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Dear President of the Agriculture Council and Commissioners Kyriakides and Wojciechowski

### Article 13 TFEU: Export of live EU farm animals to Libya at a time of escalating civil war

The Court of Justice has given considerable weight to the duty in Article 13 TFEU to pay full regard to the welfare requirements of animals when formulating and implementing certain policies, including those on agriculture and transport. Protocol 33, the predecessor of Article 13, played a significant part in the Court's judgment in the *Zuchtvieh* case.

We believe that the Commission and the Member States (MS) involved in live animal exports to Libya are ignoring their Article 13 duty in continuing to permit farm animals to be sent to Libya when the war in that country is becoming increasingly severe. On 21 April 2020, the UN warned of the rapidly worsening situation in Libya.<sup>1</sup> MS that export animals to Libya include Ireland, Spain and Romania.

There is a risk of exported animals getting caught in missile fire, there is risk of vessels carrying the animals being seized, and there have been recent allegations of chemical weapons being used.<sup>2 3</sup> Moreover, the Libyan authorities have said that during the COVID-19 crisis in certain circumstances livestock vessels will have to wait for 14 days of quarantine at anchorage before being able to enter a Libyan port.<sup>4</sup>

The extreme danger of the situation is recognised by Ireland's Department of Foreign Affairs which states "We advise Irish citizens against all travel to Libya. Irish citizens in Libya are advised to leave immediately by commercial means. Due to the ongoing fighting and the risk of kidnapping or terrorist attacks throughout the country, the situation in Libya remains extremely dangerous." Other MS are probably giving similar advice. It is worrying that Ireland is prepared to send animals to Libya at a time when it recognises the severity of the situation.

It is most unlikely that in the current situation there is any competent authority in Libya that is able to ensure that EU animals are slaughtered in accordance with the OIE's international standards on welfare at slaughter. In practice slaughter in Libya probably entails extreme and prolonged pain and fear.

It is too dangerous for welfare NGOs to film in Libya's slaughterhouses. However, filming in other countries in North Africa and the Middle East shows that slaughter almost always involves extreme suffering and almost never complies with the OIE welfare standards. It is unlikely that slaughter in Libya is significantly different.

Common practices in this region include:

- Severing of cattle's leg tendons in order to make them easier to control
- EU animals are sometimes slaughtered on the pavement outside butcher's shops
- Cattle are chased round the abattoir and, once caught, are tied to a post where the throat is cut.
- Slaughtermen are often too frightened of cattle to come close enough to perform a full frontal cut across the throat which could lead to relatively rapid death. Instead they stand at arm's length and simply stab the point of the knife into the neck. Even after several such stabs, the animals remain standing on all four legs while they slowly bleed from a small hole in the neck. The animal bellows in pain and distress and struggles powerfully against the rope that restrains it. The cattle can take many minutes to die.
- Sheep are dragged through the slaughterhouse by their legs, fleeces and horns. Once at the place of slaughter, they are thrown onto their backs in readiness for throat cutting.
- A chain is often tied round the rear leg of cattle. The fully conscious animal is then hoisted up, dangling upside-down from one back leg, ready for slaughter.

The problems described above are unrelated to slaughter according to religious beliefs. Most of the suffering arises because of inhumane handling and throat-cutting that have nothing to do with religious requirements. When Muslims see our films they are horrified and say 'this is not Halal'.

### **The Article 13 duty to pay full regard to animal welfare**

Under the legal principle of good faith, the Article 13 'full regard duty' obliges the Commission and the MS to take animal welfare into account in a thorough and serious manner in formulating and implementing policies in specified fields. It does not require that animal welfare should necessarily be given precedence over other policy considerations. However, the Commission and the MS should be able to demonstrate what consideration was given to animal welfare in the formulation and implementation of a particular policy and, where a relatively low priority has been accorded to animal welfare, the reasons and justification for so doing. Moreover, this thinking should be made available to citizens under the principles of openness and transparency established by Article 15 TFEU.

We believe that the 'full regard duty' applies not just to animals while they are in the EU but even when they have left the EU if their welfare is impacted by EU policies in one of the Article 13 fields. The importance of the EU giving consideration to the impact of its policies on the welfare of animals at slaughter outside the EU has been highlighted on several occasions. The EU has stated that its ban on the import of seal products addresses moral concerns that "arise from the fact that seal products may have been obtained from animals killed [outside the EU] in a way that causes them excessive pain, distress, fear or other forms of suffering".<sup>5</sup> Similar moral concerns surely arise from the export of EU animals to Libya where they will be killed "in a way that causes them excessive pain, distress, fear".

Regulation 1099/2009 on the protection of animals at the time of killing requires meat imported from third countries to come from animals slaughtered to welfare standards equivalent to those of the EU. It is reasonable to ask the Commission and MS, before exporting animals to non-EU countries, to consider under Article 13 whether they will be slaughtered to proper welfare standards.

The examples regarding seal products and imported meat do not have an economic disadvantage for the EU, whereas halting live exports to Libya could be economically disadvantageous. However, the economic benefits to the EU livestock sector should not result in animal welfare considerations being disregarded. In Joined Cases C-37/06 and C-58/06 the Court of Justice stated that it has previously “held that efforts to achieve objectives of the common agricultural policy cannot disregard requirements relating to the public interest such as the protection of the health and life of animals, requirements which the Community institutions must take into account in exercising their powers”.

Despite its claim to have some of the highest animal welfare standards in the world, the EU lags behind Australia in this respect. Australian law recognises an obligation to consider the welfare at slaughter of exported animals and accordingly requires exporters to have systems in place to ensure that Australian animals are slaughtered in accordance with the OIE standards.<sup>6</sup>

In conclusion, the EU continues to send cattle and sheep to Libya even though it knows that the animals are likely to be slaughtered in cruel ways that entail prolonged suffering and that at a time of escalating hostilities, the Libyan authorities will not be able to ensure that EU animals are slaughtered in accordance with OIE standards. Moreover, as indicated earlier, there are other serious threats to the welfare of animals exported to Libya.

The continuation of such exports questions the very claim by the EU of being a leader in animal welfare and having the highest standards in the world. No civilized country can make such claims when it exports animals to destinations where they will experience such immense suffering during transport, handling and slaughter.

We believe that continuing with these exports is inconsistent with Article 13. We request the Commission and exporting MS to halt the export of live farm animals to Libya.

As you know, our overall objective is to secure a revision of Regulation 1/2005 to end long distance live animal transport and a shift to a meat and carcasses only trade.

Yours sincerely

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Animal Welfare Foundation, Iris Baumgärtner, Vice-Chair  
Animals International, Gabriel Paun, EU Director  
Animals without Borders, Anita Euschen  
Animals' Angels, Julia Havenstein, Vorsitzende  
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Tierschutzbund Zürich, Iris Baumgärtner, Vice-Chair  
Varkens in Nood, Robyn Pees  
Verein gegen Tierfabriken, Martin Balluch  
WELFARM – Protection mondiale des animaux de ferme, Ghislain Zuccolo, Director

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<sup>1</sup> <https://apnews.com/576ea44d3b6c11dde2163c09b7a37445>

<sup>2</sup> <https://madamasr.com/en/2020/04/25/feature/politics/un-mission-in-libya-to-investigate-claims-lna-used-chemical-weapons-in-tripoli/> Accessed 4 May 2020

<sup>3</sup> <https://www.fleetmon.com/maritime-news/2020/28365/grimaldi-car-carrier-seized-libyan-national-army/> Accessed 4 May 2020

<sup>4</sup> <https://www.bimco.org/ships-ports-and-voyage-planning/crew-support/health-and-medical-support/novel-coronavirus---implementation-measures#Libya> Accessed 6 May 2020

<sup>5</sup> European Communities – Measures Prohibiting the Importation and Marketing of Seal Products. First Written Submission by the European Union. Geneva, 21 December 2012, para 2

<sup>6</sup> <https://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/information-exporters-industry/escas>