits of journey times for slaughter due to a less dense slaughterhouse network. Also, specific concerns were highlighted by another Member State, since any limitation would have important economic consequences for the dairy sector, which relies on transport of calves by ferry based on roll-on roll-off, over more than 19h. In addition, other Member States, who are among the main beneficiary countries of calves transported on long journeys, would also be impacted as their farming sector could not satisfy the national market demand. Within the Public Consultation, 85% of participating local authorities were in favour of maximum journey times for animal transport (compared to 95,4% of the total number of respondents). Moreover, Southern Member States are generally more concerned by restrictions on hot temperatures as they will be more impacted. They often flag the logistical challenges linked to transporting live animals by night.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

Common, updated European standards for animal welfare during transport seek to foster sustainable agricultural and food production, avoid distortions of the internal market, and meet societal expectations and ethical concerns. In addition, they seek to ensure improved legal clarity while reducing administrative burdens for companies and authorities and hence improve efficiency and attractiveness of the EU system.

(a) Are there clear benefits from EU level action?

The overall objectives to contribute to the harmonisation of the implementation and enforcement of common EU requirements, thus contributing to a smoother functioning of the internal market and a higher level of animal welfare. The revision also seeks to address citizens' concerns and contribute to the sustainability of food systems.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

The functioning of the internal market be improved. Having updated common provisions at European level will reduce partitioning of the internal market through differing national legislation and remove obstacles linked to the diverging implementation and enforcement of the current EU requirements, which jeopardizes the integrity of the internal market.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

The revision will replace existing Union legislation and seeks to harmonize with a more homogenous set of rules on EU level the additional national requirements that have been put in place over the past years. With a more homogenous set of rules on EU level, the intra-EU trade of animals and food of animal origin would be facilitated. Hence, the internal market would be improved, and the EU high values on animal welfare would be more easily promoted at global level

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

The proposal does not inflict on the local, regional and national authorities' competence on how to organise and perform inspections to ensure compliance with the animal welfare rules as the Member States see fit, pursuant to the Official Controls Regulation.

(e) Will there be improved legal clarity for those having to implement the legislation?

Currently, some provisions of the existing legislation are vague and not sufficient, thus subject to incoherent implementation and enforcement. In addition, species-specific provisions of several species are lacking in the case of transport, such as farmed fish and dogs and cats. Existing legislation lags behind scientific developments in animal welfare. The current proposal seeks to correct these weaknesses.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

Yes, the explanatory memorandum of the legislative proposal contains justifications as regards the proportionality of the measures. The comparison of the options in the impact assessment (section 7) is also performed in terms of proportionality.

The proposal lays down animal welfare rules on protection of animals during transport, striving for a balanced and proportionate impact following the results of the impact assessment. This is the case of

exporting to third countries and requiring further conditions: these aim to improve the welfare of animals while at the same time ensuring the continuation of business. A similar approach has been taken with regards to journey times and finding a proportionate journey length allowing for the transport of animals to continue happening while limiting it in a way that ensures a better welfare for the animals transported.
In the case of transport during high or low temperatures, proportionate mitigation measures are in place to allow the transport without hindering the welfare of the animals transported, e.g. transporting during the night.
The proposal of Regulation on transport foresees, in addition, adequate transition periods in order to allow the different actors and Member States to adapt gradually to the new requirements and obligations. This is the case for the preferred measures related to journey times, space allowances, exports and real time positioning available to competent authorities (5 years); journey times for vulnerable unweaned animals (5 years) and new specific rules on the transport of cats and dogs (3 years).

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The initiative does not go beyond what is necessary to achieve the objectives of the revision and is appropriate to achieve them. The choice of the legal instrument is justified.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

EU intervention would provide uniform rules for the protection of animals during transport. Harmonised EU-wide rules would ensure a level-playing field for operators within the single market and a more efficient enforcement. National action would otherwise not be sufficient to achieve those objectives in a satisfactory way. Thus the initiative does not go beyond what is necessary to achieve the objectives of the revision.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

A Regulation has been chosen as instrument, also replacing an existing Regulation. As the transport of animals is of a transboundary nature, the revision consists of fully harmonized, stricter and clearer requirements, with rules facilitating enforcement, that will apply across the EU. A Regulation appears to be the most appropriate instrument of the planned revision to achieve a uniform implementation and enforcement. A Directive would require to be transposed into national rules which would likely not as efficiently address the drivers related to diverging interpretation, implementation and enforcement of EU requirements.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument og approach?)

Although the proposal sets out common objectives and requirements, it leaves some room for Member States to adapt to their own national/regional situation, including allowing for stricter national rules to apply (within certain limitations).

(d) Does the initiative create financial or administrative cost for the Union, national

governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
As described in more detail in Annex 3 of the impact assessment report, **competent authorities** will need to carry out a number of new procedures. The monitoring data received by competent authorities from operators will help authorities to better target their controls and inspections and thus make savings. The digitalisation of the whole process is expected to reduce the current paperwork and to strengthen the official controls. **Road transporters** will need to reorganise their journey planning and contracts to comply with the new requirements on journey times, space allowances and providing real-time data access to authorities, including for exports and for vulnerable animals, and hot temperatures. Some **sea transporters** will have to upgrade or replace their vessels and register these under another flag, to meet updated requirements. Sea transporters will also need to hire a person who has followed specific trainings on animal welfare ('animal welfare officer') to accompany the crew on board in order to take appropriate measures to safeguard the welfare of animals. Additionally, **transporters of cats and dogs** will have to upgrade their vehicles and have a veterinarian perform health checks before any transport. The impact assessment has shown that the various environmental and social benefits created by the measures foreseen, including enhanced resilience of production systems, reduced health risks (AMR, zoonoses) as well as lower environmental contamination, render the associated costs commensurate with the main objective to contribute to sustainable agricultural and food production by ensuring a higher level of animal welfare.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
While no derogations from the common rules have been granted to specific Member States, the geographical localisation of each region and country concerned have been taken into account when formulating the policy options (e.g. the situation of remote or insular areas in relation to the rules on animal transports). For example, the rule according to which, for transport of live animals, time spent on livestock vessels does not count as journey time and the derogation of the 9 h journey time to a slaughterhouse some areas where the network of slaughterhouse is not enough dense (e.g; Finland and Greece);