

International Law, Animal Health and Zoonosis: A Critical Analysis of EU Leadership

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Abstract

On April 21st 2016, EU Regulation 2016/429 on transmissible animal diseases entered into force. The law aims to prevent and control animal diseases that can be transmitted to other animals or to humans. The new law deals, of course, with an issue that is of great public interest during the COVID-19 pandemic, which would have had its origins in such zoonosis. This contribution analyses what can be called for short the EU's Animal Health Law, the expectations that lay behind it, and whether those expectations have been realized. Part 1 describes the origins of the proposal; how and by whom it was advocated and its relationship to EU animal law in general. Subsequent parts examine the content of the Animal Health Law – its scope, overarching themes, and innovative elements. The core of the contribution is evaluative and asks what the exact implications are likely to be for animals and animal products, both within EU and beyond its borders, particularly with regard to exports. The article also looks at the potential for the Animal Health Law to be replicated in non-EU political contexts, taking account of recent criticism of the EU's own willingness to make significant and meaningful progress in implementing its animal health and welfare strategy. Is the Animal Health Law an expression of the leadership role the EU claims in transboundary animal law, offering a promising and instructive way forward, or is it just fuss and feathers?

1 Introduction

The 21st of April is a memorable date in history because it's the date on which Romulus founded Rome on the bank of the River Tiber and the day on which in London in 1926 Elizabeth, the future Queen of the United Kingdom and the Commonwealth, was born. Somewhat less memorably but not unimportantly it's also the date on which in 2016, and after a transitional period of five years, the EU Animal Health Law entered into force. EU Regulation n°2016/429 (the Animal Health Law) on transmissible animal diseases was approved by the European Parliament and the EU Council in March 2016, long before the

outbreak of the COVID-19 pandemic.¹ The law was a key output of the EU's Animal Health Strategy 2007-2013, which declared that "Prevention is better than cure."²

The overall aim of the law was to prevent and control animal diseases that can be transmitted to other animals or to humans by providing a comprehensive overarching legal framework that could regulate zoonosis across different sectors of the economy.³ More specifically, the intent was to guide and regulate activities in the EU livestock and food production sectors, although on its face the law also covered diseases that might occur in all kept animals, which could in some cases include pets. The familiar name of the regulation, as the Animal Health Law, suggests that its main objectives are the improvement of animal health rather than the improvement of animal welfare more broadly understood.⁴ Either way, the focus on the regulation of zoonosis warrants in-depth analysis.

In the following part the analysis delves deeper into this EU legal initiative, elaborating both on the origins of the proposal [*Section 2.1*] and its content [*Section 2.2*]. The analysis then asks about the exact implications of the initiative, both for animals and animal products, within the EU [*Section 3.1*] and beyond EU borders [*Section 3.2*]. This is an opportunity to respond to recent criticism of the EU's willingness to make significant and meaningful progress in the implementation of its animal health and welfare strategy [*Section 3.3*]. Is the EU still a frontrunner in the development and implementation of transboundary animal law? And is the Animal Health Law most usefully understood as a promising and instructive way forward others could emulate? Or is it rather an example of legal window-dressing and mere fuss and feathers [*Section 4*]?

¹ European Parliament and Council Regulation (EU) 2016/429 on transmissible animal diseases and amending and repealing certain acts in the area of animal health (EU Animal Health Law) [2016] OJ L84/1.
² Commission, 'New Animal Health Strategy for the EU (2007-2013) where "Prevention is better than cure"' (Communication) COM (2007) 539.

³ EU Animal Health Law, art 1 and recital 5.

⁴ See EU Animal Health Law, recital 7, which refers to art. 13 TFEU (the EU's policy integration provision regarding animal welfare).

2 The EU Animal Health Law

The first subsection, below, explores how and by whom the EU Animal Health Law was advocated. The second subsection examines the substantive provisions of the law and analyzes the scope and purpose of its overarching themes.

2.1 Origins

The Animal Health Law originated as a package of measures, proposed by the European Commission in May 2013, to modernize, simplify and strengthen agri-food chains in Europe. The nearly 70 pieces of EU legislation regulating the food chain were to be reduced to five,⁵ to ensure consumers' confidence in the sustainability of food production.⁶ The proposal encompassed (1) official controls, (2) animal health, (3) plant health and (4) plant reproductive material⁷ on the basis that “Animal health is a concern for all European citizens. This concern stems from the public health, food safety and food security aspects, which are related to animal health but also from the economic costs that animal disease outbreaks can trigger [...]”.⁸

Clearly, the Animal Health Law was motivated primarily by anthropocentric rather than biocentric concerns.⁹

Although the European Commission estimated that the package of measures would enter into force in 2016,¹⁰ it did not take effect until the 21st of April 2021. This gave time for

⁵ Commission, ‘Smarter rules for safer food: Commission proposes landmark package to modernise, simplify and strengthen the agri-food chain in Europe’ (Press Release) Brussels, 6 May 2013, 1.

⁶ *ibid.*

⁷ *ibid.*, 1-3.

⁸ Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on Animal Health’ COM (2013) 260 final, 2.

⁹ In contrast, see recital 1, EU Animal Health Law and considerations 3.6 and 3.7 of the Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on Animal Health, COM (2013) 260 final — 2013/0136 (COD) [2014] OJ C170/106. In addition, an explanatory memorandum also mentions that the concern for animal health stems from “animal welfare considerations, including the implications of disease control measures on animal welfare”, see Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on Animal Health’ COM (2013) 260 final, 2.

¹⁰ Commission, ‘Smarter rules for safer food: Commission proposes landmark package to modernise, simplify and strengthen the agri-food chain in Europe’ (Press Release) Brussels, 6 May 2013, 3.

legislative consideration to be given to the common agricultural policy (CAP), the internal market and the protection of public health. It also allowed various experts, Member States, and other interested parties, such as the Animal Health Advisory Committee (a sub-group of the Advisory Group on the Food Chain and Animal and Plant Health (AGFC)) and the European Economic and Social Committee (EESC) to be consulted. A survey was also carried out to assess the effectiveness of EU disease surveillance programs.¹¹ The introduction of a single regulation for animal health in the EU was based on the principle that “prevention is better than cure,” a basic premise of the Animal Health Strategy, 2007-2013.¹²

The overall goal of the Strategy was to build a new EU animal health policy on four pillars: clearly defined priorities; an overarching legal framework; an emphasis on prevention, surveillance and preparedness; and the incorporation of scientific innovation and research.¹³ In line with the emphasis on disease prevention, the new law shifted the focus of EU law and policy to disease surveillance and the achievement of biosecurity at farm level.¹⁴ Furthermore, the new EU animal health framework redefined existing *acquis* on animal health, welfare, animal nutrition, food safety, public health, environmental protection, pharmaceutical products and common agricultural policy legislation so that a comprehensive new law could become the vehicle for implementing the principles of the Animal Health Strategy.¹⁵ The over-arching intent was to deepen and strengthen the coherence between the EU’s animal health policy and other EU policies.¹⁶

This of course raises the question of the extent to which the Animal Health Law is best understood as something really new, or whether it’s just a cosmetic re-packaging of prior legislation. This is a subject to which we shall return.

¹¹ GJ Torres and others, 'Animal Disease Surveillance. the future EU Animal Health Law' (2011) *Épidémiologie et Santé Animale* 286, 286.

¹² COM (2007) 539 (n 2).

¹³ Commission, 'Action Plan for the Implementation of the EU Animal Health Strategy' (Communication) COM (2008) 545 final, 3.

¹⁴ Torres and others (n 11) 286; B. Bisdorff and others, 'Active animal health surveillance in European Union Member States: gaps and opportunities' (2017) 145 *Epidemiology and Infection* 802.

¹⁵ EU Animal Health Law, recital 8 and art 1 (2) (b) (i) and COM (2008) 545 final (n 13) 3.

¹⁶ Torres and others (n 11) 286. EU Animal Health Law, recitals 3 and 11.

2.2 Content

The Animal Health Law comprises more than 280 articles, which is in part the result of streamlining existing legal enactments. In 2004, the European Commission undertook an assessment of legislative texts dealing with animal health as a preliminary to drawing up an animal health strategy in 2007.¹⁷ An analysis released in 2013 found that the legal framework then in force in the EU comprised 50 directives and regulations and 400 pieces of secondary legislation,¹⁸ some of them adopted as early as 1964 and, thus, perfect targets for ‘Smart Regulation’.¹⁹ On its face, then, the Animal Health Law codifies and replaces a complex array of previous EU rules²⁰ on animal health.²¹

The Animal Health Law has nine main parts.²² Article 1 contains an overview of these different parts and their associated themes. They cover, for example, disease prevention, biosecurity measures, and disease control and eradication, including emergency measures to restrict animal movement (parts I, II, III and VII). It also sets out requirements for the entry of animals and animal products into the EU, and their subsequent movement, identification, registration and certification (parts IV, V and VI). Part II gives special attention to surveillance measures, because these were identified as key pillar of future EU animal health law and policy.²³ Animal health visits (Article 25) are recognized as helpful, both in disease prevention and the early detection of potential problems.²⁴

¹⁷ Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on Animal Health, COM(2013) 260 final – 2013/0136 (COD) [2014] OJ C170/105.

¹⁸ *ibid.*

¹⁹ COM (2013) 260 final (n 17) 2.

²⁰ For a detailed list see EU Animal Health Law, recital 167 and art 270, and Annex V for a correlation table.

²¹ EU Animal Health Law, recital 170.

²² Part I general rules, Part II disease notification and reporting, surveillance, eradication programs, disease-free status, Part III disease awareness, preparedness and control, Part IV registration, approval, traceability and movements, Part V entry into the union and export, Part VI non-commercial movements of pet animals into a member state from another member state or from a third country or territory, Part VII emergency measures, Part VIII common provisions, and Part IX transitional and final provisions

²³ Torres and others (n 11) 286; Bisdorff and others (n 14).

²⁴ ‘EC proposes a new Europe-wide animal health law’ (2013) 172 *The Veterinary Record* 513; Bisdorff and others (n 14).

The scope of the law is extensive, targeting not only animals, but also germinal products, products of animal origin and animal by-products (Article 2).²⁵ Animals are defined broadly to cover virtually all animals: both those kept and wild, vertebrate and invertebrate, and terrestrial as well as aquatic.²⁶ Because pet animals generally pose a lower animal health risk than farm animals, different rules apply to each.²⁷ Pets are also exempt from some registration and record keeping requirements, particularly with respect to their movements, to reduce administrative burdens and costs for pet keepers (Part VI ‘non-commercial movements of pet animals into a member state from another member state or from a third country or territory’).²⁸

The definitions of terrestrial animals and wild animals are worth noting. Terrestrial animals include birds and terrestrial mammals as well as (bumble) bees.²⁹ Wild animals are animals which are not kept animals (Article 4(8)). The last sentence of Recital 19 says that “For the purposes of this Regulation, the term ‘wild animals’ envisages all animals that are not kept by humans, including stray and feral animals, even if they are of species that are normally domesticated”. It follows from this that the law does not adhere to a *sensu stricto* biological definition of wild animals, and that raises a question about how large game populations kept within fences are to be treated.³⁰

In Spain and Portugal, for example, there are hunting enclosures where large game species are raised in fenced areas for the express purpose of hunting.³¹ This intense form of game management can pose serious risks for contagious diseases.³² It is arguably the case that game health cannot be ensured throughout its whole production chain, including meat

²⁵ EU Animal Health Law, art 2(1).

²⁶ See, however, with regard to reptiles, amphibians, marine mammals and insects, EU Animal Health Law, recitals 23 and 150.

²⁷ EU Animal Health Law, recital 24.

²⁸ *ibid*, 24 and 131. The special chapter on non-commercial movements of pet animals in the new Regulation take over the rules from existing Regulation (EU) No 576/2013 on the non-commercial movements of pet animals. However, there is a transitional period until 21 April 2026, during which Regulation (EU) No 576/2013 will continue to apply.

²⁹ EU Animal Health Law, art 4(2).

³⁰ Ana Carolina Abrantes and Madalena Vieira-Pinto, 'Challenges and Insights Regarding Fenced Large Game Populations and the New EU Animal Health Law' (2021) 18 *EcoHealth* 272.

³¹ *ibid* 273.

³² Joaquín Vicente and others, 'Risk factors associated with the prevalence of tuberculosis-like lesions in fenced wild boar and red deer in south central Spain' (2007) 38 *Vet Res* 451.

market supply, unless its sanitary risks are managed in the same way that applies to regular livestock production systems.³³ And I would in fact argue that fenced large game species should be treated legally as ‘kept animals’ as defined in Article 4(8). It would follow from this that the responsibilities the law imposes on ‘operators’ (Article 4 (24)) and ‘animal professionals’ (Article 4 (26)) are also the responsibilities that must be discharged by the managers of game raised and hunted in large, fenced properties.

The overall response of veterinary scientists to the new EU Animal Health Law has been positive. The Federation of Veterinarians of Europe welcomed its premise that ‘prevention is better than cure,’ as well as the European Commission’s proposal to consolidate and integrate the regulatory framework governing animal health and public health.³⁴ They did, however, complain that the law as proposed contained no clear definition of veterinarian.³⁵ That has now been corrected so that Article 4 (53) does now contain a definition of ‘official veterinarian’.

The key points to note, then, about the Animal Health Law are (1) that it establishes a common system for better detecting and controlling disease, and for tackling health and food safety risks in a coordinated way; (2) that it simplifies the implementation of the rules governing international trade in certain live animals and animal products; (3) that its prioritization and categorization of diseases enables a more risk based approach and a better use of resources for regulating animal health; (4) that it gives practical tools to veterinary authorities to fight potentially devastating transmissible diseases, particularly in the realms of surveillance, diagnosis and notification; (5) that it makes transparent the rules that will guide farmers and others using early detection to prevent major disease outbreaks and minimize their impacts on livestock and consumers; and (6) that it contains enough flexibility in its application to different sizes and types of establishments, such as small and medium enterprises and hobby holdings) to accommodate different local circumstances, particularly in relation to registration and approval requirements and in mounting effective responses to unknown emerging and new diseases.

³³ Abrantes and Vieira-Pinto (n 30) 273.

³⁴ ‘EC proposes a new Europe-wide animal health law’ (n 24).

³⁵ *ibid.*

The most up-to-date version of the Animal Health Law contains several amendments³⁶ and three corrigenda³⁷.

3 Evaluation

So, what impact has the EU Animal Health Law had within and across EU borders? And what value is it adding to the EU's ability to implement an effective animal health and welfare strategy?

3.1 Impact within the EU

The agri-food industry is the second largest economic sector in the EU, employing over 48 million people and with a gross worth of about €750 billion a year.³⁸ The livestock population includes 146 million porcine animals, 76 million bovine animals, and 75

³⁶ European Parliament and Council Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) [2017] OJ L95/1 and Commission delegated Regulation (EU) 2018/1629 amending the list of diseases set out in Annex II to Regulation (EU) 2016/429 of the European Parliament and of the Council on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') [2018] OJ L272/11.

³⁷ Corrigendum to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') [2017] OJ L57/65; Corrigendum to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) [2017] OJ L137/40; Corrigendum to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') [2021] OJ L48/3.

³⁸ These numbers were estimated by then Health and Consumer Commissioner, Tonio Borg, in 2013. See Commission, 'Smarter rules for safer food: Commission proposes landmark package to modernise, simplify and strengthen the agri-food chain in Europe' (Press Release) Brussels, 6 May 2013, 1.

million sheep and goats.³⁹ In 2020, just over half of EU-27's meat production was from pigs (23 million tonnes). Poultry meat production reached a new peak in the same year of 13.6 million tonnes, an increase of 3.1 million tonnes above the level recorded in 2010.⁴⁰

A study published in November 2021 and requested by the European Parliament's Committee on the Environment, Public Health and Food Safety examined the relation between different zoonotic pandemics and the livestock sector.⁴¹ It reviewed the zoonotic disease risks posed by the livestock sector (including fur production) and what improvements, such as the integration of animal and human disease surveillance services, might be recommended.⁴² The study also recognized that improved regulation to guard against zoonotic pandemics should be extended to aquafarming. Aquaculture in the EU produced around 1.4 million tonnes live weight of aquatic organisms in 2017, with a total value of €5.2 billion.⁴³

Although Europe already has some of the highest food safety standards in the world, there is still room for improvement, particularly in the enforcement of health and safety standards throughout the food production chain.⁴⁴ Better enforcement of better standards would avoid tragedies, such as the culling of 700,000 pigs in the EU since 2014 to combat African swine fever and the culling of over 12.5 million poultry animals across 22 EU Member States in 2020-2021 to combat avian influenza.⁴⁵ Furthermore, even though the new Animal Health Law primarily targets (aqua)farm animals, it is now also an important point of departure for the regulation of diseases in all kept animals, including pets, which

³⁹ EUROSTAT, 'Agricultural production - livestock and meat' (last update October 2021) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Agricultural_production_-_livestock_and_meat#Livestock_population> accessed 26 January 2022.

⁴⁰ *ibid.*

⁴¹ Jeremy Brice and others, 'The relation between different zoonotic pandemics and the livestock sector', Study, ENVI Committee of the European Parliament, <[https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2021\)695456](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)695456)> 26 January 2022.

⁴² *ibid.*

⁴³ EUROSTAT, 'Aquaculture in the EU' (15 October 2019) <<https://ec.europa.eu/eurostat/web/products-eurostat-news/-/edn-20191015-2>> accessed 26 January 2022.

⁴⁴ EU Animal Health Law, recital 2, and Commission, 'Smarter rules for safer food: Commission proposes landmark package to modernise, simplify and strengthen the agri-food chain in Europe' (Press Release) Brussels, 6 May 2013, 2.

⁴⁵ 'Animal Health Law – General Q&As', <https://ec.europa.eu/food/animals/animal-health/animal-health-law_en#> accessed 26 January 2022.

constitute the second largest category of animals. In 2020, pets in EU countries included about 151 million cats (80.8m) and dogs (70.5m) and over 37 million ornamental birds.⁴⁶ Additionally, the new Animal Health Law is important because the uniform standards it sets for the health of animals have the potential to override the variable restrictions imposed by the veterinary laws of individual Member States, thus safeguarding the internal market for and free trade in (live) animals.⁴⁷

3.2 Impact & applicability outside the EU

The data on extra-EU trade in animal products show that between 2002 and 2020 trade more than doubled, with average annual growth of 4.5%. In 2020 the total value of the trade stood at €71 billion.⁴⁸ Disease outbreaks related to animals can have a significant impact on this international trade in animals and animal products and can play a decisive role in business disruption. They impose direct costs on farmers and related industries, as well as on the public sector agencies that try to deal with disease through eradication and monitoring.

A telling example comes from the incidence of foot and mouth disease where the total annual costs due to direct losses and vaccination are estimated to range globally between US\$6.5 billion and US\$21 billion, with an average value of US\$11 billion, and with China, India and Africa experiencing the most severe losses.⁴⁹

In an effort to limit these kinds of costs the EU Animal Health Law, for the first time at the Union level, specifically regulates exports. The approach is similar to that followed in

⁴⁶ Emma Bedford, 'Pet population in the European Union 2020, by animal type' (8 July 2021) <<https://www.statista.com/statistics/515010/pet-population-european-union-eu-by-animal/>> accessed 26 January 2022.

⁴⁷ Giancarlo Ruffo and others, 'The Animal Health Law-Regulation EU 2016/429 and the Future of Food Safety and Free Commerce in Europe,' (2018) *Journal of Food Science and Engineering* 61, 63.

⁴⁸ EUROSTAT, 'Extra-EU trade in agricultural goods' (last update March 2021) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Extra-EU_trade_in_agricultural_goods#Agricultural_products:_3_main_groups> accessed 26 January 2022.

⁴⁹ 'Animal Health Law – General Q&As', <https://ec.europa.eu/food/animals/animal-health/animal-health-law_en#> accessed 26 January 2022.

the General Food Law Regulation,⁵⁰ inasmuch as the new export rules are mainly intended to have Member States guarantee that animals and animal products exported from the Union to third countries are safe and do not pose an animal health risk for importing countries.⁵¹ This can be supplemented by good coordination and communication between EU Member States and neighboring third countries, as well as with relevant international institutions, such as the FAO and the OIE.⁵²

When it comes to imports into the Union, the guiding principle is that third countries need to set and enforce animal health standards that are at least as stringent as those that apply to movements of animals and animal products within the Union.⁵³

The importance and value of this principle can be understood by asking what would happen if imports were allowed without the condition that they meet EU animal welfare standards.⁵⁴ In 1999, for example, the EU Laying Hens Directive prohibited the use of battery cages for laying hens in the EU but did not bracket this with a restriction on imports of eggs from countries where battery-caged egg production was permitted.⁵⁵ The consequence was that one in three of the eggs consumed in the EU originated from caged

⁵⁰ European Parliament and Council Regulation (EU) 2002/178 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [2002] OJ L31/1.

⁵¹ EU Animal Health Law, art 243.

⁵² Torres and others (n 11) 286-287.

⁵³ EU Animal Health Law, recital 155 and art 234.

⁵⁴ See Iyan Offor, 'Animals and the Impact of Trade Law and Policy: A Global Animal Law Question' (2020) 9 *Transnational Environmental Law* 239.

⁵⁵ Directive (EC) 99/74 laying down minimum standards for the protection of laying hens [1999] OJ L203/53. See also Council Directive (EC) 2007/43 laying down minimum rules for the protection of chickens kept for meat production [2007] OJ L182/19. See in comparison: European Parliament, 'Legislative Resolution on the Proposal for a Council Directive laying down Minimum Rules for the Protection of Chickens Kept for Meat Production' COM (2005) 221, amendment 8. In contrast, see Council Regulation (EEC) 3254/91 prohibiting the use of leghold traps and the introduction into the community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards [1991] OJ L 308/1, art 2 and 3 (1). Notwithstanding this requirement, the import restriction has had little practical effect, see Offor (n 54) 255.

laying hens in Russia and Ukraine, thus effectively circumventing the Laying Hens Directive.⁵⁶

Paradoxically, egg production in Ukraine, currently the second largest exporter of battery-caged eggs to the EU, is being directly and indirectly supported by the EU. On the one hand, the EU allows Ukraine to export its eggs into the EU tariff-free and with no animal welfare obligations attached.⁵⁷ On the other hand, EU Member States such as the Netherlands, where financiers ING and Rabobank are located, allow investments in poultry companies in Ukraine, where laying hens are held in battery cages.⁵⁸ This is on its face a practice that manifestly contradicts the clear intent of the Laying Hens Directive to ban the use of battery cages for laying hens and, thus, to promote animal welfare. Moreover, imports of terrestrial animals and germinal products thereof, like eggs, are only supposed to be permitted if they originate from establishments in third countries on an approved list drawn up by the European Commission,⁵⁹ and only then if such consignments are accompanied by the required animal health certificates, declarations, or other necessary documents.⁶⁰

Even so, by imposing its animal health requirements through trade restrictions the EU can have a significant indirect impact on the animal health policy of countries outside the EU, and this may eventually result in an incremental change in and overall improvement to animal health standards in countries that trade with the EU.⁶¹

⁵⁶ Nick Morton, 'Global Poultry Trends: Russia and Ukraine Produce One in Three of Europe's Eggs' (*The Poultry Site*, 3 April 2013) <<https://www.thepoultrysite.com/articles/global-poultry-trends-russia-and-ukraine-produce-one-in-three-of-europes-eggs>> accessed 26 January 2022.

⁵⁷ Implementing Regulation (EU) 2015/2077 opening and providing for the administration of union import tariff quotas for eggs, egg products and albumins originating in Ukraine [2015] OJ L 302/57, Annex I. In contrast and regarding Mercosur countries, the EU has agreed on duty free egg products provided that animal welfare standards laid down by the Laying Hens Directive are respected, see EUROGROUPFORANIMALS, 'Animal Protection in EU Trade Negotiations' (October 2020) at 20-21 <https://www.eurogroupforanimals.org/files/eurogroupforanimals/2020-10/2020_eurogroup_for_animals_mercosur_en.pdf> accessed 26 January 2022.

⁵⁸ Tim Steinweg, 'Chicken Run: The Business Strategies and Impacts of Poultry Producer MHP in Ukraine' (*SOMO*, September 2015) <<https://www.somo.nl/wp-content/uploads/2015/09/Chicken-Run.pdf>> accessed 26 January 2022.

⁵⁹ EU Animal Health Law, art 229-236.

⁶⁰ EU Animal Health Law, art 237-238.

⁶¹ Sabine Brels, *Le droit du bien-être animal dans le monde* (Harmattan 2017) 206-221.

Questions can be raised, of course, about how appropriate it is for the EU to use the trade in animals and animal products as a vehicle for imposing its political and ethical preferences for the treatment of animals on non-EU Member States and on consumers in the EU.⁶² In the EC Seal Products case,⁶³ the World Trade Organization (WTO) Appellate Body ruled that trade regulations imposed to protect animal welfare could be permissible as part of the public morality exception (GATT, Article XX(a)) to the imposition of free trade restrictions.⁶⁴ The ban on the import of seal products from Canada and Norway into the European Union, which did not want to accept products resulting from cruel hunting practices was accepted in principle by the WTO, although its application to products resulting from indigenous hunting practices was judged to be unfair.⁶⁵

The second paragraph of Article 1 of the Animal Health Law clearly acknowledges that relevant international standards are to be taken into account in the implementation of the law.⁶⁶ These relevant international standards are embodied in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures,⁶⁷ to which the EU is a party.⁶⁸ The Terrestrial Animal Health Code and the Aquatic Animal Health Code of the World Organisation for Animal Health (OIE), which is the WTO reference organization for standards relating to animal health and zoonoses, are also relevant and applicable.

The EU is, thus, obliged to respect OIE standards as much as possible, without triggering trade disruptions.⁶⁹ On the other hand, questions have been raised about whether EU

⁶² Offor (n 54) 246.

⁶³ *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products* (Appellate Body Report) WT/DS400/AB/R, WT/DS401/AB/R (22 May 2014).

⁶⁴ Chad McGuire, 'Environmental Law and International Trade: Public Morality as a Tool for Advancing Animal Welfare' in Randall Abate (ed), *What Can Animal Law Learn from Environmental Law* (Environmental Law Institute 2020).

⁶⁵ Iyan IH Offor and Jan Walter, 'GATT Article XX (a) permits otherwise trade-restrictive animal welfare measures' (2017) 12 *Global Trade and Customs Journal* 158, 161.

⁶⁶ EU Animal Health Law, art 1 (2) (b) (iii).

⁶⁷ WTO, *Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)*, 1 January 1995, 1867 UNTS 493.

⁶⁸ EU Animal Health Law, recital 12.

⁶⁹ EU Animal Health Law, recital 13.

conformity with international trade law, especially WTO rules, is forestalling meaningful progress with its strategy for requiring stronger animal protection.⁷⁰

Although in some ways the decision in the EC Seal Products case seemed to be a promising example of how the EU might influence the animal welfare policies of foreign countries, the EU has chosen not to press the international policy advantage that the Seal Products decision arguably gave it.

So, there is a sense in which the EU talks a good game on the international stage about wanting to protect animal welfare but has shown no real appetite for meaningful action when it comes to imposing substantive restrictions on the production and use of animals and animal products, particularly for food, and may have masked this lack of ambition by using the WTO as a scapegoat.⁷¹

Although the EU suggested in 2000 several initiatives that might address animal welfare issues within the WTO framework,⁷² they languished for lack of support.⁷³ It is, of course, politically convenient for the EU to point a finger at the WTO as the dominant hurdle to overcome in animal protection and to claim for itself a leading position whilst at the same time ignoring the fact that its own animal welfare strategy 2012-2015 is poorly implemented.⁷⁴ The EU has failed, for example, to address the pressing animal welfare issues that arise from intensive factory farming even though it causes considerably more harm than the killing of wild seals, to which the EU has strenuously objected.⁷⁵ Different attitudes towards different animal species – restricting imports of seal products and dog ⁷⁶ while having no import restrictions on laying hens and broiler chickens – are a further

⁷⁰ Offor (n 54).

⁷¹ *ibid* 259.

⁷² WTO Committee on Agriculture, 'European Communities Proposal: Animal Welfare and Trade in Agriculture' (28 June 2000), WTO Doc. G/AG/NG/W/19.

⁷³ Offor (n 54) 247.

⁷⁴ European Court of Auditors, 'Special Report No 31/2018 – Animal Welfare in the EU: Closing the Gap between Ambitious Goals and Practical Implementation' (14 November 2018) <<https://op.europa.eu/webpub/eca/special-reports/animal-welfare-31-2018/en/>> accessed 26 January 2022.

⁷⁵ Offor (n 54) 257-58.

⁷⁶ European Parliament and Council Regulation 1523/2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur [2007] OJ L 343/1.

indication that the EU's discourse on animal protection is marked by moral schizophrenia.⁷⁷

3.3 Critical observations

Notwithstanding that a link between animal welfare and health is recognized in the Animal Health Law, the primary focus is on animal health and not on animal welfare.⁷⁸ The EU thus misses an opportunity for the better integration of animal welfare and animal health law and policy by taking explicit account, for example, of Council Regulations No 1/2005 on the protection of animals during transport⁷⁹ and No 1099/2009 on the protection of animals at the time of killing⁸⁰.⁸¹ The linkage between animal health and animal welfare is acknowledged in principle: “*When disease prevention and control measures are carried out in accordance with this Regulation, their effect on animal welfare, understood in the light of Article 13 of the Treaty on the Functioning of the European Union (TFEU), should be considered in order to spare the animals concerned any avoidable pain, distress or suffering*”.⁸² But this does little more than affirm a relationship that has been established in the EU for quite some time.⁸³

The new law is an expression of the growing interest in the ‘One health’ concept, which reflects the idea that the health of one affects the health of all and thus acknowledges that human health, animal health and environmental health are intrinsically intertwined and interdependent.⁸⁴ The aim of the Animal Health Law is to ensure a reduction of the adverse effects animal diseases can have on animal health as well as on public health and

⁷⁷ Evelyne Langenaken, 'L'animal entre l'être et l'avoir, une schizophrénie humaine et juridique' in Florence Dossche (ed), *Le Droit Des Animaux: Perspectives d'avenir* (Larcier 2019) 286-313; Gary Francione, 'Animals—Property or Persons?' (2004) Rutgers Law School Research paper 1-45.

⁷⁸ See EU Animal Health Law, recital 7.

⁷⁹ Council Regulation (EC) 1/2005 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 [2005] OJ L3/1.

⁸⁰ Council Regulation (EC) 1099/2009 on the protection of animals at the time of killing [2009] OJ L303/1.

⁸¹ See EU Animal Health Law, recital 7.

⁸² *ibid.*

⁸³ EU Animal Health Law, art 1 (2)(b)(i).

⁸⁴ See Michael P Murtaugh and others, 'The science behind One Health: at the interface of humans, animals, and the environment' (2017) 1395 *Annals of the New York Academy of Sciences* 12.

the environment.⁸⁵ Other EU initiatives have stressed the One Health concept.⁸⁶ It is also central to the action plan against antimicrobial resistance released by the European Commission in November 2011.⁸⁷ And it finds further expression in the letter sent by President Von Der Leyen to the EU Commissioner for Health and Food Safety, emphasizing that fighting antimicrobial resistance through a One Health approach is a Commission priority.⁸⁸

It is worth noting that the UN is also increasingly committed to the One Health concept. A World Health Assembly resolution of 19 May 2020, for example, makes specific reference to One Health as an approach that can usefully guide research into the origins and transmission of COVID-19 and the prevention of future pandemics.⁸⁹ A similar endorsement appears in a recent guidance document for the UN Sustainable Development Cooperation Framework, prepared by the FAO, the OIE, the WHO and the UNEP.⁹⁰

While the concern of the EU for the health of animals is important and necessary, it is ancillary to the main anthropocentric objectives of consumer protection, which are to protect food safety and thus human health.⁹¹ The closer alignment of human health with environmental and animal health in EU law and policy is best understood as aspirational. In the words of UN Secretary-General Guterres: “The process of recovery from COVID-19 provides us with a unique opportunity to build back better, together, so as to transform the world into one where humans truly live in harmony with Nature, hereby give a voice to the voiceless, be a champion of non-anthropocentrism and play a lead role for a twenty-

⁸⁵ EU Animal Health Law, art 1 (2) (a) (iii). See also art 1 (2) (b)(i).

⁸⁶ Brice and others (n 41) 41-49.

⁸⁷ Commission, ‘Action plan against the rising threats from Antimicrobial Resistance’ (Communication COM (2011) 748 final).

⁸⁸ Ursula von der Leyen, ‘Mission letter to Stella Kyriakides – Commissioner for Health and Food Safety’ (1 December 2019) <https://ec.europa.eu/commission/commissioners/sites/default/files/commissioner_mission_letters/mission-letter-stella-kyriakides_en.pdf>.

⁸⁹ World Health Assembly ‘Resolution 73.1, COVID-19 Response’ UN Doc A73/VR/4 (19 May 2020), para 9(6).

⁹⁰ World Health Organization (WHO), Food and Agriculture Organization (FAO), World Organisation for Animal Health (OIE) and UN Environment Programme (UNEP), ‘Antimicrobial resistance and the United Nations sustainable development cooperation framework: guidance for United Nations country teams’ (26 October 2021) <<https://www.who.int/publications/i/item/9789240036024>>.

⁹¹ See section 2.1 ‘Origins’.

first century global Earth-centered transition, in which the lives of all human and non-human species matter”.⁹²

A further critical observation about the Animal Health Law is that it is old wine in new bottles. Most of the rules it enumerates were retrieved from prior legislation, which entered into force before the new law took effect and are now (implicitly) repealed.⁹³ The previous rules have been slightly adapted so that they are less burdensome and more coherent. But the net result is much more a codification of old rules than it is the creation of substantively new legislation.

There are some new elements, such as a new notification and reporting system for animal diseases (ADIS), the introduction of animal health visits by veterinarians as part of on-farm surveillance and extended legal possibilities to prevent and control diseases in wild animals. Overall, however, the new law “consolidates the legal framework for a common Union animal health policy through a single, simplified and flexible regulatory framework for animal health”.⁹⁴

In some respects, the EU’s newly harmonized legal framework for regulating animal health can be said to lack coherence. The new law addresses the basic responsibilities veterinarians and animal keepers have to combat zoonotic diseases but other relevant factors, such as the imposition of official controls,⁹⁵ the authorization of veterinary medicines, and the use of medicated feed, are still the province of other, fragmented pieces of legislation. Specific and prior rules on communicable diseases in humans and on transmissible animal diseases (Decision No 1082/2013/EU, Regulation (EC) No 999/2001, Directive 2003/99/EC, and Regulation (EC) No 2160/2003) remain in place.⁹⁶

⁹² See UNGA ‘Harmony with Nature, Report of the Secretary-General’ UN Doc. A/75/266 (28 July 2020) at 94 and 95.

⁹³ See for a comprehensive overview, EU Animal Health Law, art 270.

⁹⁴ See EU Animal Health Law, recital 9.

⁹⁵ Notice that art 281 of the EU Animal Health Law contains a conflict resolution provision stating that, in the event of any conflict between acts concerning official controls, the provisions of the EU Animal Health Law shall prevail.

⁹⁶ EU Animal Health Law, art 2(2).

So, the new law will only apply to zoonoses to the extent that specific rules are not already laid down in prior EU enactments.⁹⁷

It is also worth noting the way the new law deals with registration and traceability requirements for pet animals. The registration of certain animals and of commercial pet breeders will not only help in the fight against zoonoses but also help in countering illegal breeding facilities, such as puppy mills. Currently, national registration databases for pets are in place in some Member States, but since they are not linked and coordinated at the EU level their value for setting and enforcing policy is minimal.⁹⁸ In 24 Member States, for example, commercial pet breeders are required to register but there is no uniformity or consistency across states in how commercial breeders are defined.⁹⁹ New EU registration rules will eliminate these discrepancies and improve enforcement and, thus, kill two birds with one stone.

One last critical observation relates to the matter of timing. The new law allows a five year transition period and, in the light of current circumstances, that might very well have been shortened. For non-commercial movements of pet animals, the new law has an even longer transitional period of ten years and will therefore not apply until 21 April 2026,¹⁰⁰ which is also the date by which the European Commission is obliged to evaluate the new law and submit a report to the European Parliament and to the Council.¹⁰¹

4 Conclusion

The main goal of the new Animal Health Law is clear and it is to guard vigorously against and to prevent zoonosis. It has at its core a strong emphasis on preventative measures, combined with innovative uses of animal health surveillance. The new law also provides

⁹⁷ Recital 17 Animal Health Law.

⁹⁸ For instance, legislation requiring registration for dogs exists in 22 Member States, but not even half are effectively linked at the EU level. See Alain Peeters, 'Rechten en plichten van fokkers' (2020) 4 Dogzine 46.

⁹⁹ *ibid.*

¹⁰⁰ EU Animal Health Law, art 277. See also EU Animal Health Law, recital 175.

¹⁰¹ EU Animal Health Law, art 282.

the EU with an overarching legal framework for regulating animal health, principally by consolidating a substantial amount of prior law and policy into a single enactment.

The new law is not just old wine in new bottles, however. The introduction of animal health visits on the ground at the farm level and an EU-wide animal health notification and reporting system (ADIS) are important and useful innovations. The broad scope for the applicability of the new law to animal species, including large, fenced game populations, also signals that the new law can be a useful steppingstone to the control of animal health beyond populations of farm animals. Farm animals are crucial targets for regulation under the new law because in economic terms the agri-food sector is the second largest in the EU in view of the value it represents, and because the economic impacts of zoonotic diseases, like African swine fever and avian influenza, can be devastating.

To counteract these effects, the new law offers a measure of uniformity and consistency to offset divergent national requirements and expectations for animal health within the EU. And beyond the borders of the EU, it tries to create systems of registration, surveillance and reporting for animal health that have the potential to override divergent national requirements by harmonizing EU law and policy with animal health requirements in third countries.

On balance, and from the perspective of animal welfare, the new EU Animal Health Law is a disappointment. It pays lip service to the One Health principle and in other respects it arguably makes the EU a world leader in animal health regulation. But it's hard to see how improvements in the regulation of animal health in the EU, and perhaps beyond the EU in some respects, that are triggered by the new law will also translate into substantial improvements in the welfare of the animals that are entered into trade in Europe, and with countries beyond Europe.