

MAŁGORZATA EWELINA SZYMAŃSKA

Maria Curie-Skłodowska University in Lublin, Faculty of Law and Administration
<https://orcid.org/0000-0001-5976-496X>
malgorzata.szymanska@poczta.umcs.lublin.pl

Livestock Welfare – Legal Aspects

The increase in ecological awareness in society observed since the second half of the 20th century leads to the development of legal regulations in the field of environmental protection, nature protection and animal protection. The basis for maintaining biological balance is the harmonious coexistence of people, plants and animals, and guaranteeing effective protection of the natural environment has a direct impact on the conditions of human existence. Creating and applying legal regulations can lead to the realization of balance in the natural environment. Diverse ways of using animals by man in the modern world determine the need to protect them by preventing excessive exploitation of animals and guaranteeing their welfare.

The topics of well-being are undertaken by various fields of science: economics, zootechnics, veterinary medicine, ethics, including law. The proper living conditions for animals are subject to legal regulation at the domestic, European and international level. They are intended to ensure appropriate treatment during production. The addressees of legal norms are both agricultural producers, entities involved in the transport of animals, their slaughter, as well as state administration bodies entrusted with control functions in this respect.¹ Welfare in relation to farm animals will be achieved through the selection and application of such techniques and production methods that take into account the quality of life of animals by eliminating to the maximum extent all unnecessary nuisances of their lives, and allow achieving the most favorable standard of living.

¹ E. Jachnik, *Zasada dobrostanu zwierząt we wspólnej polityce rolnej Unii Europejskiej*, „Studia Iuridica Lublinensia” 2017, Vol. 26, p. 289ff.

Citing statistical surveys, nearly half of Europeans (46%) identify well-being in terms of compliance with obligations for all animals, while slightly less (40%) associates well-being with farm animals only in terms of maintaining them and ensuring a better quality of life. In Poland, these proportions are 33 and 30%, respectively. Interestingly, the percentage of citizens who view animal welfare as going beyond animal protection alone (minimum farming conditions) is 18% in the EU and 14% in Poland, and is very close to those in which welfare is considered equivalent to protection (17% EU and Poland). A similar percentage of respondents believe that animal welfare contributes to better quality animal products (17% EU, 12% Poland). The vast majority of Europeans (94% EU, 86% Poland) believe that it is important to protect farm animal welfare. However, over half (57%) of EU respondents (36% in Poland) consider it “very important” and 37% as “rather important” (52% in Poland). Only a small proportion of respondents (4% EU, 7% Poland) do not recognize animal welfare as an important issue. More than four out of five (82%) respondents in the EU (77% in Poland) believe that the welfare of farmed animals should be better protected than now. Almost two-thirds (64%) of Europeans (59% of Poles) indicated that they would like to receive more information about the conditions of animal husbandry in their country. Europeans strongly argue that imported products from outside the EU should meet the same animal welfare standards as those used in the EU (93%). Nine out of ten respondents (90%) agree to set animal welfare standards around the world. Overall, 59% of EU citizens (44% of Poles) declare that they would be willing to pay more for products from animal-friendly farming conditions, with 35% (27% Poland) willing to pay up to 5% more and 16% (EU and Poland) from 6 to 10% more. Over half (52%) of EU citizens (41% of Poles) are looking for labels that identify animal welfare during breeding when purchasing products. It is worth noting that 47% of Europeans (37% of Poles) state that the current selection of animal-friendly food products in shops and supermarkets is insufficient; this result is 9 percentage points higher than in the previous survey.²

The discussion on animal welfare has involved specialists from various fields since the 20th century. The report prepared by the Brambell committee in 1965 is important for addressing the issue of animal welfare. Its authors postulated that animals domesticated by humans in terms of living conditions should have five freedoms: freedom from hunger, thirst and malnutrition by providing access to fresh water and food that will keep animals healthy and strong; freedom from psychological trauma and pain by providing adequate shelter and a place of rest; freedom from pain, wounds and diseases due to prevention, timely diagnosis and treatment; freedom to express natural behavior by providing adequate space, conditions and the company of other animals of the same species, and freedom from fear and stress by providing care

² See E. Herbut, J. Walczak, *Dobrostan zwierząt w nowoczesnej produkcji*, „Przegląd Hodowlany” 2017, Nr 5, p. 3ff.

and treatment that does not cause animal mental suffering. The above-mentioned freedoms have been defined as values that have become a commonly accepted basis for assessing well-being. They are the basis for legislative solutions and continuous research on improving the conditions for keeping farm animals from the point of view of their needs.³

The sensitivity of societies to the pain and suffering arising from the animal husbandry system has caused social pressure on politicians, international authorities and organizations that allow it to pass a number of legal acts regarding animal protection.

On 15 October 1975, the Declaration of Animal Rights was adopted under the auspices of UNESCO. Under the influence of the public opinion of European societies, the following conventions on animals were adopted by the Council of Europe for the adopted Declaration: the European Convention for the Protection of Animals kept for breeding purposes of 10 March 1976; the European Convention for the Protection of Animals for Slaughter of 10 May 1979; the European Convention on the International Transport of Animals of 13 December 1986, and the European Convention for the Protection of Pets of 13 November 1987.⁴

The signatories of the European Convention for the protection of Animals kept for Farming Purposes have committed themselves to establishing common legal standards for housing, feeding and care in accordance with the needs of animals and to ensuring their protection in the conditions of modern intensive farming systems. The convention also indicated the need to take into account the living requirements of animals when developing and implementing European rules. Its importance and the demands expressed in it were contained in Decision 78/923/EEC issued by the European Council. According to its content, the protection of animals is not in itself one of the objectives of the Community. However, the Council recognized a certain relationship between the protection of farm and farm animals and the functioning of the common market in the context of unequal conditions of competition. The latter was influenced by the heterogeneous legislative approach of the Member States, which resulted in divergent legal norms.

The issue of animal welfare at the Community level as a value was also raised in the Treaty of Amsterdam in 1997, which adopted the Additional Protocol on the protection and good treatment of animals. It had a significant impact on the subsequent legislative process. The European Parliament also adopted a Community action plan for the protection and welfare of animals in 2006. It stated that the protection of animals is an expression of humanity and a challenge for European civilization and culture, which was the inspiration for other official documents.

³ I. Lipińska, *Z prawnej problematyki dobrostanu zwierząt gospodarskich*, „Przegląd Prawa Rolnego” 2015, Nr 1, p. 64ff.

⁴ R. Kołacz, Z. Dobrzański, *Higiena i dobrostan zwierząt gospodarskich*, Wrocław 2006, p. 147.

The principle of animal welfare seems to have a special position in the system of values of the European legislator. This rule has been incorporated into the legal system under the Lisbon Treaty and is now expressed in Art. 13 of the Treaty on the functioning of the European Union. The commented provision is included in Title II of the Treaty, which sets out the general principles and objectives of the European Union. The catalog of general principles of the EU's functioning reflects the system of values approved by the EU legislator. As is the case with other adopted legislative solutions, the shape finally given to the principle of respect for animal welfare is the result of axiological currents clashing and a manifestation of frequently understood international law in the forum and this is undoubtedly EU law – a compromise.

According to the content of Art. 13, the principle of EU law is care for animal welfare in the formulation and implementation of those EU policies that, by their very nature, may have an impact on this welfare. The inclusion of the discussed principle in the circle of the principles of EU law was influenced by the development of the trend belonging to the so-called ideal nature protection, which is humane protection of animals. We define protection as motivated by non-economic reasons other than utilitarian ones. Humanitarian protection, i.e. based on the conviction that animals are capable of suffering, and inflicting suffering on them beyond a duly justified dimension is unethical and should be prohibited, is undoubtedly motivated by non-economic considerations.

Legislative solutions undertaken under EU law are often an expression of a compromise between competing values. It is no different in the case of respect for animal welfare, the implementation of which sometimes conflicts with religious customs, cultural heritage or regional traditions. The rule adopted in Art. 13 of the Treaty on the Functioning of the European Union is not an absolute rule. The legislator emphasizes that in the process of adopting and applying provisions regarding or taking into account animal welfare, account should be taken of tradition and legislation existing in the Member States to the extent that they may affect the understanding of animal welfare, and indicates the exceptions that may be made in the protection system due to the indicated elements, namely religious customs, cultural heritage or regional traditions.⁵

The most important EU secondary legislation regulating animal welfare issues is Regulation 1099/2009 on the protection of animals at the time of killing,⁶ Regulation 1/2005 on the protection of animals during transport and related operations, and amending the Directive 64/432 and 93/119 and Regulation 1255/97⁷ and Directive 98/58 regarding the protection of farm animals.⁸ The handling of individual categories

⁵ M. Górski, J. Miłkowska-Rębowska, *Komentarz do art. 13 Traktatu o funkcjonowaniu Unii Europejskiej*, Warszawa 2012, p. 261.

⁶ Official Journal of 2009 L 303/1.

⁷ Official Journal of 2005 L 3/1.

⁸ Official Journal of 1998 L 221/23.

of livestock is regulated by Directive 2008/119 concerning minimum standards for the protection of calves,⁹ Directive 2008/120 regarding minimum standards for the protection of pigs¹⁰ and directives regarding the protection and minimum standards in the farming of laying hens and chickens, including providing these animals with adequate surface.

The EU has one of the highest animal welfare regulatory standards in the world that includes general requirements for the farming, transport and slaughter of farm animals, and specific requirements for individual species. The Common Agricultural Policy provides an opportunity to increase farmers' level of knowledge about their legal obligations (through cross compliance, which makes the payments they receive under the common agricultural policy conditional on meeting minimum requirements), and encourages farmers to apply higher standards (through financial support provided in under rural development policy). Knowledge about animal welfare has grown rapidly in recent years and is of great interest to the media. The European Parliament adopted two resolutions (in 2010 and 2015) on EU animal welfare policy. Actions taken in the EU for animal welfare come from four main sources, each with a separate control mechanism.¹¹

The common agricultural policy contributes to the achievement of animal welfare goals through cross compliance (making most payments to farmers under the common agricultural policy subject to compliance with minimum requirements) and the financing of animal welfare activities and projects. Cross compliance is a mechanism that makes the majority of payments under the Common Agricultural Policy¹² (about EUR 46 billion in 2016) conditional on compliance with a number of environmental rules, maintaining land in good agricultural condition, animal welfare and public and animal and plant health. It does not apply to small agricultural producers, who account for around 40% of the total number of farmers in the EU.¹³ Payments under the common agricultural

⁹ Official Journal of 2009, L 10/7.

¹⁰ Official Journal of 2009, L 47/5.

¹¹ European Parliament resolution of 5 May 2010 on evaluation and assessment of the Community Action Plan on Animal Welfare 2006–2010 (2009/2202 (INI)) and European Parliament resolution of 26 November 2015 on the new strategy on animal welfare for 2016–2020 (2015/2957 (RSP)).

¹² Direct payments in accordance with Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 laying down provisions on direct payments to farmers under support schemes under the common agricultural policy (OJ L 347, 20.12.2013, p. 608); and area and animal welfare payments under rural development in accordance with Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 347, 20.12.2013, p. 487).

¹³ Article 92 of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy (OJ L 347, 20.12.2013, p. 549). Small-scale agricultural producers are, however, not exempt from the obligation to comply with relevant animal welfare legislation and are subject to official controls to verify compliance with these provisions.

policy for farmers who do not meet these standards and requirements may be reduced by an amount of between 1 and 5% of the payment, or more if the non-compliance is intentional. In exceptional cases, the authorities may exclude farmers from aid schemes. The cross-compliance system does not cover all legal requirements regarding animal welfare, but includes provisions on the protection of calves and pigs and provisions laying down general requirements for all farmed animals.¹⁴

General requirements apply to all farms keeping livestock regardless of the species and number of animals are defined in Directive 98/58/EC concerning the protection of farmed animals. These requirements specify: the qualifications of the persons handling the animals; guarding animals; storage of documentation regarding the treatment and deaths of animals; ensuring freedom of movement for individuals; the quality of buildings and premises where animals are kept; ensuring species-specific environmental conditions for animals; animal nutrition; dealing with sick, injured animals and performing veterinary procedures and technologies used in breeding. The requirements for calves are additional guidelines that calf owners must comply with. These requirements are defined in Council Directive 2008/119/EC establishing minimum standards for the protection of calves, whereby a calf is considered to be an animal up to the age of 6 months, regardless of its sex. For calves, the requirements relate to: ensuring an adequate surface area; indoor environmental conditions; a ban on tying calves and muzzling them; controlling calves and caring for sick calves; proper feeding of calves. The requirements for pig farming in Council Directive 2008/120/EC⁴⁰ establishing minimum protection standards for this species have been regulated separately. Pigs should be kept in groups due to intense social behavior. This causes maintaining such breeding conditions that in addition to maintaining proper surface and environmental conditions, there is no aggressive behavior, and veterinary treatments are performed on animals isolated from the group.

In maintaining animal welfare, which is dependent on the will of man, verification and supervision is an extremely important aspect. These issues were included in Parliament's Regulation No. 882/2004 of the European Council of 29 April 2004 on official controls carried out to check compliance with feed and food law as well as animal health and animal welfare rules. The basis of this normative act is the assumption that animal health and animal welfare are important factors, which contribute to improving the quality and safety of food. From this, Member States have an obligation to both enforce animal health and animal welfare rules and monitor compliance by operators at all stages of production, processing and distribution. Therefore, according to Art. 3 of Regulation 882/2004, official controls should be organized in each country. Rules for carrying them out and, above all, appointing the competent bodies were left to the

¹⁴ A. Bartkowiak, Ł. Namyślak, P. Mielcarek, *Działania strategiczne w zakresie dobrostanu zwierząt jako element zrównoważonego rozwoju rolnictwa*, „Problemy Inżynierii Rolniczej” 2012, z. 1, p. 99ff.

national legislator. The basic legal act regulating the treatment of vertebrate animals, including farm animals, is the Act of 21 August 1997 on the Protection of Animals.¹⁵ Each animal requires humane treatment. An animal as a living being, capable of feeling suffering, is not a thing – man owes him respect, protection and care (Art. 1(1) in conjunction with Art. 5 of the Act of 21 August 1997).

In accordance with Art. 2 point 1 of the Act of 29 June 2007 on the organization of breeding and reproduction of farm animals, used in the Act, livestock means: a) equidae: horse (*Equus caballus*) and donkey (*Equus asinus*), b) cattle: domestic cattle (*Bos taurus*) and buffaloes (*Bubalus bubalus*), c) deer: red deer (*Cervus elaphus*), sika deer (*Cervus nippon*) and fallow deer (*Dama dama*) kept in farm conditions to obtain meat or hides, if they come from rearing or closed breeding, referred to in the provisions of hunting law, or rearing or farming, d) poultry, e) pigs (*Sus scrofa*), f) sheep (*Ovis aries*), g) goats (*Capra hircus*), h) honey bee (*Apis mellifera*), i) fur animals. In accordance with Art. 4 point 2 of the Act on the Protection of Animals, “humane treatment of animals” means treatment that takes into account the animal’s needs and provides care and protection. In Poland, the provisions on breeding and welfare requirements are set out in the Regulation of the Minister of Agriculture and Rural Development of 15 February 2010 on the requirements and procedures for keeping livestock for which protection standards have been laid down in EU regulations¹⁶ (entered into force on 30 June 2010) and the aforementioned Act of 21 August 1997. In the case of other species of livestock or groups of cattle (e.g. cows and heifers), welfare provisions were set out in the Regulation of the Minister of Agriculture and Rural Development of 28 June 2010 on minimum conditions for keeping farmed animal species other than those for which protection standards have been laid down in EU legislation.¹⁷ This regulation sets protection standards for: cattle (excluding calves), horses, sheep, goats, ostriches, guinea fowls, polar foxes, common foxes, raccoon dogs, mink, cowards, rabbits, chinchillas, nutria, deer, fallow deer and turkeys, geese and ducks on farms keeping at least 100 of these birds.¹⁸

The concept of animal welfare is not defined in any act of European law, although the term is increasingly used by both the European legislator, legislators of individual Member States and representatives of the doctrine. In 2008, the World Organization for Animal Health (OIE) developed the following definition of animal welfare: “Welfare is achieved if the animal is healthy, safe and well fed, does not suffer from discomfort and has the ability to express inborn (natural) behavior and does not experience such inconvenient conditions like pain, fear and anxiety”. The concept of animal welfare has

¹⁵ Journal of Laws of 2019, pos. 122, 1123.

¹⁶ Journal of Laws of 2010, No. 56, pos. 344, as amended.

¹⁷ Journal of Laws of 2019, pos. 1966.

¹⁸ See A. Reinholz-Trojan, *Znaczenie wiedzy o zachowaniu zwierząt w kontekście dobrostanu na przykładzie bydła domowego (Bos taurus)*, [in:] *Zachowanie się zwierząt*, red. M. Trojan, Warszawa 2007.

been the subject of disputes in the doctrine of biological and veterinary sciences as well as ethics and law for several decades. The term is associated with such biological qualities as stress, tolerance, adaptation, fitness and homeostasis. The same indicates that the concept of well-being applies to the body as a whole and embraces all its functions, from psychological reactions (emotions, feelings) to phenomena occurring at the cellular level.¹⁹ The following examples of attempts to define this term can be indicated: Barry Hughes defines well-being as a state of physical and mental health achieved in conditions of full harmony of the system in its environment.²⁰ According to David Sainsbury, well-being is a set of conditions that cover the biological and behavioral needs of the body, which allows the full disclosure of its genetic potential.²¹ Donald Broom states that well-being is a state of the system in which an animal can cope with the circumstances surrounding it.²²

Welfare is disturbed when the intensity of stimuli acting on physiological systems goes beyond the ability to maintain balance in these systems. A clear distinction should be made here between adaptive responses with stress symptoms and welfare threshold responses. The concept of well-being is not easy to define. This expression is very broad and there is no single, generally accepted definition. In general, well-being is defined either very generally, without going into details as in the case of Broom's proposal, which claims that it is a state in which the animal can cope with the environment in which it resides, or more precisely specified criteria are proposed by defining it as a set of environmental conditions satisfying not only the basic biological needs of the individual, but also, and perhaps above all, behavioral needs, allowing the expression of the entire genetic potential of the individual. Because even at a fairly low level of behavior organization, in instinctive activities, animals exhibit the accompanying emotions. Many researchers place special emphasis on the emotional aspect of well-being, and thus provide animals with the ability to express behavior with the participation of appetite stimuli while minimizing aversive situations.

According to the Farm Animal Welfare Code, developed by the English specialists from the Farm Animals Welfare Council, the concept of animal welfare can be reduced to the following points: freedom from hunger and thirst, freedom from discomfort, freedom from pain, injury and disease, freedom from fear and stress and the ability to express normal behavior. Freedom from pain, disability and disease – by guaranteeing animals prevention, early diagnosis and treatment. Freedom from hunger and thirst – by providing access to food and fresh water that guarantees proper physical condition and energy. Freedom from discomfort – by providing the right environment, including

¹⁹ R. Kołacz, E. Bodak, *Dobrostan zwierząt i kryteria jego oceny*, „Medycyna Weterynaryjna” 1999, Nr 3, p. 147.

²⁰ B.O. Hughes, *Welfare of Intensively Housed Animals*, “Veterinary Research” 1988, No. 33, p. 123.

²¹ D.W.B. Sainsbury, *Pig Housing and Welfare*, “Pig News and Information” 1984, No. 4, p. 337.

²² D.M. Broom, *The Veterinary Relevance of Farm Animal Ethology*, “Veterinary Record” 1987, No. 17, p. 400.

shelter and a place to relax. Freedom from fear and anxiety – by providing the right conditions and treatment of animals, which allows animals to avoid mental discomfort, and freedom of expression of natural behavior by providing sufficient physical space, proper indoor conditions, and the company of other animals of the same species. Lack of assurance of those “five freedoms” can be described on a continuum from the individual’s complete lack of coping with the environment to the shortage in this area indicating a low level of welfare, to the complete assurance of freedom for animals in this area.²³ In biological sciences, animal welfare science is currently one of the most comprehensive sciences, a discipline that includes behavioral ecology, evolutionism, neuroscience, animal behavior, genetics as well as cognitive behavior science and consciousness research.²⁴ Ensuring the welfare of animals concerns both the conditions in which the animals are kept, the conditions in which they are transported, and the methods of killing them. In the research and measurement of welfare since 1993, you can use the indications of the Farm Animal Welfare Council (FAWC), which proposed to measure well-being based on the so-called five freedoms. Well-being can take different levels – from good welfare to poor welfare, and the criteria for this assessment can be multi-threaded. When considering the above definitions, a reflection arises that welfare is basically not synonymous. The semantic capacity of this term inclines us to perceive the individual’s situation in a holistic context and may be the direction of development of many scientific disciplines in the 21st century.

Livestock are the largest group of species at risk of poor welfare. This is mainly due to the economic focus on lowering agricultural production costs, low sensitivity and knowledge on the part of people taking care of animals. Initially, the minimum criteria were used to assess the level of farm animal welfare: ensuring constant access of animals to water – both in the pen, on the stand, or in the paddock and pasture; ensuring at least the minimum dimensions of the stands and the surface of the pen in which the individual is to be kept; proper functioning of the ventilation and proper lighting of livestock buildings; proper collection, storage and disposal of manure.²⁵

The official control systems in place in the Member States play a key role in ensuring the proper enforcement of animal welfare standards. Good practices in this area, in particular regarding the consistency of official controls, and the need to focus on areas and entities conducting business are the basis for efficient control. Public interest in animal welfare has become particularly important in recent years, which is mainly due to the growing awareness of consumers regarding the methods of producing raw materials of animal origin. The attitudes presented are in line with the theory of

²³ K. Durka, J. Sikorska, M. Trojan, *Postrzeżenie oraz przestrzeżenie dobrostanu zwierząt laboratoryjnych, hodowlanych oraz przetrzymywanych w ogrodach zoologicznych w kontekście obowiązującego prawa*, „Wschodni Rocznik Humanistyczny” 2015, t. 11, p. 313ff.

²⁴ M.S. Dawkins, *A User’s Guide to Animal Welfare Science*, “Trends in Ecology and Evolution” 2006, Vol. 2, pp. 77–82.

²⁵ K. Durka, J. Sikorska, M. Trojan, *op. cit.*, 324ff.

democratic society development and the principle of the expanding circle, proposed by Peter Singer. This principle says that as humanity improves, the extent of human intimacy with the surrounding world increases. Currently, the area of kindness and empathy also directs people to the animal world. The voices of public opinion express the desire to limit animal suffering as much as possible and seek educational, legal and scientific ways to achieve this goal.²⁶

The European legislator has recognized the need to ensure that animals are adequately adapted the welfare level and has set a minimum in a number of legal acts on animal handling standards so that physical and mental health and the general condition of the organism may have been determined to be sufficient for individual animal species. Animal welfare directly or indirectly determines their health and productivity, as well as the quality of animal products. Welfare issues are the subject of many interdisciplinary studies aimed at optimizing animal welfare, transport and slaughter. The protection of animal health is also an important element of protecting public health. Food safety control of animal origin monitors every link in its production chain, from herd monitoring, strategies for welfare protection through biosecurity and preventive and therapeutic programs to quality control of the final product. Attention should also be paid to the economic dimension of well-being, which translates into production efficiency. Future actions should develop farming methods in which the maximization of economic profit does not translate into the exploitation of animals.

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²⁶ W. Matuszewski, J. Walczak, *Dobrostan zwierząt gospodarskich – regulacje prawne i ich konsekwencje. Opracowanie monograficzne*, Kraków 2005, p. 3.

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Abstract: The article tackles the issue of farm animals welfare as a constituent factor of animal health protection and an important element of proper management of agricultural production. The starting point for the deliberations is an assumption that each animal is capable of suffering and should therefore be treated in a proper way. In the authoress' opinion the current legislation ensures animal welfare and covers in a comprehensive manner all respective issues starting from animal maintenance at a farm, through the transporting of animals, to the conditions of their slaughter. Further simplification and harmonisation of the existing legislative norms is nevertheless necessary, as well as formulation of clear principles of support to farmers who satisfy the basic requirements of animal welfare, and to those who maintain standards even higher than prescribed. Regulations regarding respect for animal welfare were shaped independently of the evolution of regulations concerning environmental protection (including in the context of sustainable development) and nature protection in other aspects. Undoubtedly, however, humane protection of animals is a fragment of comprehensively understood nature protection and thus broadly understood environmental protection.

Keywords: animal welfare; common agricultural policy; legal animal protection

