

Legal Aspects of the Prohibition on Chick Shredding in the German State of North Rhine-Westphalia

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1. Introduction: Content of the Internal Directive and Actual Situation of Male Chicks

This comment considers legal aspects of the Internal Directive of the Ministry of Climate Protection, Environment, Agriculture, Nature and Consumer Protection of 26 September 2013 of the German State of North Rhine-Westphalia, which banned the practice of male chick shredding and other methods of killing.² In the light of European and German legislation this could either be viewed as progress in animal welfare law and hereby serve as a model for other regions, or constitute an unlawful act beyond the leeway of implementation exceeding the Ministry's competence.

The purpose of the article is to inform the legal community in Europe about this very current development (1) and to consider some legal aspects. The questions asked are if European law permits the Ministry's action (2) and if national German law does not restrict the opportunity or the impact of the Internal Directive (3). The underlying thesis is that there are distinctions between theoretical and practical legal realities in Animal Welfare law and the recent development could change one part of this discrepancy (4).

The Internal Directive, which followed the legal opinion of the public prosecutor of Münster in investigative proceedings,³ was issued on 26 September 2013. It was not published,⁴ as it constitutes an internal administrative ordinance between the Ministry and its subordinate authorities. In substance, it asks the subordinate authorities within the *Land* of North Rhine-Westphalia to issue ordinances prohibiting the current practice of male chick killing within their local jurisdiction. The Ministry leaves scope to the subordinate authorities to grant the producers a time-limit of one year for implementation, as the practice was tolerated before and the impact could

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² The Internal Directive was issued under file number VI-5 4201-722 but was not published. The author therefore examines a confidential version.

³ Writ of *nolle prosequi* dating from 10 July 2013.

⁴ Therefore this article summarizes its substance and tries to inform Europe-wide.

be seen throughout Europe. The main reason given for the Internal Directive itself is that there was a legal need for clarification,⁵ inasmuch as the Münster public prosecutor's office, in a recent case, found that there were no reasonable legal grounds for the killing under section 17 No.1⁶ German Animal Welfare Act⁷.

The prosecutor's office had filed a writ of *nolle prosequi* and dropped the case against a hatchery owner because they found a mistake of law⁸. When undertaking a first-level examination of the physical elements⁹ of an offence the prosecutor's office did not find any reasonable grounds for the killing.¹⁰ Their examination of the third-level elements of the offence, the guilt examination,¹¹ yielded a finding that the hatchery owner's mistake of law might be deemed exculpatory according to section 17 German Penal Code¹², and thus the prosecutor's office terminated the investigation. The prosecutor's office found that, as the administrative authorities had tolerated the practice of killing surplus chicks for many years, this fact had led to a mistake of law on the part of the hatchery owner and therefore constituted a ground for excuse. However, the public prosecutor stated explicitly that the tolerance of the administrative authorities could not constitute a justification for the practice.¹³

At its core, the public prosecutor's decision determined that the current killing practice in the hatchery was unlawful under German law, and the Ministry followed these findings in the Internal Directive.

This new enforcement action may possibly put a stop to some of the cruel consequences of the egg-producing industry. In practice,¹⁴ male chicks of laying hens are killed within 72 hours¹⁵ of their birth by shredding or gas exposition, because keeping them alive is not considered to be cost-effective. These so-called 'hybrid layers' grow more slowly because of their breed and are generally smaller than broilers.¹⁶

This type of culling, also known as the 'maceration' or 'crushing' method, is a common practice in many factory farms in Europe and is regulated¹⁷ under European Law, specifically under

⁵ In other words, the Ministry tried to 'freeze' the practice in order to clarify if the changing legal opinion within the judiciary system could be followed by legislative or other actions.

⁶ Which reads as follows: '*Mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe wird bestraft, wer 1. ein Wirbeltier ohne vernünftigen Grund tötet oder (...)*', [On pain of up to 3 years imprisonment or fine shall be punished who 1. kills a vertebrate without reasonable grounds or (...)].

⁷ See *BGBl.* I S. 3154, last version amended on 7 August 2013.

⁸ These findings to drop the case were unusual and that is the actual reason for attracting jurisprudential and practical attention. In the past, similar cases were dropped because of a different legal argumentation with regard to the merits of the case and by affirming reasonable grounds for the killing.

⁹ The German examination agenda in substantive penal law starts with physical elements of an offence (1), including any kind of intent, followed by the examination of the unlawfulness (2), including justification elements, followed by the guilt examination (3), including exculpatory reasons.

¹⁰ One can either consider the 'reasonable ground' as part of the first level assessment, physical elements of a crime, or on the second level 'unlawfulness / justification' of a crime, which is not decisive in this case.

¹¹ See fn. 9.

¹² See *BGBl.* I S. 3799, last version amended on 10 October 2013.

¹³ Referring to the reason given by LORZ/METZGER, *Tierschutzgesetz*, Kommentar [Animal Welfare Act, Commentary], (abbrev. LORZ/METZGER, *Tierschutzgesetz*), 6. Auflage, München, 2008, § 1, Rec. 68 that the welfare of the animal is not placed to the administrative authority's disposal.

¹⁴ See the in-depth explanation in ORTH, *Zur Tötung unerwünschter neonater und juveniler Tiere* [On the killing of unwanted neonatal and juvenile animals], *NuR* 2010, Page 853, 855, Fn. 18.

¹⁵ This is the deadline envisaged under EU Law, Attachment 1, Table 1, No. 4 of Regulation (EC) No 1099/2009.

¹⁶ The growth disparity as between laying hen chicks and broiler chicks is roughly 17 as versus 5 weeks. This means that broiler chicks reach their final, slaughter weight after 5 weeks of life, whereas laying hen chicks, which are usually not used for poultry production, reach full-grown slaughter weight after 17 weeks of life.

¹⁷ See below under Chapter 2.

Council Regulation (EC) No 1099/2009. About 40 million chicks are killed each year in Germany under such cruel conditions¹⁸. Based on the number of chicks in Germany, one can estimate the number of chicks in Europe subjected to cruel killing methods at roughly 330 million.¹⁹

Indeed, in objective terms, the practice of killing male chicks in factory poultry farming (in the egg-producing branch of the industry) can only be called cruel²⁰, although it is one of the common consequences of the lack of dual-purpose breeds. The practice itself must be considered cruel, as living chicks are crushed without anaesthesia and whilst the chicks are fully conscious, entailing intense pain which lasts longer than necessary during the killing process.

2. European Law Aspects

2.1. Applicable Law

When examining the legal framework of the Internal Directive of the Ministry, there are regional, national and European aspects to be considered. This article focuses on the national and European aspects but disregards the regional competence aspects of the Internal Directive.

The Internal Directive of the State Ministry was issued in order to ban the practice described above. This regulation should be seen in the light of European Union legislation, in particular Article 13 Treaty on the functioning of the European Union (TFEU)²¹ and Council Regulation (EC) No 1099/2009²².

Article 13 TFEU²³ obliges the addressed entities to pay full regard to the welfare requirements of animals, since animals are sentient beings. It does not vest legislative competence in the European Union for animal welfare matters as a general matter.²⁴ However, the horizontal clause²⁵ does find specific expression in EU secondary law²⁶. The creation and implementation of secondary law under different legislative competencies, as e.g. the agricultural competence of Article 43 TFEU, is reviewed for conformity with Article 13 TFEU, addressing both the Union's legislation²⁷ and that of the Member States²⁸. Thus, also the Member States may not produce legislation nor tolerate its enforcement contradicting the purpose of Article 13 TFEU. The Internal

¹⁸ See HIRTH/MAISACK/MORITZ, *Tierschutzgesetz*, Kommentar [Animal Welfare Act, Commentary], (abbrev. HIRTH/MAISACK/MORITZ, *Tierschutzgesetz*), 2. Auflage, München, 2007, § 17, Rec. 49; and an estimate / calculation based on the number of living laying hens: <https://www.destatis.de/DE/ZahlenFakten/Wirtschaftsbereiche/LandForstwirtschaftFischerei/TiereundtierischeErzeugung/Tabellen/LegehennenEier.html> (called 20131117).

¹⁹ According to the estimate under fn. 18 the number of chicks can be derived from the number of laying hens, about 326 millions, see <http://www.animalwelfareintergroup.eu/issues/laying-hens/> (called 20131119).

²⁰ According to the widely held opinion of 'cruel' and the legal definition of the objective scope of cruel methods of murder under section 211 German Penal Code, see e.g. FISCHER, *Strafgesetzbuch*, Kommentar [Penal Code, Commentary], 58. Auflage, München, 2011, § 211, Rec. 56.

²¹ See *ABl.* C 306 vom 17.12.2007, S.1.

²² See *ABl.* L 303 vom 18.11.2009, S.1.

²³ As to the scope and interpretation of the Animal Welfare clause under Art. 13 TFEU, see CALLIESS/RUFFERT, *EUV/AEUV* [TEU/TFEU], 4. Auflage, München, 2011, Art. 13, Rec. 1 et seq; GRABITZ/HILF/NETTESHEIM, *Das Recht der Europäischen Union* [The law of the European Union], 50. Ergänzungslieferung, München, 2013, Art. 13, Rec. 1 et seq.

²⁴ See GRABITZ/HILF/NETTESHEIM, *Das Recht der Europäischen Union*, Art. 13, Rec. 8; CALLIESS/RUFFERT, *EUV/AEUV*, Art. 13, Rec. 12.

²⁵ As to the interpretation as horizontal or cross-section clause, see GRABITZ/HILF/NETTESHEIM, *Das Recht der Europäischen Union*, Art. 13, Rec. 3; CALLIESS/RUFFERT, *EUV/AEUV*, Art. 13, Rec. 1.

²⁶ See GRABITZ/HILF/NETTESHEIM, *Das Recht der Europäischen Union*, Art. 13, Rec. 18.

²⁷ See CALLIESS/RUFFERT, *EUV/AEUV*, Art. 13, Rec. 4.

²⁸ See CALLIESS/RUFFERT, *EUV/AEUV*, Art. 13, Rec. 5.

Directive protecting huge numbers of male chicks from shredding serves the purpose of improving animal welfare and consequently meets the regulatory intention of Article 13 TFEU. One specification of Article 13 may be seen in Regulation 1099/2009, although the latter was adopted earlier.

2.2. Scope

The Council Regulation on the protection of animals at the time of killing entered into force 1 January 2013. It applies to all Member States and thus to Germany, as well, but leaves leeway for national implementation and regulation. Thus, national implementation and regulation can go beyond the regulation of animal welfare aspects of slaughter.²⁹ The Council Regulation is based on Article 37 Treaty establishing the European Community^{30, 31} which creates legislative competence in the realm of agriculture. In agricultural respects, the regulation tries to balance a host of different interests, including those of livestock and food hygiene, fair market conditions and animal welfare, which permeate all parts of the regulation and are particularly salient under recitals 2³², 3³³, 4, 5, 6 et cetera.

It is important to consider the intention of the regulation and the interests underlying when interpreting Annex 1 of the regulation, which governs the different methods of stunning. Despite the heading ‘stunning methods’, Annex 1 contains not just stunning methods but also killing methods. Chapter I Table 1 regulates so-called mechanical procedures, which are in contrast to electrical methods under Table 2, gas methods under Table 3 and other methods, such as injections, under Table 4.

Under Table 1 No. 4, one finds the applicable mechanical stunning method for chicks up to an age of 72 hours. This is called a stunning method, but should actually be called a killing method. The animal species and its age is regulated in Column 3 (conditions of use). The so-called³⁴ ‘maceration’ process is described³⁵ as *immediate crushing of the whole animal*. Column 5 provides for specific requirements regulating certain methods, a reference to chapter II of the Annex.

Column 5 refers to point 2 of Chapter II which then describes maceration in the following words: ‘This method shall provide *instantaneous maceration and immediate death* of the animals. The apparatus shall contain rapidly rotating mechanically operated killing blades or expanded polystyrene projections. The capacity of the apparatus shall be sufficient to ensure that all animals are *killed instantaneously, even if they are handled in a large number.*’

Details on how animals can be killed are found not in the main body of the regulation or within the recitals, but rather in its annex. Article 4 of the Regulation prescribes as a basic matter that:

‘1. Animals shall only be *killed after stunning* in accordance with the methods and specific requirements related to the application of those methods set out in Annex I. The loss of

²⁹ See in particular Article 26(1) of the Regulation.

³⁰ Article 37 TEC, which is now Article 43 TFEU.

³¹ See the wording of the regulation 1099/2009 before Recital 1).

³² Recital 2 e.g. refers to animal welfare when mentioning: ‘*Business operators or any person involved in the killing of animals should take the necessary measures to avoid pain and minimise the distress and suffering of animals during the slaughtering or killing process.*’

³³ Recital 3 e.g. refers to fair market conditions when mentioning: ‘*However, large discrepancies have been observed between the Member States in implementing that Directive (93/119/EC) and major welfare concerns and differences susceptible to affect competitiveness between business operators have been pointed out.*’

³⁴ ‘Name’ under Column 1.

³⁵ ‘Description’ under Column 2.

consciousness and sensibility shall be maintained until the death of the animal.

2. The methods referred to in Annex I which do not result in instantaneous death (hereinafter referred to as simple stunning) shall be followed as quickly as possible by a procedure ensuring death such as bleeding, pithing, electrocution or prolonged exposure to anoxia.’

The scope of the regulation is an outcome-orientated³⁶ balance of animal welfare aspects and livestock producers’ interests in fair market conditions and harmonised European standards. The outcome-orientation of the regulation means that the development of the sector should be balancing different interests by obtaining the best animal welfare standards possible and by leaving the means to the entity in charge of the implementation. But the regulation itself does not prohibit stricter killing and stunning methods with regard to animal welfare standards as shown by the existence of Article 26 and Recital 57.³⁷

The regulation also tries to adapt the methods it prescribes to technical standards, in order to maximise animal well-being at the time of killing or immediate prior to killing. It envisages the modifications to stunning methods under Annex 1 in line with technical scientific progress as per the opinion of the European Food Safety Agency (EFSA) under Article 4(2-1), and does not permit any relaxation of animal welfare standards 4(2-2). This could be described as dynamic and progressive legislation.

Taking account of both aspects of Article 4(2-1) and 4(2-2), the regulation furnishes a legal and technical framework for slaughtering methods, but leaves implementation and enforcement to the Member States, affording them leeway for outcome-orientated legislation. In addition, it is fair to ask whether the maceration method in Annex 1 is not in fact in conflict with the prescription under Article 4 No. 1 that all animals ought to be stunned before they are killed.³⁸

Consequently, the rules on maceration of chicks up to an age of 72 hours establish minimum standards for this method. Other killing methods, e.g. cervical dislocation (Annex 1, Chapter 1, Table 1, No. 5) are also applicable with respect to young poultry or chicks.

However, the regulation at no point suggests that chicks have to be killed as a general proposition. Thus, keeping them alive is an acceptable way of treating them as well. Even if it sounds obvious, it must be clearly pointed out that killing chicks remains an issue for national regulation. The regulation only prescribes the way they have to be killed if killing is considered necessary, but does not rule out the option of not slaughtering them at all.

Consequently the scope of the regulation does not cover whether to kill or not, it is only focused on the methods. Hence, strictly speaking, the Internal Directive does not fall within the regulation’s scope.

2.3. National Discretion

Even if one disagrees with the author’s analysis of the scope of the regulation, the Internal Directive may still be regarded as having been issued in accordance with the Regulation.

As envisaged by Recital 57, the Regulation allows stricter national rules under Article 26. Article 26(1) states that the Regulation shall not prevent Member States from *maintaining* any

³⁶ See the implementation paper of the Scottish Government, Pages 1, 16, available under: <http://www.scotland.gov.uk/Publications/2012/08/9239/3> (called 20131115).

³⁷ See explained below under chapter 2.3.

³⁸ As maceration actually does not include stunning strictly speaking, this could be a contradictory rule within the regulation itself, setting up a conflict which can only be resolved by the European Court of Justice.

national rules aimed at ensuring more extensive protection of animals at the time of killing in force at the time of entry into force of this Regulation. Article 26(2) furthermore states that Member States may *adopt* national rules aimed at ensuring more extensive protection of animals at the time of killing than those contained in this Regulation with reference to (a) killing and related operations of animals outside of a slaughterhouse, (b) the slaughtering and related operations of farmed game and (c) slaughtering with regard to religious rites.

In accordance with Article 26(1) and 26(2), national legislation may consequently adopt and maintain stricter rules with regard to animal welfare. Thus, apart from the fact that the Internal Directive does not fall within the scope of the regulation strictly speaking, the regulation itself does permit Member States to enact stricter rules. As the practice of chick shredding had been considered illegal and not in compliance with German national animal welfare standards even before the Regulation entered into force 2013,³⁹ the Internal Directive only maintains a stricter national rule by implementing the German Animal Welfare Act. The Internal Directive must therefore be considered to be a specific implementation of section 17(1) German Animal Welfare Act, which is a pre-existing rule and which was good law in Germany even before the Regulation entered into force. Hence, the Internal Directive is compatible with the scope of Article 26(1) of the Regulation.

Accordingly, after all this, the Internal Directive must be considered lawful and applicable under EU law.

3. German Law

Under German national law, there is a further level of restrictions in the killing and slaughtering of animals. These are governed by sections 4 and 4a Federal German Animal Welfare Act in conjunction with the above-mentioned EU Regulation. However, this level of restrictions concerns *how* animals are slaughtered.

The *question of whether* animals may be slaughtered falls within the scope of section 17 No.1 of the Federal German Animal Welfare Act⁴⁰, which prohibits the killing of animals without reasonable grounds, on pain of up to 3 years imprisonment. The question of whether there are reasonable grounds to support the large-scale killing of chicks is a question of legal analysis in respect of section 17 No.1 German Animal Welfare Act.

When considering the question of large-scale killing of male chicks, the core question is thus whether the killing of these animals is subject to the term ‘reasonable grounds’. Such reasonable grounds are defined by German constitutional values, legislative rules and concepts of public morality and justice.⁴¹ There are good arguments for applying a common-sense approach and looking at the general meaning of the word ‘reasonable’. By introducing the reasonable ground(s) requirement in section 2(1) and other sections of the German Animal Welfare Act, the German *Bundestag* created a core concept of animal welfare⁴², which added a new dimension to the legal

³⁹ See ORTH, Zur Tötung unerwünschter neonater und juveniler Tiere [On the killing of unwanted neonatal and juvenile animals], *NuR* 2010, Page 853, 856 with further notes to HIRTH/MAISACK/MORITZ, *Tierschutzgesetz*, § 17, Rec. 49; LORZ/METZGER, *Tierschutzgesetz*, Anh § 1, Rn. 17, TierSchIV, Rec. 11; KLUGE/V. LOEPER, *TierSchG*, Kommentar [Animal Welfare Act, Commentary], (abbrev. KLUGE/V. LOEPER), Stuttgart, 2002, § 1, Rec. 57; § 17, Rec. 168; PFOHL, *Münchener Kommentar zum StGB*, [Munich Commentary to the Penal Code], (abbrev. MünchKomm/PFOHL), Band 5, München, 2007, § 17 TierSchG, Rec. 42.

⁴⁰ See fn. 6.

⁴¹ See HIRTH/MAISACK/MORITZ, *Tierschutzgesetz*, § 17, Rec. 9, § 1, 27 et seq.; LORZ/METZGER, *Tierschutzgesetz*, § 1, Rec. 65 referring to the overall legal system.

⁴² See HIRTH/MAISACK/MORITZ, *Tierschutzgesetz*, § 1, Rec. 27.

principle of proportionality⁴³. Hence, obviously negative emotions such as boredom, lust, impulsivity, comfort, wantonness, revenge, tedium, whimsy, rage etc. are *per se* not reasonable grounds.⁴⁴ Motives of luxury are likewise not reasonable grounds, nor is the killing of animals for sport.⁴⁵

To-date, the killing of animals for slaughter and subsequent human consumption must be considered to be reasonable grounds within the meaning of section 17 No.1 German Animal Welfare Act, inasmuch as this use of animals comports with current public concepts of morality and justice.⁴⁶ But not every animal killed in the context of animal farming for consumption is actually killed to be eaten.

The jurisprudence of the German *Bundesverfassungsgericht* concerning laying hens⁴⁷ makes clear that purely economic reasons do not suffice as reasonable grounds for slaughtering or mistreatment⁴⁸. Previous to that ruling, the Higher Regional Court of Appeal in Frankfurt/Main had explicitly found that economic reasons did not suffice as reasonable grounds.⁴⁹ If there are different reasons, the main reason must be considerable and decisive.⁵⁰

Rearing male hybrid layer chicks takes approximately three times as long as broiler chicks (5 to 17 weeks), but it is possible to eat their meat and sell them as poultry. Thus, killing male hybrid layer chicks is a way to save costs in the egg production industry, although it would be possible to rear them to adulthood. Consequently, the producers' primary reasons for killing these chicks are commercial and economical. Even if the killed and crushed chicks can be '(re)used' or 'processed' afterwards, it is clear that the primary reasons for the practice of killing male hybrid layer chicks are economic in nature, and as such, they are not deemed adequate reasons under section 17 No.1 German Animal Welfare Act.

If one determines that economic aspects are the primary reasons for the large-scale practice of killing male chicks, this compels the conclusion that, under federal German law, the practice of maceration of male hybrid layer chicks has actually been illegal for a substantial period of time.⁵¹ Thus, the recent Ministry Internal Directive prohibiting this practice at the regional level is lawful, and should be considered a necessary step in the implementation of the German Animal Welfare law.

The fact that most of the above mentioned findings previously existed makes the Internal Directive important. The Internal Directive linked the theoretical knowledge about the German Animal Welfare Law with the practical producing conditions in factory farming. Therefore it ought to be considered as a necessary step of implementation to reduce the discrepancies between legal

⁴³ See HIRTH/MAISACK/MORITZ, *Tierschutzgesetz*, § 1, Rec. 29, 39 et seq., § 17, Rec. 9 and extensively MAISACK, *Zum Begriff des vernünftigen Grundes im Tierschutzrecht* [On the term reasonable grounds in Animal Welfare Law], Baden-Baden, 2007, Page 53 – 64.

⁴⁴ See HIRTH/MAISACK/MORITZ, *Tierschutzgesetz*, § 17, Rec. 40.

⁴⁵ See HIRTH/MAISACK/MORITZ, *Tierschutzgesetz*, § 17, Rec. 41.

⁴⁶ See the broad and critical debate in HIRTH/MAISACK/MORITZ, *Tierschutzgesetz*, § 17, Rec. 47 and the affirmative enumeration in LORZ/METZGER, *Tierschutzgesetz*, § 17, Rec. 19.

⁴⁷ See BVerfG, Judgement of 06.07.1999 '*Legehennenentscheidung*', NuR 1999, 687, online available under: http://www.bundesverfassungsgericht.de/entscheidungen/fs19990706_2bv000390.html (called 20131116).

⁴⁸ Ibid, Rec. 139.

⁴⁹ See OLG Frankfurt/M, NStZ 1985, 130.

⁵⁰ See ORTH, Zur Tötung unerwünschter neonater und juveniler Tiere [On the killing of unwanted neonatal and juvenile animals], NuR 2010, Page 853, 856.

⁵¹ See the unanimous literature opinion in HIRTH/MAISACK/MORITZ, *Tierschutzgesetz*, § 17, Rec. 49; LORZ/METZGER, *Tierschutzgesetz*, Anh § 1, Rec. 17, TierSchlV, Rec. 11; KLUGE/v. LOEPER, § 1, Rec. 57; § 17, Rec. 168; MünchKommStGB/PFOHL Band 5, § 17 TierSchG, Rec. 42; ORTH, Zur Tötung unerwünschter neonater und juveniler Tiere, NuR 2010, Page 853, 855 et seq.

regulation on the one hand and everyday reality on the other hand. One could also state that the Internal Directive transfers the prevailing legal opinion into production conditions, with a regional but in so far *erga omnes* effect.

4. Conclusion

The Internal Directive was issued in accordance with German and European law. Firstly, it does not contradict substantive primary EU law. Secondly, the Internal Directive does not fall within the applicable EU regulation's scope or, as the case may be, it falls at least properly within the discretion which the EU regulation leaves to the Member States. Thirdly, it meets German substantive Animal Welfare law.

Its practical impact is remarkable, in that it has to attract attention across national boundaries. It is suitable to eliminate one part of the discrepancies between theoretical and practical legal realities in animal husbandry.

If one considers the process involved in the Ministry's issuance of the Internal Directive, it is also remarkable to note that only one year ago the Ministry itself had held the legal opinion that there was almost no possibility of determining an offence under section 17 No.1 German Animal Welfare Act.⁵² Hence, it appears that the new assessment by the office of the state prosecutor has directly influenced the Ministry's own legal assessment. There is also a possibility that staff turnover within the Ministry following the elections in May 2012 in North Rhine-Westphalia played a role here, as well.

Nevertheless, it behoves Germany to move beyond this current tenuous position and create legal certainty. Not only should the judiciary in other regions of Germany adopt this reading of the Animal Welfare Act, but – first and foremost – the German *Bundestag* or federal government should issue similar regulations at the national level. The Internal Directive of North Rhine-Westphalia should not remain a lone 'voice crying in the wilderness'.

In the medium term, it may well be that poultry producers will avoid this region when seeking production sites in future. Thus, a merely regional internal directive will effectively change nothing at the national level in the long run. But in legal terms, the Internal Directive, and the thinking underlying it, has to be viewed as progress in German animal welfare law and as an advance in the development of German public policy in the realm of animal rights.

⁵² Internal legal opinion of the Ministry of Climate Protection, Environment, Agriculture, Nature and Consumer Protection dating from 22 August 2012.