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# Draft Act

of the Federal Government

Draft Act amending the Animal Welfare Act – ban on the culling of chicks

A. Problem and objective

The Federal Office of Statistics reports that around 45 million ‘female chicks reared for laying’ were hatched in 2019. ‘Female chicks reared for laying’ are female chicks that are used as laying hens after rearing and are therefore predominantly derived from breeding lines that, unlike dual-purpose breeds, are specifically geared towards high laying performance.

In those breeding lines, approximately 45 million male chicks hatch, in addition to 45 million females reared for laying. The producers discard these male chicks for financial reasons, as cockerels do not lay eggs and the cockerels from these breeding lines are not very suitable as broilers due to their poor fattening performance. For this reason, the vast majority of male chicks are currently culled in hatcheries shortly after hatching, usually by gassing with high concentrations of carbon dioxide but also by shredding.

§ 1, sentence 1 of the Animal Welfare Act states that animals are to be protected: ‘The purpose of this Act is to protect the life and welfare of animals out of man’s responsibility for them as fellow living creatures.’ § 1, sentence 2 of the Animal Welfare Act reads: ‘No person may inflict pain, suffering or harm on an animal without reasonable cause.’ It follows from the converse of § 1, sentence 2 that pain, suffering or harm may nevertheless be inflicted on animals only if there is reasonable cause for doing so. In its rulings of 13 June 2019 (BVerwG 3 C 28.16, BVerwG 3 C 29.16), the Federal Administrative Court ruled that in light of the national objective of protecting animal welfare enshrined in the Basic Law (Article 20a of the Basic Law), the financial interest in hens specifically bred for high laying performance does not constitute reasonable cause within the meaning of § 1, sentence 2 of the Animal Welfare Act to cull male chicks from these breeding lines. The Federal Administrative Court held, however, that there is still a reasonable justification for continuing the current practice of culling male chicks for a transitional period if there are soon likely to be alternatives to culling the chicks which place a significantly lesser burden on the hatchery than rearing the animals.

Irrespective of the two rulings and the specific court cases, there has been a political will for years for the poultry industry to stop culling chicks. Research projects on the use of dual-purpose chickens were promoted for this purpose. When breeding dual-purpose chickens, the hen should have sufficient laying performance and the cock should have acceptable fattening and slaughter performance, so that both sexes have a financial value. Research projects, some of which have been publicly funded, have now furthermore succeeded in developing practical methods for sexing chicks even before they hatch. As a result, eggs from which male chicks would hatch can be discarded, eliminating the need to cull the male chicks.

Against this background, in particular the Federal Administrative Court rulings, and in view of the coalition government’s aim to end the culling of chicks as specified in the coalition agreement, chick culling is now to be expressly banned. The ban also covers breeding animals and animals for reproduction. Breeding animals are used to produce parent stock, which are used to produce utility chicks. According to current scientific knowledge, chicken embryos are not able to feel pain until the seventh day of incubation. From then on, it is possible that pain begins to be felt. Therefore, from the seventh day of incubation onwards, any operation on a chicken egg or termination of incubation carried out either during or after the application of egg sexing techniques and which causes the death of the chicken embryo should be rejected on animal welfare grounds. These actions should now also be banned.

B. Solution

The Act bans introduces a ban on the culling of *Gallus gallus* chicks in the Animal Welfare Act. The ban also covers breeding animals and animals for reproduction.

It further includes the ban, from the seventh day of incubation onwards, on any operation on a chicken egg or termination of incubation carried out either during or after the application of egg sexing techniques in such a way as to cause the death of the chicken embryo.

However, the two bans will not come into force immediately or at the same time. A staged entry into force is stipulated: the ban on culling chicks will enter into force on 1 January 2022 and the ban on operations on chicken eggs and the termination of incubation will enter into force on 1 January 2024. This will give the industry time to adapt to the new legal framework.

C. Alternatives

Not including both bans, or merely stipulating that there is no reasonable cause to cull chicks and cause the death of chicken embryos, would not achieve the objective of outlawing the culling of chicks or chicken embryos and effectively enforcing compliance with those bans. There are therefore no apparent equally suitable legislative alternatives. The provisions are accompanied by measures aimed at strengthening the breeding and use of dual-purpose breeds.

D. Budget expenditure exclusive of compliance costs

The Act does not give rise to any budget expenditure exclusive of compliance costs.

E. Compliance costs

E.1 Compliance costs for the public

The Act does not give rise to any additional compliance costs for the public.

E.2 Compliance costs for businesses

Businesses will incur annual compliance costs amounting to approximately EUR 147.5 million. Bureaucratic costs due to information disclosure obligations:

None.

E.3 Compliance costs for authorities

Authorities are not expected to see any change in compliance costs.

F. Additional costs

The Act may lead to an increase in the retail price of eggs, as the industry may pass on the costs it incurs to end-consumers.

Draft Act of the Federal Government

Draft Act amending the Animal Welfare Act – ban on the culling of chicks[[1]](#footnote-2)))

Dated ...

The German Bundestag has adopted the following Act:

Article 1

Amendment to the Animal Welfare Act

After § 4b of the Animal Welfare Act, in the version as promulgated on 18 May 2006 (Federal Law Gazette I p. 1206, 1313), last amended by [...], the following § 4c is added:

‘§ 4c

Culling chicks of farmyard fowl of the species *Gallus gallus* from egg-laying breeding lines shall be banned. The ban shall not apply in the following cases:

* + - 1. where chick culling
				1. has been prescribed or ordered under animal health regulations; or
				2. is necessary in specific cases for animal welfare reasons;
			2. for non-hatching chicks;
			3. for poussin as defined in Article 1(1)(a) of Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat (OJ L 157, 17.6.2008, p. 46), last amended by Commission Regulation (EU) No 519/2013 of 21 February 2013 (OJ L 158, 10.6.2013, p. 74); and
			4. for chicks

intended for use in experiments on animals; or

whose tissue or organs are to be used for scientific purposes.’

Article 2

Further amendment to the Animal Welfare Act

The Animal Welfare Act, last amended by Article 1 of this Act, is amended as follows:

* + - 1. § 4c is amended as follows:
				1. The current wording becomes paragraph 1.
				2. The following paragraph 2 is added:

‘(2) From the seventh day of incubation onwards, during or after the application of an egg-sexing technique it shall be prohibited to

1. perform an operation on a chicken egg in such a way as to cause the death of the chicken embryo, or
2. terminate the incubation process in such a way as to cause the death of the chicken embryo.’
	* + 1. The following point 6a is inserted after § 18(1)(6):

‘6a. performs an operation on the egg or terminates incubation contrary to § 4c(2),’.

Article 3

Entry into force

* + 1. Paragraph 2 notwithstanding, this Act shall enter into force on 1 January 2022.
		2. Article 2 shall enter into force on 1 January 2024.

Explanatory notes

A. General part

1. Objective of and need for the provisions

For 2019, the Federal Office of Statistics reported that around 45 million ‘female chicks reared for laying’ were hatched. ‘Female chicks reared for laying’ are female chicks that are used as laying hens after rearing and are therefore predominantly derived from breeding lines that, unlike dual-purpose breeds, are specifically geared towards high laying performance.

In those breeding lines, approximately 45 million male chicks hatch in addition to 45 million females reared for laying. As these male chicks become cockerels, which do not lay eggs, they are discarded by producers for financial reasons. The cockerels also have lower fattening performance than broilers. For this reason, the vast majority of male chicks are currently culled in hatcheries shortly after hatching, usually by gassing with high concentrations of carbon dioxide.

§ 1, sentence 1 of the Animal Welfare Act states that animals are to be protected: ‘The purpose of this Act is to protect the life and welfare of animals out of man’s responsibility for them as fellow living creatures.’ It follows from the converse of § 1, sentence 2 of the Animal Welfare Act that pain, suffering or harm may nevertheless be inflicted on animals if there is reasonable cause for doing so. In its rulings of 13 June 2019 (BVerwG 3 C 29.16, BVerwG 3 C 28.16), the Federal Administrative Court ruled that in light of the national objective of protecting animal welfare enshrined in the Basic Law (Article 20a of the Basic Law), culling male chicks does not constitute reasonable cause within the meaning of § 1, sentence 2 of the Animal Welfare Act by today’s values. The concept of reasonable cause is aimed at balancing the legally protected interests of livestock owners and the interests of animal welfare. Upon weighing the conflicting interests, the Federal Administrative Court found that the interests of animal welfare outweighed the hatcheries’ financial interest in avoiding subsequent costs for male chicks from egg-laying lines. The fact that chicks from egg-laying and dual-purpose lines are considerably less suitable for fattening than those from fattening lines is due to breeding and production methods predominantly geared to profitability. Systematically culling male chicks from egg-laying lines is not compatible with the underlying principles of the Animal Welfare Act, which are to ensure a balance between animal welfare and human interests. According to the Federal Administrative Court, the protection of life founded on ethics according to the notion of the Animal Welfare Act is not just set aside for these animals, it is completely abandoned. They are produced in the full knowledge that they will be immediately be culled (see Federal Administrative Court rulings of 13 June 2019 – 3 C 28/16, 3 C 29/16 –, juris, margin ref. 26).

The Court held that since the concept of reasonable cause in § 1, sentence 2 of the Animal Welfare Act is aimed at striking a balance between the legally protected interests of livestock owners and the interests of animal welfare, previous practice and the specific interests of livestock owners should not be disregarded if methods are to change. In addition, it was likely soon to be possible to determine the sex in the egg and improve the options for using chickens from dual-purpose lines. In that event, the Court found, it would not be an appropriate balance of interests within the meaning of § 1, sentence 2 of the Animal Welfare Act to ban hatcheries from continuing to kill male chicks without a transitional period, which would leave time for the foreseeable development of new egg sexing methods and also any further changes with dual-purpose lines. Without any such transitional period, hatcheries would be forced, at great expense, to first allow male chicks to be reared and then, probably soon after, to set up an egg sexing procedure or convert their holding to hatching eggs from improved dual-purpose lines. In the Court’s opinion, avoiding this double changeover was a reasonable ground under the circumstances for the previous practice to temporarily continue. Denying reasonable cause for culling the male chicks regardless of the time required to convert farms would not take adequate account of livestock owners’ legitimate interests (see Federal Administrative Court rulings of 13 June 2019 – 3 C 28/16, 3 C 29/16 – juris, margin ref. 28-31).

Irrespective of the two rulings and the associated court cases, there has been a political will for years for the poultry industry to stop culling chicks. Research projects on the use of dual-purpose chickens have been promoted. Research projects, some of which have also been publicly funded, have furthermore now succeeded in developing practical methods for sexing chicks even before they hatch. As a result, eggs from which male chicks would hatch can be discarded, doing away with the need to cull them.

According to current scientific knowledge, chicken embryos are not able to feel pain until the seventh day of incubation.[[2]](#footnote-3) From then on, it is possible that pain begins to be felt. Therefore, from the seventh day of incubation onwards, there will be a ban on any operation on a chicken egg carried out either during or after the application of egg sexing techniques in such a way as to cause the death of the chicken embryo, including termination of incubation. A chicken embryo develops in the egg during incubation and hatches after 20 or 21 days. According to current scientific knowledge, chicken embryos are not believed to have the ability to feel pain until the seventh day of incubation. The embryo begins to feel pain from some time after the sixth day of incubation and, according to current knowledge, the embryo’s pain sensation is fully developed as of the 15th day of incubation. For reasons of animal welfare, therefore, not only must the culling of the hatched chick be rejected, but so too must any operations on the chicken egg and any termination of incubation carried out from the seventh day of incubation onwards in such a way as to cause the death of the chicken embryo, which may be able to perceive pain. The further the hatching process has progressed from the seventh day of incubation, the more likely it is that, from an animal welfare point of view, there is no or no significant difference between causing the death of the chicken embryo and culling the hatched chick. The regulatory scope of the amendment thus covers the phase of embryonic development up to the hatching of the chick. The aim in doing so is to prevent a long transitional period creating an incentive to first invest in sexing techniques to be used after the seventh day of incubation.

1. Main content of the draft

To safeguard the interests of animal welfare, this draft Act introduces a ban on culling chicks into the Animal Welfare Act. The ban also covers breeding animals and animals for reproduction.

It further includes the ban, from the seventh day of incubation onwards, on any operations on a chicken egg or any termination of incubation carried out either during or after the application of egg sexing techniques in such a way as to cause the death of the chicken embryo.

However, the two bans will not come into force immediately or at the same time. A staged entry into force is stipulated: the ban on culling chicks will enter into force on 1 January 2022 and the ban on performing operations on chicken eggs and terminating incubation will enter into force on 1 January 2024. This will give the industry time to adapt to the new legal framework.

1. Alternatives

Not including both bans, or merely stipulating that there is no reasonable cause to cull chicks and cause the death of chicken embryos, would not achieve the objective of outlawing the culling of chicks or causing the death of chicken embryos and effectively enforcing compliance with those bans. There are therefore no apparent equally suitable legislative alternatives. The provisions are accompanied by measures aimed at strengthening the breeding and use of dual-purpose breeds.

1. Legislative powers

The federal government’s legislative powers for the amendments in the Act stem from Article 74(1)(20) (animal welfare, the law on food products including animals used in their production) of the Basic Law. The federal government’s legislative powers for the necessary provisions on monetary fines stem from Article 74(1), point 1, case 2 of the Basic Law.

In the current case, a federal regulation is necessary in the national interest within the meaning of Article 72(2) of the Basic Law in order to safeguard legal and financial unity, since the regulation being adopted here must apply equally to all the affected animals used in the production of food products as well as to all farmers in Germany. This will ensure that the affected animals are afforded the same protection throughout the country and all farmers in Germany are subject to the same conditions and requirements for their operations in this respect.

1. Compatibility with EU law and international treaties

This draft Act is compatible with European Union law and international treaties to which the Federal Republic of Germany is party.

In particular, the draft law is consistent with Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing, as that regulation governs how animals may be culled, not whether they may be culled. Therefore, the proposed provisions do not fall within Regulation (EC) No 1099/2009.

1. Consequences of the legislation
	1. Legal and administrative streamlining

No provisions are simplified or rescinded.

* 1. Sustainability aspects

The provisions of this draft Act are sustainable under the German Sustainability Strategy as they benefit animal welfare and thus sustainable agriculture. The draft Act aims to end the culling of chicks that are discarded for financial reasons.

The draft is therefore consistent with the principles of sustainable development in terms of respecting the welfare of farm animals and improving society’s food ethics, both in terms of production and trade. In particular, the proposals thus foster the achievement of Sustainable Development Goal 2: ‘End hunger, achieve food security and improved nutrition, and promote sustainable agriculture’. Account is also taken of sustainable development principle 4 ‘Strengthening sustainable management’, in particular point 4c) ‘Sustainable agriculture and fisheries must be productive, competitive and socially and environmentally sustainable; in particular, they must respect [...] animal welfare requirements [...]’.

* 1. Budget expenditure exclusive of compliance costs

The draft does not give rise to any budget expenditure exclusive of compliance costs.

* 1. Compliance costs

4.1. Compliance costs for the public

There are no compliance costs for the public.

**4.2. Compliance costs for businesses**

Businesses will incur compliance costs due to the draft Act. Authorities and the public are not expected to see any change in compliance costs. Calculations from the Federal Office of Statistics were used to estimate the compliance costs. The data on the number of cases used and the time spent are based on internet research, data from the Federal Office of Statistics and telephone interviews.

Due to the chick culling ban, the draft Act leads to annual compliance costs for businesses of around EUR 147.5 million.

The impact on the annual compliance costs depends on the specific procedure chosen by each hatchery as an alternative to culling chicks. Using an egg sexing method as a service, i.e. with licensing procedures, leads to increased costs for the food industry and processing companies. As it is not yet possible to determine the exact amount of the licence fees, the additional price per shell egg[[3]](#footnote-4))) estimated by one of the providers of the previous process is used as an approximate value. In this respect, the number of eggs produced after payment of the licence fees represents the number of cases.

The additional cost per egg originating from a farm using a sexing method in eggs for hatching is estimated at EUR 0.01-0.03 per shell egg[[4]](#footnote-5))). In its current form, this procedure is geared towards trade as the licence fees are borne by egg-packing centres. The logistical costs are already included in the service provider’s calculation.

In 2019, a total of around 15 billion eggs were produced in Germany[[5]](#footnote-6))). Of these, around 12 billion eggs overall were produced for domestic use, net of exports[[6]](#footnote-7))).

It should be considered that the sexing procedure was carried out on approximately 3 million eggs in 2019. In addition, about 2.25 million cockerels are currently being raised. These 5.25 million eggs should be deducted,

leaving around 12 billion eggs which can be assumed to be sold to the food trade or industry. If all hatcheries were to convert to the above method, annual compliance costs of between EUR 120 million (EUR 12 billion \* EUR 0.01) and EUR 360 million (EUR 12 billion \* EUR 0.03) can be expected from licence fees. For the estimate above, the mean, i.e. EUR 0.02, is used.

This estimate assumes that the licence fees charged by the provider can be derived in full from the additional cost per egg deduced above. Furthermore, the final additional burden depends on the price structure of the envisaged licensing procedure.

On the other hand, there is an annual relief for farms of EUR 92.4 million (12 billion eggs \* EUR 0.0077). The revenues including savings from a sexing procedure were calculated at EUR 0.0077 per egg for hatching[[7]](#footnote-8))). This includes savings for the staff who manually sort the chicks immediately after hatching and savings due to lower setting capacity and energy cost reductions in the setter.

For around 12 billion eggs, the annual compliance costs due to licence fees less relief are expected to range between EUR 27.6 million (12 billion \* (EUR 0.01-0.0077)) and EUR 267.5 million (12 billion \* (EUR 0.03-0.0077)). Estimating using the mean (EUR 0.02-0.0077) results in annual compliance costs of EUR 147.5 million.

Establishments treating and processing food of animal origin and placing it on the market must be approved by the competent authority, with specific exemptions. Currently, there are 2 436 egg-packing centres registered and published in the database in Germany.[[8]](#footnote-9))). Therefore, the average additional annual compliance costs per company amount to approximately EUR 60 600.

Since the implementation of the proposed regulation will lead to ongoing external costs, it is particularly important to audit the financial capacity and viability of an average packing centre (often small and medium-sized enterprises). In this respect too, however, it should be stressed that reasonable cost increases do not make it financially unreasonable to comply with the regulations, because the costs incurred in the production chain will be passed onto consumers, irrespective of the size of the undertaking. No derogation for small and medium-sized enterprises is provided for because the objective of the regulations – to end the culling of day-old chicks – can only be achieved by also including these businesses.

Within the meaning of the "one in, one out" rule, the annual compliance costs incurred by businesses during this regulatory process constitute an "in" of EUR 147.5 million. Currently, only some of the costs can be compensated for through the Federal Ministry of Food and Agriculture’s relief provisions from this legislative period. Further compensation options are being examined.

**4.3. Administrative compliance costs**

Authorities are not expected to see any change in compliance costs. Hatcheries are subject to regular inspections in accordance with Article 9 of Commission Regulation (EC) No 617/2008 of 27 June 2008 laying down detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks (OJ L 168, 28.6.2008, p. 5). The specific annual inspections are derived from a risk analysis. In addition, farms are already being inspected under the provisions of the Animal Welfare Act because farms are culling male chicks. Therefore, no additional inspections are anticipated in connection with the implementation of this proposed regulation. The inspection work to determine that an operation is no longer being carried out is estimated to be the same as the current workload.

* 1. Additional costs

It is likely that the industry will pass on at least some of the costs to consumers, so the proposed rules may have an impact on unit prices of up to EUR 0.10 per pack of six eggs.

* 1. Other consequences of the legislation

No impact in terms of equality is anticipated since the Act contains no provisions that affect the specific situations of men and women.

1. Time limit and review

No time limit is envisaged.

This Act will be evaluated no later than 1 January 2027. The aim of the evaluation will be to check whether the Act’s aim of outlawing the culling of chicks has been achieved. The indicator for the evaluation will be non-compliance identified by federal states during inspections. Data from the federal states will be used as the information base.

B. Specific part

Re Article 1 (Amendment to the Animal Welfare Act)

§ 4c, sentence 1 stipulates a ban on chick culling. This ban is being made law against the background of the Federal Administrative Court rulings 3 C 28.16 and 3 C 29.16 and in view of the coalition government’s aim to end the culling of day-old chicks, as stated in the coalition government. A ban is necessary to fully outlaw the culling of chicks and effectively enforce compliance with the ban. The ban is to enter into force on 1 January 2022.

It covers all chickens originating from egg-laying breeding lines, including breeding animals and animals for reproduction. The ban covers the culling of both female and male chicks. The regulations encompass both the systematic culling of male chicks in hatcheries and the culling of male or female chicks in farms for breeding and reproduction. The ban extends to cover chicks produced for breeding and reproduction because in the poultry farming production system female and male chicks are also culled at breeding and reproduction farms when hen or cockerel chicks of a certain line cannot be used for further breeding. This action in the breeding and reproduction segment – in violation of animal welfare standards – should also be outlawed.

The ban on culling chicks does not infringe on hatchery operators’ and breeders’ fundamental rights, in particular the fundamental right of occupational freedom under Article 12 of the Basic Law. Operating a hatchery or a breeding establishment is an activity protected by occupational freedom; however, the practice of an occupation or profession may be regulated by or pursuant to a law (Article 12(1), sentence 2 of the Basic Law). The ban on chick culling in this draft Act does not constitute unreasonable interference with hatchery operators’ or breeders’ freedom to practice their occupation since the work, in particular the hatching of eggs, remains permitted. Hatchers are also free to decide whether to hatch eggs from laying, fattening or dual-purpose lines on their farms. Furthermore, it can be assumed that by 1 January 2022 egg sexing techniques will be ready for practical use and available on the market as alternatives to culling chicks, along with the use of dual-purpose chickens and the rearing and fattening of male chicks.

For the period from 2008 to 2020, the federal government earmarked around EUR 8 million to promote all alternatives, including around EUR 6.5 million for enhancing egg sexing techniques.

Thanks to this federal funding, techniques for sexing a chick while still in the egg to a very high degree of accuracy have been developed. Different sexing methods using different technologies mean the sex of the chick can be determined with certainty. In addition to endocrinology and spectroscopy approaches, gene analysis procedures and embryonic colour sexing have also become established.

In principle, all these methods are suitable for widespread use in German hatcheries and some are already being used in practice. Companies are working to further optimise the processes for the relevant technologies in their own interest.

Since the above Federal Administrative Court rulings in June 2019, egg sexing procedures have been refined.

Generally speaking, the sexing techniques can be set up at the hatcheries themselves, or sexing can be offered as a service. Making use of a service is particularly convenient for hatcheries whose stock of eggs for hatching renders setting up the sexing techniques financially unviable. This ensures that the eggs for hatching can be sexed irrespective of production volumes and genetics.

By sexing developing chicks while still in the egg, it is possible to prevent a male chick from developing further and hatching. Doing so requires changes in the incubation processes. Unlike the other alternatives, sexing requires few changes to upstream and downstream production stages. Sexing eggs leads to cost reductions: the earlier the eggs are sexed, the greater the savings for the hatcheries. Discarding the eggs from which male chicks would hatch frees up breeding capacity. Sexing in the egg means hatcheries need only one third of their capacity since, at least in procedures where sexing is offered as a service, the remaining incubation takes place in ‘sexing centres’. Furthermore, there are no costs for sexing, culling and disposing of live chicks.

The ban on chick culling does not affect the control of animal diseases or the emergency culling of sick or injured hatched animals under animal welfare standards. Similarly, the ban will not apply to non-hatching chicks or poussin. The term ‘poussin’ is defined in Article 1(1)(a) of Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat. According to the definition, a poussin is a chicken of less than 650 g carcase weight (expressed without giblets, head and feet), or a chicken of 650 g to 750 g if the age at slaughter does not exceed 28 days. Animal experiments are also exempt because the ban relates to the systematic culling of chicks and embryos in egg production and is not to cover scientific experiments on chicks or embryos.

In addition to egg sexing methods, alternatives to culling include rearing brother cockerels or using dual-purpose chickens. The federal government will be supporting and advancing in particular the breeding and use of dual-purpose breeds in the coming years. The appropriate measures to this end will be discussed within the livestock farming expertise network set up by the Federal Ministry of Food and Agriculture.

Re Article 2 (Further amendment to the Animal Welfare Act)

Re point 1

Re (a)

The ban stipulated in § 4c is extended by breaking it down into paragraphs, leading to an editorial change as regards paragraph numbering.

Re (b)

§ 4c(2) bans, from the seventh day of incubation onwards, any operations on a chicken egg or any termination of incubation carried out either during or after the application of egg sexing techniques in such a way as to causes the death of the chicken embryo. The wording of points 1 and 2 is intended to cover the deliberate culling or accidental killing of the chicken embryo during or after the application of an egg sexing technique. The seventh day is deemed critical because it is from this day onwards that the chicken embryo may begin to feel pain, according to the current state of knowledge.

The ban, from the seventh day of incubation onwards, on performing operations on a chicken egg or terminating incubation, either during or after the application of egg sexing techniques, in such a way as to cause the death of the chicken embryo, is not an unreasonable infringement on the freedom of undertakings developing egg sexing techniques to practice their profession. This does not affect operations such as, in particular, the improvement of existing sexing methods or the research and development of sexing techniques to determine the sex before the seventh day of incubation.

For animal embryos in which the perception of pain develops continuously, i.e. from the sixth day of incubation onwards for chicken, the safeguarding of the national objective to protect animal welfare according to Article 20a of the Basic Law also applies before hatching or birth. By the end of 2023, sexing techniques that determine the sex of chicken embryos before the seventh day of incubation should be ready and available for use. The aim in doing so is to prevent a long transitional period creating an incentive to first invest in sexing techniques to be used after the seventh day of incubation.

Re point 2

§ 18(1)(6a) provides for an administrative offence for breaches of the ban under § 4c(2).

Re Article 3 (Entry into force)

Article 3 governs a staggered entry into force of the Act.

Re paragraph 1

Article 1 will enter into force on 1 January 2022. To rapidly reduce the number of chicks culled and in view of the technical progress already made, a short period of time before the chick culling ban takes effect is considered appropriate. Current scientific progress suggests that the alternatives can be put in place by the end of 2021.

Affected farmers can reasonably be expected to have implemented the necessary changes to operational processes within the period between promulgation and entry into force. Following the Federal Administrative Court rulings and the development of alternative methods, the current practice of culling chicks must stop for animal welfare reasons.

Re paragraph 2

Article 2 will enter into force on 1 January 2024.

Since egg sexing may result in the subsequent culling of chicken embryos found to be male, the envisaged provision in § 4c(2) means that only sexing procedures that determine the sex of the chicken embryo before the seventh day of incubation may be used in future. This requirement is not met by current sexing techniques, but should be possible by the end of 2023. For this reason, § 4c(2) is not scheduled to take effect until 1 January 2024. As such, procedures that determine sex after the sixth day of incubation are permitted until that time solely as bridging technologies.

1. ) Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1). [↑](#footnote-ref-2)
2. ) Bartels, Thomas / Wilk, Inga / Schrader, Lars: *Entwicklung von Nozizeption und Schmerzempfinden bei Hühnerembryonen. [Stellungnahme des FLI]*. [Development of nociception and pain perception in chicken embryos. [Friedrich Loeffler Institute Opinion]. Greifswald – Riems Island 2020. Friedrich Loeffler Institute, Federal Research Institute for Animal Health. [↑](#footnote-ref-3)
3. ) https://www.seleggt.de/wp-content/uploads/2018/04/SELEGGT\_FAQs\_D.pdf. [↑](#footnote-ref-4)
4. ) Von der Crone, Caspar & Gault, Matthias & Mau, Markus & Lang, Horst. (2020). Gazdaság & Társadalom – Journal of Economy & Society – 11. ÉVFOLYAM 2018. 3–4. SZÁM *Ausstieg aus dem Verfahren des Tötens männlicher Küken: Umsetzung und Möglichkeiten, Kriterien und Standards für ökologische und konventionelle Aufzucht* [Phasing out the culling of male chicks: implementation and possibilities, criteria and standards for organic and conventional rearing]. 11. ÉVFOLYAM. 108. 10.21637/GT.2018.3-4.07. [↑](#footnote-ref-5)
5. ) https://www.bmel-statistik.de/fileadmin/daten/DFB-0100200-2019.pdf, S.3. [↑](#footnote-ref-6)
6. ) https://www.bmel-statistik.de/fileadmin/daten/DFB-0100200-2019.pdf, S.3. [↑](#footnote-ref-7)
7. ) Thünen Institute statement 2017 (single-farm impact of a spectroscopic sexing method for fertilized chicken eggs). [↑](#footnote-ref-8)
8. ) http://apps2.bvl.bund.de/bltu. [↑](#footnote-ref-9)