

Review

Considerations on the sphere of application of European Union animal protection legislation for horses

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Summary

The increasing awareness of animal welfare issues among consumers and the general public in the European Union has brought about the adoption of laws for the protection of production animals throughout the various steps of the food chain, from breeding to slaughter. Considering that horses may be kept for a variety of reasons, including as companion animals and as farm animals, protective legislation in Europe applies to this species only partially. In consistency with the areas of competence of the European Union, it is the purpose of the activity (be it economic/commercial or neither) and not the final purpose of the equine (whether they are intended for human consumption or not) along the entire food chain that determines the application of the above legislation. Even horses which are not kept for food production are covered by EU laws when they are bred or transported in connection with a commercial activity, while equines kept for purposes outside this context are protected only by national laws.

Keywords

Animal protection, European Union, Farming, Horse, Italy, Regulation, Review, Slaughter, Transport.

Introduction

Since the early existence of humankind, humans have had very strong bonds with horses which have contributed to the development of human societies and to civilisation through transportation, communication, trade and warfare. Although technological progress has somewhat diminished the ancestral role of horses, a deep bond between these animals and humans nonetheless still exists and it is witnessed both in sport and leisure as well as in social and therapeutic activities.

Over the past few decades, the general public has progressively paid increasing attention to the welfare of farm and companion animals, thus being very keen to see both the European Union (EU) and national legislature pass the necessary laws and provisions to ensure their protection in diverse fields, such as farming, transportation and slaughter.

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This paper attempts to highlight the rules and provisions on equine protection within current EU and national legislation, according to the purposes for which equines are kept or to the different phases of the production chain.

An initial fundamental aspect that needs to be examined in the light of this analysis is the existing correlation between the competences of the EU and animal protection: as EU competence is limited to the areas covered by the *Treaty on the functioning of the European Union* (7), i.e. civil and commercial matters, EU legislation on animal protection refers exclusively to the use of animals in economic activities and therefore applies to farm animals, thus excluding from its field of application animals used in other types of activities. An in-depth examination of the issue concerning the development of the legal status of animals within the European jurisdiction has been studied (12, 29). Significantly, European laws on animal welfare apply solely to the following:

- animals 'bred or kept for the production of food, wool, skin or fur or for other farming purposes' (15)
- transport 'in connection with an economic activity' (16)
- the 'movement, lairaging, restraint, stunning, slaughter and killing of animals bred and kept for the production of meat, wool, skin, fur or other products' (14, 17).

The intention declared in the preamble of all European sources of law on animal protection is that of establishing common minimum standards for the protection of animals kept for farming purposes within the context of the EU Common Agricultural Policy in order to ensure the rational development of agricultural production and to facilitate the organisation of the market in animals, considering that 'the national laws at present in force in the field of the protection of intensively housed animals present differences which may distort conditions of competition and, consequently, have a direct effect on the functioning of the common market'.

The question regarding whether horses are to be classified as companion or farm animals becomes one of major importance for this

analysis, considering that equines can be classified in both categories. To this end, it may be useful to highlight the provisions contained in the Inter-Ministerial Decree of 29 December 2009 (Guidelines and principles for the organisation and management of the equidae registry by the *Unione Nazionale Incremento Razze Equine* or UNIRE) (article 8, paragraph 15, of Law No. 200 of 1 August 2003) (9). This regulation states that all equines kept in Italy need to be identified and registered within a national database (*Banca Dati Nazionale: BDN*) and the owner must state the purpose of the animal upon registration, thus classifying each animal as a 'DPA horse' or 'non-DPA horse' (DPA: *destinati alla produzione di alimenti per l'uomo* or 'horses destined for human consumption'). The 'non-DPA' animals are, on animals kept for purposes other than that of food production, such as, for example, recreation and leisure, or cultural or sporting events.

On this basis, one would expect to classify DPA horses under the larger category of farm animals and, therefore, non-DPA equines that fall outside this field, would be regarded as companion animals. However, such classification does not prove to be appropriate when dealing with the different cases which could actually occur in practice because, as outlined below, there are situations in which a non-DPA horse may be considered as a farm animal and, on the other hand, a horse registered as a DPA horse could even be considered as a non-farm animal or as a 'companion animal', for instance when it is kept by private horse owners for mere recreational or leisure purposes.

Farming

Animal welfare regulations relevant to farming can be classified into two categories according to their respective fields of application: there are provisions with a 'horizontal' effect which concern all species, and their 'vertical' counterparts which, instead, refer only to a particular species or class of animals, the latter being for example, calves, egg-laying chickens, pigs and meat

chickens, all of which are regulated by specific laws.

In the field of horse protection, as there are no special *ad hoc* legislative acts which safeguard this species, the 'horizontal' legislation remains the sole reference, i.e. Council Directive 98/58/EC concerning the protection of animals kept for farming purposes (15), enacted in Italy through the Legislative Decree No. 146/2001 (3). This Council Directive, as mentioned above, applies to 'any animal, including fish, reptiles or amphibians, bred or kept for the production of food, wool, skin or fur, or for other farming purposes'; it does not apply to 'animals living in the wild, those intended for use in competitions, shows, cultural or sporting events or activities, experimental or laboratory animals and any invertebrate animal'.

The observation that horses can also be bred for purposes different from food production, together with the fact that animals bred or kept for use in competitions, shows, cultural or sporting events are explicitly omitted from the field of application of the above cited Council Directive may lead to uncertainties in regard to the application of provisions for horses classified as non DPA animals. According to Rigonat, the above limitation was expressly intended to exclude companion horses from the range of application of Council Directive 98/58/EC, thus resolving that clearly 'only equines kept for food production to the benefit of mankind [DPA] are the addressees of the European legislature' (30, 31). However, we believe, that the exclusion of horses kept for use in competitions, shows, cultural or sporting events from the scope of this regulation should rather to be interpreted and intended only to the extent and within the limits of the time and place of the event in question: one need only consider that both non DPA as well as DPA animals may take part in such events and competitions because the purpose for which the animal is kept is not a circumstance to that end.

Accordingly, it is clear that the exclusion of cultural or sporting events from the range of application of Council Directive No. 98/58/EC is not only the outcome of the link between EU

competence and economic/commercial matters described above, but it also represents an element of flexibility of the regulation itself, which would hardly be fully complied with in events that often take place in provisional facilities to shelter animals for a limited period of time and which are therefore rather different from stables or professional farms.

In light of these preliminary considerations, the regulations concerning the protection of horses intended for use in competitions or shows (in which both DPA and non DPA equines may participate) have an administrative and not a legislative nature. More specifically, the conditions to be met in fields, tracks and competition areas and their overall characteristics are outlined and indicated in the regulations issued by the competent sporting and technical boards (the agency for the development of horseshow activities *Agenzia per lo Sviluppo del settore ippico* or ASSI; the Italian Federation for equestrian sports *Federazione Italiana Sport Equestri* or FISE), while safety and health regulations concerning horses used in public or private shows taking place outside the officially authorised tracks or facilities (authorised by the ASSI, FISE, International Equine Federation [FEI] and by the associations recognised by the FEI, as well as by associations or organisations recognised by the Italian Olympic Committee), except for exhibitions, pageants and parades, are given in the Order issued by the Health Ministry on 21 July 2011 (28). This Order, which amends the previous one of 2009, determines and stipulates out the conditions of authorisation for show procedures, track events, field grounds and holding walls and provides provisions on horse care and on the code of conduct for jockeys.

Horses bred in professional stables or farms are always subject to the general rules of Council Directive No. 98/58/EC even if they are not kept for food production or for agricultural purposes or if they are classified as non-DPA horses, as they are part of an economic activity typical of a farm enterprise, like other types of farming or breeding. Recent Italian case law seems to confirm this interpretation (8)

considering that in compliance with amended article no. 2135 of the Italian Civil Code racehorse breeding is fully encompassed within the notion of farm enterprise. Whereas under the previous version of article 2135 of the Italian Civil Code, i.e. prior to the amendments enacted through the Legislative Decree No. 228/2001 (2), this type of farming was considered to have a commercial and not an agricultural nature (5); in fact, to be qualified or classified as a 'livestock farm', the scope had to be that of food or labour production (1).

The situation is different for equines kept by private owners on non-professional farms for recreational or leisure purposes. In fact, the element which precludes the possibility of considering the animal as a farm animal or a source of labour is the lack of an economic or commercial implication in the facility where it is kept, and not its qualification as a DPA or non-DPA animal; in compliance with the intent of the EU legislation, this is the deciding factor for exclusion from the range of application of the regulations on animal protection in farming. The consequence is that in those cases, the welfare of equines is solely covered by the general provisions of the National Legal Order for purposes of animal mistreatment (articles 727, 544-*bis*, 544-*ter*; 544-*quater* of the Italian Criminal Code).

In addition to the above legislation on the protection of equines kept for farming purposes, the relevant criteria for the correct and safe handling of horses, ponies, donkeys and hinnies must also be kept in mind; reference thereto is made in the 'Code for the Care and Handling of equines' (*Codice per la Tutela e la Gestione degli Equidi*) issued by the Italian Ministry for Labour, Health and Social Politics (27). This Code includes 'all those who keep equines for any purpose, and is intended to favour and spread a respectable equestrian culture'. This Code does not only encompass regulations ratified by Directive No. 98/58/EC and the enacting decree, the European Veterinary Medicine Code of Conduct (4), and article 544 *ter* of the Criminal Code, but also provides more specific standards for the welfare of horses, the scope of which is to determine a series of measures

and a policy destined for those who possess and keep horses and are responsible for their handling and control. Although such criteria are not legally binding (the Code was not enacted through a primary or secondary act and therefore does not constitute an objective source of law (10)), they may nonetheless represent a useful reference for health authorities, both when no other laws or regulations find application or when the latter do not foresee specific technical requirements for the relevant facilities where the animal is kept.

To conclude, it appears in all evidence that providing a statement of purpose for an equine in compliance with the Ministerial Decree dated 29/12/2009 (9) does not appear to be appropriate to define and outline the range of application of the horizontal European legislation in farming. This criterion could lead to situations in which, even if they are bred in the same stable and destined to the same purposes, horses classified as DPA horses would benefit from a different protection regime than animals classified as non-DPA animals.

Transport

In regard to the current European legislation concerning animal transport, principal reference is made to Council Regulation No. 1/2005/EC (on the protection of animals during transport and related operations) (16) which applies to the transport of live vertebrate animals within the Community and in connection with an economic activity, both entering (import) or leaving (export) the customs territory of the EU itself. The Regulation does not apply to the transport of animals that have no economic activity, e.g. the carrying of pets with their owner or the transportation to and from veterinary practices or clinics, on the advice and with certification of a veterinarian.

This once more emphasises that the final purpose for which the equine is kept is not the relevant factor when determining the range of application of the above Regulation, this being, more specifically, the purpose of transport. Whilst the transport of horses destined for

fattening farms or slaughterhouses (which is permitted only when equines are registered as DPA horses) undoubtedly falls within the European legislation, the reference legislation for the transportation of non-PDA horses is more complex: these animals, as stated earlier, may in fact be used in races or sport competitions which could imply an economic outcome of certain relevance. Council Regulation No. 1/2005 EC, while excluding transport that is not connected with an economic activity from its range of application, provides an extensive interpretation of the same. Article 12 of the preamble to the Regulation states that 'transport for commercial purposes is not limited to transport where an immediate exchange of money, goods or services takes place. Transport for commercial purposes includes, in particular, transport which directly or indirectly involves or aims at a financial gain'. The outcome is that in order to establish whether the European legislation is applicable or not, it is necessary to go on a case-by-case basis according to the different practical circumstances which could occur during the transportation of equines for sporting activities, when from such activities a financial gain is involved, either directly or indirectly.

Clarification on this aspect is given by two ministerial circulars issued by the Health Ministry, General Division of Animal Health and of Veterinary Medicine. The first, dated 6 February 2008 (25), explains that an individual account of transport operations of equines in a personally owned vehicle, or of one's own animal in the absence of a commercial structure, such as, for example, the transportation of horses to and from riding stables, for competitions or for cultural, leisure or sport activities, etc. does not fall within the range of application of the Regulation No. 1/2005 (16). The second circular dated 7 April 2008 (26), specifies that 'the transport of equines on an 'individual account transport' basis under transportation law (Law No. 298/1974) such as, for example, the transport of racehorses by professionals, constitutes an economic activity and therefore is fully encompassed within the sphere of

application of Council Regulation No. 1/2005 EC (16).

According to the Ministry, the differentiating element is whether the provisions relative to transportation are 'beyond the regime foreseen for the transport of goods', considering that the ownership and property of the vehicle or of the horse is completely irrelevant; non-commercial transport may in fact also be performed with a hired vehicle, or by courtesy with a private vehicle (e.g. another person's animal with a privately owned vehicle). On the other hand, the use of a vehicle with the required authorisation of the transporter, in compliance with current legislation on commercial transport, implies an economic activity, be it complementary or accessory, even in the event of the transportation of goods for personal requirements, or of one's own horse and for such reason is subject to the discipline of the Council Regulation No. 1/2005/EC (16).

Finally, it is useful to add that the agreement signed between the Italian State and the regions of Italy covering primary provisions for the authorisation of live animal transport dated 20 March 2008 (6) is applicable to the transport of non DPA equines with their owner; on one hand the agreement states that when equine transport lacks a commercial purpose, then the general transport conditions foreseen in article 3 of the Regulation are applied; on the other hand, it determines the procedures for the registration of means of transport for veterinary services of the competent territorial health authority (AUSL: *Azienda Unità Sanitaria Locale* or Local Public Health Service).

Slaughter and killing

The EU provisions concerning the protection of animals at the time of slaughter and killing (14) also include 'animals bred or kept for the production of meat, skin, fur or other products', which are commonly referred to as farm animals. In this respect, movement, lairaging, restraint, stunning, slaughtering and killing operations of DPA equines need to be performed in accordance with the relevant EU

legislation. This Directive may also be applied to non-DPA animals, when they are killed in compliance with veterinary health policies or in all cases in which they are slaughtered in authorised slaughterhouses although their carcasses cannot be kept for human consumption.

On the other hand, such discipline does not apply to the killing of DPA or non-DPA equines in the course of cultural or sporting events, i.e. those 'events that are essentially and predominantly related to long established cultural traditions or sporting activities, including racing or other forms of competitions, where there is no production of meat or other animal products or where that production is marginal compared to the event as such and not economically significant', as defined by the Council Regulation No. 1099/2009/EC (17) that, starting from 2013, will amend and replace Directive No. 93/119/EC (14).

It must nonetheless be underlined that both the Council Directive No. 93/119/EC and Council Regulation No. 1099/2009/EC (14, 17) do not provide specific provisions concerning the procedures for stunning, slaughtering or killing of equines, thus making this legislative reference scarcely relevant in practice. To this end, it might be useful to outline that, with concern to equines, detailed indications based on scientific evidence are available in a report published by the European Food Safety Authority (EFSA) (18) that describes the most adequate technical procedures to adopt in order to reduce pain and suffering in animals to a minimum during killing or euthanasia.

Conclusions

An analysis of current European and national legislation reveals that there are no specific provisions that govern the protection of equines (Table I). Despite the ancestral origins of the relationship between horses and human-kind, it is surprising that the legislature has not been more attentive to the protection and welfare of these animals which have widely contributed to the development of human societies and that still nowadays are often used for leisure and sporting events and breeding

activities. This is even more surprising given that caring for and handling the psychophysical health of a horse is notably more complex compared to that of other farm animals.

Our analysis has shown that equines are at less protected by the law for farming purposes than in other cases (transport and slaughter), as European legislation only refers to and covers activities that have an economic and commercial impact. This emerges even more so at the time of slaughter as it does not provide provisions that are different from those referred to the general category of farm animals, both in current legislation (14) as well as in the regulations which will enter in force on 1 January 2013 (17). The legislature has instead devoted more attention to transportation, determining the specific requirements to be met during short or long journeys. This appears in an Act that is directly and immediately applicable in every member state of the EU (16). However, in spite of this legislation being more articulate, a large number of irregularities unfortunately still occur. A considerable lack of protection has in fact been registered in Member States during long distance transportation of animals destined for slaughter, where the aspect of animal welfare is highly compromised. A study examining shipments of horses from Romania and Poland to Italian slaughterhouses has revealed a noticeable percentage of absence of compliance with the rules of the Council Regulation No. 1/2005 EC (16), both with reference to the general conditions the means of transport, as well as their suitability or fitness for animal transportation: the non-conformity was significantly higher upon arrival in Italy rather than upon departure (23).

In regard to the lack of specific legal provisions for the protection of horses on horse farms, this appears to conflict somewhat with the conditions in which lairaging occur and that often lead to disrespect for their ethological requirements. Indeed, there remain numerous lairage structures, especially for competition horses, which end up limiting their natural behaviour pattern such as, for example, single stalls, where the importance of daily exercise within paddocks is highly underrated (33).

Table
European Union and Italian laws applicable to farming and transport of equines

Sports events ^(a)	Historical shows ^(b)	Pageants and parades ^(c)	Exhibitions ^(d)	Commercial farming	Non-commercial farming	Commercial transport	Non-commercial transport	Slaughter	References
X	X	X	X	X	X	X	X	X	9
X	X	X	X	X		X		X	16
-	X	-	-	-	-	-	-	-	28
X	-	-	-	-	-	-	-	-	-(a)
-	-	-	-	X	-	-	-	-	3
-	-	-	-	-	-	-	-	X	17
X	X	X	X	X	X	X	X	X	27

X existence of legislation

- absence of legislation

(a) events that comply with the sport and technical regulations issued by officially acknowledged federations* at national and international levels; these regulations set the conditions to be met to ensure the well-being of animals and give technical requirements for competitions

(b) all events that are not events organised by the officially acknowledged associations or federations*

(c) events with a cultural purpose in which equines are not used for competitions

(d) exhibitions, morphological exhibitions that are not events organised by the officially acknowledged associations or federations*

* Italian Agency for the development of horseshow activities: *Agenzia per lo Sviluppo del settore ippico* or ASSI

Italian Federation for equestrian sports: *Federazione Italiana Sport Equestri* or FISE

International Equine Federation (*Fédération Equestre Internationale*: FEI)

Italian Equestrian Tourism and Trek Federation: *Federazione Italiana Turismo Equestre e Trec-Associazioni Nazionali Turismo Equestre* (FITETREC-ANTE)

Even in countries that are traditionally attentive to the welfare of equines, such as Germany or Switzerland, only 16% of horses are kept in group stalls (32). Single stall lairage structures, besides being associated with certain diseases of the respiratory system in some breeds (21), often cause behavioural problems (11, 13, 20, 22).

In addition to the various lairaging methods, attention must also be paid to equally questionable training practices, in particular those regarding horses participating in dressage competitions. Authors such as Mazzoleni (24) and Heuschman (19) have observed that there are frequent training practices and methods that are disrespectful of the welfare of the horse and that do not take into account the fundamental principles of the biomechanics of the species. The current habit of riders wanting to obtain rapid results and therefore accelerating training, results in subjecting animals to practices for which they

are often not prepared. Hence, constrictive training methods have begun to emerge; they prove to be harmful for horses as they cause physical and psychic loss. Therefore, although certain countries have issued ethical equestrian guidelines, it may be extremely valuable for those who approach this discipline and care for horses to participate to mandatory theory and practice training courses to obtain adequate knowledge, in compliance with what is required by law for the owners of livestock farms. As illustrated by Heuschmann (19), it is necessary to reconsider the criteria used for judging a horse in sport competitions so to reduce the attention paid to and the appreciation of spectacular horse shows and choreographic exhibitions which may only be obtained due to strenuous training methods that cause major pain and suffering to the animals.

In conclusion, this analysis has outlined how, in different situations, even horses used for

sport or recreation, i.e. those that traditionally, although not correctly, are referred to as companion animals, are subject to European law on animal protection and animal welfare matters. Likewise, it has highlighted the lack of legislation concerning the protection of horses bred for purposes different from economic or commercial ones (be they either DPA or non-DPA horses); in this respect, they are subject to general criminal law dispositions regarding animal mishandling.

Ultimately, the distinction between farm animals and companion animals cannot rest upon the criteria outlined in the Inter-Ministerial Decree of 29 December 2009 (9),

which, as discussed, classifies horses as the DPA and non-DPA which define the final purpose of the animal for food safety purposes, but is inadequate in regard to classification as a source of labour referred to an economic or commercial activity or as a private good which exclusively reflects an emotional interest.

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