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**FINAL REPORT OF A MISSION
CARRIED OUT IN GERMANY
FROM 8 TO 12 JANUARY 2007
CONCERNING ANIMAL WELFARE ON FARMS**

*Please note that factual errors in the draft report have been corrected.
Clarifications provided by the German Competent Authorities are given as
footnotes, in bold, italic, type, to the relevant part of the report.*



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EXECUTIVE SUMMARY

This report describes the outcome of a mission carried out by the Food and Veterinary Office (FVO) in Germany, from 8 to 12 January 2007.

The main objective of the mission was to verify the implementation of EU animal welfare legislation applicable to pig and laying hen farms and to follow up the recommendations from previous reports from 2001 concerning pigs and laying hens and 2004 concerning laying hens. The report concluded that although the transposition of certain EU requirements for the welfare of pigs was significantly delayed, actions had been taken by the Länder authorities to ensure that the main requirements were respected in the intervening years. Recommendations made in previous FVO reports have been largely addressed; however, certain aspects of checks and follow-up actions were unsatisfactory. At the same time, a manual for checks of animal welfare on farms has been produced and, while it has only recently been implemented, taken together with the other guidance provided, it provides a good basis for more thorough inspections. Supervision of the work of the district level by the Länder authorities has also been relatively recent and led to improvements in the way that procedures were followed.

The report makes a number of recommendations addressed to the German competent authorities, aimed at rectifying the identified shortcomings and further enhancing the control measures in place.

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1. INTRODUCTION

The mission took place in Germany from 8 to 12 January 2007, as part of the planned mission programme of the Food and Veterinary Office (FVO).

An opening meeting was held with the competent authorities of Germany on 8 January 2007. At this meeting, the objectives of, and itinerary for, the mission were confirmed by the inspection team and additional information required for the satisfactory completion of the mission requested.

The inspection team comprised two inspectors from the FVO and a national expert, and was accompanied throughout the mission by a representative from the Central Competent Authority (hereafter: CCA), Federal Office for Consumer Protection and Food Safety (*Bundesamt für Verbraucherschutz und Lebensmittelsicherheit*).

2. OBJECTIVES OF THE MISSION

The main objective of the mission was to verify the implementation of EU animal welfare legislation applicable to pig and laying hen farms, in particular the measures put in place to give effect to Council Directives 91/629/EEC^{1,2}, 91/630/EEC³, 98/58/EC⁴, 99/74/EC⁵, Commission Directive 2002/4/EC⁶ and Commission Decision 2000/50/EC⁷ and to follow up the recommendations from report DG(SANCO)/3382/2001 regarding pigs and laying hens and report DG(SANCO)/7018/2004 regarding laying hens (hereafter: reports 3382/2001 and 7018/2004). The mission also looked at how measures taken in relation to the above are being integrated with the requirements of Regulation (EC) No. 882/2004 of the European Parliament and of the Council⁸.

¹ Legal acts quoted in this report refer, where applicable, to the last amended version.

² Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves, OJ L 340, 11.12.1991, p. 28 (hereafter: Directive 91/629/EEC).

³ Council Directive 91/630/EEC of 19 November 1991 laying down minimum standards for the protection of pigs, OJ L 340, 11.12.1991, p. 33 (hereafter: Directive 91/630/EEC).

⁴ Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes, OJ L 221, 8.8.98, p. 23, (hereafter: Directive 98/58/EC).

⁵ Council Directive 99/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens, OJ L 203, 3.8.99, p. 53, (hereafter: Directive 99/74/EC).

⁶ Commission Directive 2002/4/EC of 30 January 2002 on the registration of establishments keeping laying hens, covered by Council Directive 1999/74/EC, OJ L 30, 31.1.2002, p. 44 (hereafter: Directive 2002/4/EC).

⁷ Commission Decision 2000/50/EC of 17 December 1999 concerning minimum requirements for the inspection of holdings on which animals are kept for farming purposes, OJ L 19, 25.01.2000, p. 51 (hereafter: Decision 2000/50/EC). This Decision will be repealed and replaced by Commission Decision 2006/778/EC as of 1.1.2008

⁸ Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules OJ L 165, 30.4.2004 corrected and republished in OJ L 191, 28.5.2004, p.1 (hereafter: Regulation (EC) No. 882/2004).

In pursuit of these objectives, the following meetings were held and sites visited:

VISITS			Comments
Competent authority	Central level	2	Opening and closing meetings with the CCAs and Competent Authorities of Mecklenburg – Western Pomerania and Lower Saxony.
	<i>Länder</i> and district level	2	These meetings were held in a district office in Mecklenburg – Western Pomerania and Lower Saxony, where checks made by the local level were also evaluated. The districts were chosen by the mission team based on the contributions to the report to the Commission by each <i>Länder</i> required by Decision 2000/50/EC.
Farms		4	A local inspector carried out a check of a laying hen farm and a pig farm in each region. One battery cage and one alternative laying farm was visited. The farms were selected by the inspection team from a list of farms in the districts visited.

3. BACKGROUND

Report 3382/2001 concerned the welfare of pigs, laying hens and calves and concluded that the EU legislation for pigs and laying hens had not been satisfactorily transposed. It also indicated that the selection of pig and calf farms did not meet the requirements for a statistically representative sample of the different rearing methods and that certain requirements from Council Directive 98/58/EC such as medical and mortality records and the killing sick or injured animals had not been adequately checked. Report 7018/2004 concluded that federal legislation for the welfare of laying hens goes beyond EU requirements, but implementation was not yet adequate in particular the system of checking cages was unreliable and deficiencies were not always adequately followed up. Both reports are available under their reference number at the DG Health and Consumer Protection (DG SANCO) website:

http://ec.europa.eu/food/fvo/ir_search_en.cfm

The responses to the recommendations from the above mentioned reports are mentioned under the relevant headings in Section 5.

4. LEGAL BASIS FOR THE MISSION

The mission was carried out under the general provisions of Community legislation, in particular Artt. 9 of Directives 99/74/EC and 91/630/EEC, Art. 7 of Directive 98/58/EC and Art. 45 of Regulation (EC) No. 882/2004.

5. MAIN FINDINGS

5.1. Legislation

Although a comprehensive check of the national legislation was not carried out, during the course of the evaluation of controls, the following legal issues were identified:

In response to a recommendation in report 3382/2001 regarding the transposition of Directive 91/630/EEC the CCA indicated that the relevant federal law would enter into

force, not earlier than 20.12.2002 and not later than 07.03.2003. The second order amending the Regulation on Animal Welfare of Farm Animals (*Tierschutz-Nutztierhaltungsverordnung*) transposing the Directive 91/630/EEC entered into force on 4.8.2006. As this national legislation should have entered into force on 1.1.2003, Germany had already been found to be in breach of its obligations in this regard by The European Court of Justice (ref C-278/04 of 8.9.2005). To fill this legal gap both *Länder* visited had issued their own legal decrees and as a result, relevant EU requirements, such as group housing of pregnant sows and gilts, were already applied from 1.1.2003.

In assessing several of the legal requirements during the mission, the mission team noted that national legislation goes beyond the EU requirements on certain issues such as:

- Article 5 (2) of Directive 99/74/EC requires unenriched cages for laying hens to be phased out by 1.1.2012. National legislation requires such cages to be taken out of use in advance of this date. The relevant legislation was amended in August 2006 and although unenriched cages are banned from 1.1.2007, the Competent Authority (hereafter: CA) can permit their use until 31.12.2008 provided that plans for conversion have been made. Also if the farmer can prove that, despite his best efforts, it was not technically feasible to make the refurbishment by 31.12.2008, there is then a deadline for the use of such cages until 31.12.2009.
- Teeth clipping has been prohibited as it was considered that the level of splitting of teeth which occurs during this procedure was a significant welfare problem; teeth grinding, which was considered less of an abuse of animal welfare, is allowed where such a procedure can be justified. This is in compliance with point 8 of the Annex to Directive 91/630/EEC which allows the uniform reduction of the corner teeth of piglets by grinding or clipping provided that it is carried out in the first seven days of life.
- A minimum of 200g of raw fibre per sow per day or 8% of dry feed as raw fibre are required for pregnant sows and gilts. Directive 91/630/EEC Article 3 (7) indicates that to satisfy their hunger and need to chew, all dry pregnant sows and gilts must be given a sufficient quantity of bulky or high-fibre food, but does not define this quantity.
- Light intensity of 80 Lux is required for pigs, rather than 40 Lux as required by Directive 91/630/EEC Annex (2).
- In addition to a requirement of Article 3 (9) of the Directive 91/630/EEC for group housing of dry sows in new buildings, until the phasing out of the conventional dry sow stall in 31.12.2012, sows kept in buildings which were already in use must be allowed to move freely for a period of four weeks during the stage between weaning and giving birth.

Point 3 of the Annex to Directive 99/74/EC indicates that an adequate uninterrupted period of darkness lasting, by way of indication, about one third of the day, must be provided so that hens may rest and to avoid problems such as immuno-depression and ocular anomalies; however, national legislation requires a period of darkness of at least eight hours, but does not state that this period should be uninterrupted (§14(1)(2) *Tierschutz-Nutztierhaltungsverordnung*). It would therefore be possible for a farmer to include a light phase in the middle of the eight hour dark period to encourage higher food consumption.

5.2. Competent Authority

The organisation of the CA is described in Country profile of Germany on food and feed safety, animal health, animal welfare and plant health (ref: DG(SANCO) 7705/2005), available at the DG Health and Consumer Protection (DG SANCO) website:

http://ec.europa.eu/food/fvo/country_profiles/CP_germany.pdf

5.2.1. Guidance

Report 7018/2004 recommended that actions should be taken to ensure accurate measurements of cages for laying hens. A manual produced by a working group of representatives from the nine *Länder* with the most significant livestock production (*Handbuch, Tierschutzüberwachung in Nutztierhaltungen*: hereafter - the manual) includes guidance on this topic. The manual, which has been available to all *Länder* since September 2006, also includes guidance on preparing and planning checks, on reporting requirements (Decision 2000/50/EC) and has specific parts for each species including check lists and measuring protocols.

Check lists and measurement protocols used in both *Länder* gave appropriate guidance to the Official Veterinarians (hereafter: OVs) on how to perform an animal welfare check on the holding; however, it was noted that:

- In Lower Saxony the format for answering differed between the pig and laying hen check lists⁹. For laying hens the question required a simple yes or no answer, whereas for pigs the format was to answer whether the criteria was in compliance or not. Due to this difference a finding had been mis-recorded as the OV had mistaken the format of the question.
- In Mecklenburg-Western Pomerania the check lists for pig farms included references to transitional periods. This was to provide an *aide-memoire* regarding the date of application of certain requirements; however, some of these references had not been updated following the amendment of the national legislation. In Lower Saxony it was noted that only the check list belonging to the manual of pigs contained limited references to the transitional periods and the OV checked in detail several requirements which were not yet applicable on the farm visited.

In Lower Saxony, guidance for keeping of pigs (*Tierschutz: Leitlinien für die Schweinehaltung*), and a recommendation for keeping laying hens in alternative systems (*Empfehlung zur Haltung von Legehennen in Boden- und Freilandhaltung*) provided further information on the requirements to OVs and the livestock sectors.

To facilitate better communication between the various levels of the CA, the CCA has established a computer database (FIS-VL) which can be accessed via Internet. The *Länder* can also add their own information, giving access within their *Land* or to the other *Länder*. This database was already used in both *Länder*, where district CAs accessed information, such as the manual.

⁹ In their response to the draft report, the German Authorities noted that as a follow up measure the check lists are being amended accordingly by the *Länder*.

5.2.2. Training

The requirements of animal welfare legislation and the general aspects of Regulation (EC) No. 882/2004 were included in internal CA training in both *Länder*. Additional training events for OV's on animal welfare were organised by other bodies, including academic institutions and veterinary associations.

5.2.3. Supervision and audits

In both *Länder* visited supervisory checks by the *Länder* CA on the district level had been recently performed.

- In Mecklenburg-Western Pomerania a visit to the district on 13.12.2006 had found a lack of both written notification of deficiencies and deadlines for corrective measures, and requested the district CA to prepare a report on implementation of these aspects within 12 weeks.
- In Lower Saxony a supervisory visit on 20.12.2006 found that, although checks of farms had been made in 2004 and 2005, no such checks had been carried out in 2006. This had arisen due to changes in personnel and restructuring of the district veterinary service. Other aspects which were addressed during this visit included the updating of folders on training, keeping of minutes of meetings and traceability of findings and actions taken which were reported for the purposes of Decision 2000/50/EC. The district CA was requested to prepare a report within two months on the recommendations given. The district CA subsequently inspected 5 calf, 5 pig and 5 laying hen holdings between 22.12.2006 and 5.1.2007.

A system of internal audits, as required by Article 4(6) of Regulation (EC) No. 882/2004, has already been established in Lower Saxony and two out of the ten audits already carried out included procedures relating to animal welfare, such as whether the appropriate documents for checks were available and used, and whether personnel had the appropriate competence. Mecklenburg-Western Pomerania is developing a quality assurance system which will include internal audits.

5.3. Measures supplementary to inspections

5.3.1. Operating permits for farm establishments

When new holdings are planned or existing building converted, there is a procedure in each *Land* where experts are consulted, including OV's, and provide a written opinion on the plans submitted. In both *Länder* examples were seen where animal welfare requirements, such as group housing of sows and gilts, were taken into account as part of this procedure.

5.3.2. Information to the livestock sectors

In relation to the implementation of Article 5a of Directive 91/630/EEC, which requires the CA to ensure that training on the requirements of the Directive is available to pig stockpersons. It was noted that:

- In Mecklenburg-Western Pomerania the CA stated that no specific training for pig farmers on animal welfare topics was organised by the CA and that farmers can attend such courses in the neighbouring *Land*. The CA had participated in a seminar

for small scale farmers, where some aspects of animal welfare were included. In the district visited, this training was largely taken over by the pig keepers association.

- In Lower Saxony the Agriculture Chamber (*Landwirtschaftskammer*) organises basic courses on pig husbandry, which are compulsory for all future pig farmers, and include aspects of animal welfare. Guidance for farmers (*Leitfaden Grundlehrgang Schweinehaltung*) was prepared by the Chamber of Agriculture; partly co-financed by the EU.

In both *Länder* egg producers were informed through meetings and publications in the media about the provisions for phasing out of battery cages.

5.4. Inspections

5.4.1. Selection of farms

In response to a recommendation in report 3382/2001 that the selection of farms meets the requirements of Article 7 of Council Directive 91/630/EEC, the CCA indicated that they had drawn the attention of the *Länder* authorities to take this into account. In addition to requirements for a statistically representative sample of the different systems for rearing pigs and for checks of laying hen farms (Directive 99/74/EC, Article 8(1)), from 1.1.2006 Article 3 of Regulation (EC) No. 882/2004 requires checks to be carried on the basis of risk. The manual, which has been available from September 2006, indicates that 20% of checks should be random and 80% based on risk. Guidance on the risk based approach is provided with a weighting given for certain risk factors. For each farm visited, the OV must subsequently score each issue listed and multiply this by the weighting given; these values are added to get an overall level of risk.

It was noted that:

- The programme of checks is prepared annually by each district and the number of farms is established on the basis of local specifics. In both *Länder*, when district CAs were preparing their programme for 2007, the approach described in the manual (20% randomly selected and 80% risk based) was taken into account. In Lower Saxony the model from the manual was used, but the mission team noted that the OVs did not score the criteria in a way which corresponded to the findings indicated in their checklists. Here, a representative of the *Länder* CA stated that, at this stage, they are only gaining experience with the risk based approach. The CA in Mecklenburg-Western Pomerania had decided not to use this mathematical approach, following the results of a similar method adopted in relation to control of medicines, and preferred to provide a list of criteria to aid the OVs in making their selection of farms.
- In the district visited in Mecklenburg-Western Pomerania, although no small pig holdings were included in the four farms scheduled for 2007, random selection should ensure that such holdings are included in future years.
- Animal welfare checks carried out in Lower Saxony were not announced, while in Mecklenburg-Western Pomerania they were announced. Although Article 3(2) of Regulation (EC) No. 882/2004 requires checks without prior warning, in certain cases such as audits, it does allow such checks to be pre-announced.

5.5. Laying hens

5.5.1. Co-operation with services for egg marketing

In response to a recommendation in report 7018/2004, that information available to egg marketing inspectors should be utilised for the purposes of veterinary inspections, the CCA indicated that this issue would be addressed through the manual being developed at that time. It was noted that:

- The manual, which is now available, did not contain any information on arrangements with the CA for marketing standards.
- The CA in both *Länder* indicated that there was a national legal requirement for them to communicate any relevant findings to this body and *vice versa*.
- Previously in Lower Saxony an intermediate level of the CA, which has since been abolished, was responsible for both registration and verification of the data. A representative of the CA indicated that as a result there was now a need for greater co-operation between the different organisational units of the CA involved.

Registration of laying hen farms is now carried out at *Länder* level. The procedure for registration of holdings starts with an owner's declaration, including their assessment of the maximum number of birds which can be kept and confirmation from the district CA that all conditions have been met. For example Directive 2002/4/EC Annex (1) requires the maximum capacity of the farm to be registered and the CA would confirm that this data was correct. The data are kept in a computerised database (BALVI iP); however direct access to the database by OVs was not possible in the districts visited. The CA indicated that such data could be obtained on request.

In relation to aspects where data had been registered for the purposes of Directive 2002/4/EC it was noted that:

- The manual provides a framework for establishing the number of birds which can be kept in each particular building. In Lower Saxony, the OV used this to correctly identify that the number of birds which could be kept was limited by the feeding space on the farm visited. However, records of previous inspections indicated that only usable area had been taken into account in assessing the maximum capacity and the farm had been registered with a larger number of birds than would have been the case if all the requirements of Article 4 of Directive 99/74/EC had been assessed¹⁰.
- Prior to an inspection in 2006, there were no records that the CA had accurately assessed the total capacity of the farm visited in Mecklenburg-Western Pomerania. Remarks made in previous reports only indicated that cages were overstocked but no precise measurements had been recorded. The check list used did not indicate that an overall assessment of the capacity of the farm was necessary, nevertheless it had prompted the OV to calculate the capacity of each building, and the total capacity had now been established. The data kept for the purposes of Directive 2002/4/EC Annex (1) had not been correct.

¹⁰ *In their response to the draft report, the German Authorities noted that the district CA in the letter from 11. 1. 2007 informed the authorities responsible for registering the laying hen establishments of the measures initiated at the establishment visited and the discrepancy between the maximum stocking density and the number of animals indicated in the registration.*

5.5.2. Issues relevant to both cage and alternative systems

Point 13 of the Annex to Directive 98/58/EC requires an alarm for any system where the welfare of the animals is dependant on that system; however, the guidance provided by the CA for laying hen farms did not indicate when an alarm should be provided. On the farm visited in Lower Saxony, the OV accepted that as the livestock building was near the keeper's house he would notice any breakdown in the ventilation system. However, the mission team noted that as the quality of the air in one building was particularly poor (the CA measured levels of NH₃ 56ppm and H₂S 3ppm) failure of the ventilation system would have had a negative effect on the well being of the birds¹¹.

5.5.3. Issues relevant to cage systems

Report 7018/2004 recommended more detailed guidance on checking measurements of cages. The manual which was subsequently produced provides details for making a full assessment of these requirements. Although the manual repeats the legal requirement that cages should not be less than 35 cm high at any point, it subsequently states that any area where the height is less than 35 cm should not be counted as cage area. This led certain representatives of both *Länder* CAs to conclude that cages with a height of less than 35 cm could continue to be used, as long as that part below the minimum the height was not counted as cage area. Article 5(1)(4) of Directive 99/74/EC does not permit the use of cages which are less than the minimum height of 35 cm. During the inspection seen of a caged system, the height and slope of the cages were accurately measured, aspects which had not been adequately checked at the time of mission 7018/2004.

5.5.4. Issues relevant to alternative systems

The following issues were relevant to the alternative systems for laying hens:

- On the farm visited in Lower Saxony the OV did not exclude the area under the feeders which was less than 45 cm high, from the usable area; Article 2(2)(d) of Directive 99/74/EC requires usable area to be at least 45 cm high. Although the CA checklist indicates that an assessment of usable area should be made, just prior to this point accessible area (*begehbare Grundfläche*) is listed. The OV had overlooked the point relating to usable area because of its apparent similarity to the one on accessible area.
- In relation to perches for laying hens in alternative systems, as required by Article 4(1)(1)(d) of Directive 99/74/EC, in Lower Saxony, guidance on keeping laying hens in alternative systems (*Empfehlung zur Haltung von Legehennen in Boden- und Freilandhaltung*) recommends that at least 50% of the perches have to be on different levels and provides details of the materials which should be used.

5.5.5. Follow-up procedures

In their response to the recommendation in report 7018/2004, that adequate, timely and proportionate corrective measures should be taken where deficiencies are detected, the CCA indicated that the manual would also contain instructions as to how any deficiencies

¹¹ *In their response to the draft report, the German Authorities noted that the district CA gave instructions in writing on 12. 1. 2007 for an alarm system to be installed.*

detected can be rectified, wherever possible in a consistent manner, in accordance with the principles of animal welfare and administrative procedures. It was noted that:

- The manual provides an outline of the steps to be taken for corrective actions, including written notification and follow up procedures. It does not address the issue that measures must be proportionate to ensure that corrections are carried out.
- In Lower Saxony approximately 5% of holdings with laying hens were checked in 2005 and deficiencies were found in 62% of cases; more than one case could have been found on the same farm. Advice was given in the majority of cases (approximately 89%); "other sanctions" were imposed in the remainder. In the district visited in Lower Saxony, although no programmed checks were carried out in 2005, five checks were carried out on suspicion of poor welfare conditions, three of these on small farms not covered by Directive 99/74/EC. An oral instruction had been given to make corrections on one farm where insufficient feeding space was detected. This had still not been corrected at an inspection of this farm in 2006. Nine of the ten planned checks for 2006 were carried out between 22.12 2006 and 5. 1. 2007.
- In Mecklenburg-Western Pomerania, the 42 registered laying hen holdings were checked on average one and a half times in 2005. Deficiencies were found in 5% of cases and this was always followed by advice. In the district visited two checks were carried out in 2005, an oral warning was given for overstocking of one battery cage farm, which had also been the case in 2004 when an oral warning had also been given. A calculation was made of the capacity of each building on this farm in December 2006, when the new checklist was used and precise records made of the number of birds in each system. A written order was then given allowing two months for corrective action to be taken.

5.6. Pigs

In Lower Saxony checks were performed on approximately 7% of holdings in 2005 and deficiencies were found in approximately 25% of cases; again the same farm could have accounted for more than one deficiency. Advice was given in most cases (c. 87%); "other sanctions" were imposed in the remainder. In the district visited in Lower Saxony, eleven checks were carried out on pig farms in 2005 and deficiencies were detected in two cases, which is comparable with the average detection rate for this *Land*. One farm where major deficiencies were detected resulted in a ban on the keeping of animals. In the second case, there were deficiencies relating to both animal health and welfare requirements; however, no specific reference was made to the correction of the animal welfare issue in the records of the follow up check. Due to the lack of operational personnel and restructuring plans, no checks had been carried out in this district in 2006 until one week before the mission, when all planned checks had been performed in a period of three days.

In Mecklenburg-Western Pomerania approximately 18.5% of pig holdings were inspected in 2005. Deficiencies were found in approximately 107% of cases, as more than one deficiency was found on certain farms. Advice was given in the vast majority of cases (99.5%) and "other sanctions" in the remainder. In the district visited in Mecklenburg-Western Pomerania five checks were carried out in 2005 and no deficiencies were detected. In 2006 two checks were carried out. A recent check of one farm, where no deficiencies had been found in 2005, indicated that there was a lack of materials for investigation and manipulation activities, contrary to Directive 91/630/EEC Annex (4).

The following issues were noted:

- During the visit in Lower Saxony a sick sow, which was unable to stand up, had been isolated in a pen with a slatted floor without any bedding for two weeks; Council Directive 98/58/EC, Annex (4) requires such animals to be in suitable accommodation with dry comfortable bedding, as appropriate. In the Regulation on Animal Welfare of farm animals (*Tierschutz-Nutztierhaltungsverordnung*) and in guidance for keeping of pigs (*Tierschutz: Leitlinien für die Schweinehaltung*) states that a mat, or other appropriate bedding, should be provided for such animals. No remarks on this issue were recorded following the CA check carried out the week before the mission. Medicinal treatments and mortalities (Council Directive 98/58/EC, Annex, point 5) and the practice of killing sick or injured animals (Council Directives 93/119/EEC, Article 12 and 98/58/EC, Article 3), which were the subject of a recommendation in report 3382/2001 were included in the inspection.
- Materials to enable proper investigation and manipulation activities, such as those listed in Chapter I(4) of the Annex to Directive 91/630/EEC, are included in the guidance to OV's in Lower Saxony, which has been available since 2002. In Mecklenburg-Western Pomerania no such clarification had been provided on such materials and no reference made to the list in the Directive. No deficiencies regarding lack of these materials had been recorded by either district visited until checks in December 2006. During the visit in Mecklenburg-Western Pomerania, plastic tubes and pieces of wood, which were heavily contaminated with faeces, were accepted as suitable materials. In Lower Saxony materials for investigation and manipulation were absent for the majority of categories of pigs on the farm visited and an instruction to correct this had been given at a check a week earlier.
- Regarding group housing of sows, the CA of Lower Saxony explained that if free access stalls are used, only the area outside the stalls is included in the calculation of total unobstructed floor area.
- In Mecklenburg-Western Pomerania the OV did not detect that there was a lack of permanent access for pigs to fresh water, as required by Chapter I(7) of the Annex to Directive 91/630/EEC either during the visit with the mission team or at an inspection carried out a month earlier. The OV had confused this requirement with a national requirement for watering equipment to be separated from the feeders, where a transitional period applies. Nevertheless, an administrative order to remedy the shortcomings was served on the farmer.

6. CONCLUSIONS

6.1. Legislation

- (1) Despite the delay in transposition of Directive 91/630/EEC at federal level, arrangements had been made at *Länder* level for requirements to be applied from 1.1.2003 as required by the Directive.
- (2) Legislation goes beyond the minimum standards of Directive 99/74/EC and Directive 91/630/EEC on several aspects, notably the phasing out of cages for laying hens in advance of the EU deadline of 1.1.2012. However, the requirement

of point 3 of the Annex to Directive 99/74/EC for an uninterrupted period of darkness of about one third of the day has not been correctly transposed.

6.2. Competent Authority

- (1) The manual prepared by a *Länder* working group and made available by federal level provides an extensive set of documented procedures to assist those carrying out checks, as required by Article 8 of Regulation (EC) No. 882/2004. Although procedures for co-operating with egg marketing services were not dealt with through this manual, as had been indicated by the CCA in response to a recommendation in report 7018/2004, both *Länder visited* were developing arrangements to better facilitate exchange of information with this service.
- (2) Although detailed documented procedures generally provided a major support to OV's carrying out checks, differences in the format between the pig and laying hen check lists had given rise to certain findings being misreported, and the knowledge of the OV's was frequently insufficient on those requirements where transitional periods exist in the national legislation. The provision of legal references is a useful approach; however, the benefit of this was reduced where these references had not been updated to reflect amendments to the legislation.
- (3) Adequate arrangements have been made for the training of staff as required by Article 6 of Regulation (EC) No. 882/2004.
- (4) Certain unsatisfactory aspects of checks and follow-up actions had been allowed to persist for several years as there had been limited supervision by the higher levels of the CA; however, the recent verification of the effectiveness of inspections, as required by Article 8(3) of Regulation (EC) No. 882/2004, has resulted in improvements to the quality and consistency of controls.
- (5) The CCA actions to address a recommendation in a previous report on follow-up actions have been limited and although there was a higher use of sanctions in Lower Saxony than in Mecklenburg-Western Pomerania, the continued use of advice and oral warnings in both *Länder*, such as where there were repeated findings of the same deficiency, is contrary to the requirements of Article 54(3) of Regulation (EC) No. 882/2004 that written notification should be given, and Article 55 of Regulation (EC) No. 882/2004, which requires sanctions to be effective, proportionate and dissuasive.
- (6) The system of internal audits established in Lower Saxony, as required by Article 4(6) of Regulation (EC) No. 882/2004, is helping to ensure that the basic elements for animal welfare controls are in place and Mecklenburg-Western Pomerania is incorporating this requirement into a quality system which is under development.

6.3. Measures supplementary to inspections

- (1) Measures in addition to inspections, such as the system of building approval, help to insure that new buildings comply with major structural requirements, such as group housing of dry sows.

- (2) Training on pig welfare requirements is available as required by Article 5a of Directive 91/630/EEC.

6.4. Inspections

- (1) The manual satisfactorily addresses the dual requirements for inspections of pig farms to be carried out on the basis of risk, as required by Article 3 of Regulation (EC) No. 882/2004, and to ensure a statistically representative sample of the different rearing methods, as required by Article 7 of Directive 91/630/EEC and the different approaches to integrating the risk based approach are being implemented.
- (2) Checks of laying hens had been carried out to meet the requirements of Article 8(1) of Directive 99/74/EC and again risk based criteria for inspections are contained in the manual.

6.5. Laying hens

- (1) The recommendation in report 7018/2004 regarding the measurement of cages for laying hens has been satisfactorily addressed.
- (2) The data for registration, as required by point 1 of the Annex to Directive 2002/4/EC, sometimes indicated a capacity for larger number of birds than would have been permissible if all the requirements of Directive 99/74/EC had been accurately assessed. This has arisen in several cases, as accurate verification of the maximum number of birds had only been made recently.
- (3) Documented procedures have resulted in better quality inspections; however, the ambiguous wording in the guidance on the minimum height of cages gave rise to misunderstandings within the CA on the requirement of Article 5(1)(4) of Directive 99/74/EC. Clarification regarding the provision of an alarm for failure of a ventilation system was also insufficient and resulted in this requirement not being respected, contrary to Directive 98/58/EC Annex (13).
- (4) Regarding alternative systems, the use of checklists helped in obtaining more thorough inspections; however, separate points on similar criteria, such as accessible area and usable area, gave rise to the measurement of usable area, as required by Article 2(2)(d) of Directive 99/74/EC, being overlooked.

6.6. Pigs

- (1) Even where guidance has been provided on the suitability of material for manipulation (Directive 91/630/EEC Annex Chapter I 4), this requirement has not been adequately enforced, as this issue was not given a high priority by those carrying out checks.
- (2) Although actions have been taken to address the recommendations of report 3382/2001, such as those in relation to medical and mortality records and in relation to killing animals on farm, insufficient attention was given to the conditions for keeping sick or injured pigs, contrary to Directive 98/58/EC Annex (4).

6.7. Overall conclusion

Although the transposition of certain EU requirements for the welfare of pigs was significantly delayed, actions had been taken by the *Länder* authorities to ensure that the main requirements were respected in the intervening years. Recommendations made in previous FVO reports have been largely addressed; however, certain aspects of checks, follow-up actions were unsatisfactory. At the same time, a manual for checks of animal welfare on farms has been produced and, while it has only recently been implemented, taken together with the other guidance provided, it provides a good basis for more thorough inspections. Supervision of the work of the district level by the *Länder* authorities has also been relatively recent and led to improvements in the way that procedures were followed.

7. CLOSING MEETING

A closing meeting was held on 12 January 2007 with representatives of the CCA and regional CAs. At this meeting, the main findings and conclusions of the mission were presented by the FVO team; the representatives of the *Länder* suggested a number of clarifications on the issues raised.

8. RECOMMENDATIONS

To the competent authorities of Germany

Within 25 working days of receipt of the report, the Competent Authorities are requested to present a plan of actions, including a timetable for their completion, to address the following recommendations.

The Competent Authorities should take measures to ensure that:

- (1) The requirement for laying hens for an uninterrupted period of darkness of about one third of the day, as required by point 3 of the Annex to Directive 99/74/EC is transposed in legislation.
- (2) Staff carry out and record checks correctly, using documented procedures, as required by Article 8 of Regulation (EC) No. 882/2004.
- (3) Verification of the effectiveness of inspections is carried out, as required by Article 8(3) of Regulation (EC) No. 882/2004 to ensure the quality and consistency of controls.
- (4) Written notifications for corrective actions are given where deficiencies are detected, as required by Article 54(3) of Regulation No. (EC) 882/2004 and that sanctions are effective, proportionate and dissuasive as required by Article 55(1) of Regulation (EC) No. 882/2004.
- (5) The data, as required by point 1 of the Annex to Directive 2002/4/EC, indicates the correct maximum capacity of the establishment.

9. COMPETENT AUTHORITY RESPONSE TO THE RECOMMENDATIONS

Once the report has been published, the competent authority response to the recommendations can be found at the following link:

http://ec.europa.eu/food/fvo/ap/ap_germany_7236_2007.pdf