

Council Directive 2005/94/EC of 20 December 2005 on Community measures
for the control of avian influenza and repealing Directive 92/40/EEC

COUNCIL DIRECTIVE 2005/94/EC

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on Community measures for the control of avian
influenza and repealing Directive 92/40/EEC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee⁽²⁾,

After consulting the Committee of the Regions,

Whereas:

- (1) Avian influenza is a serious, highly contagious disease of poultry and other captive birds caused by different types of influenza viruses. Those viruses may also spread to mammals, in particular pigs, and humans.
- (2) Since poultry is covered by live animals listed in Annex I to the Treaty, one of the Community's tasks in the veterinary field is to improve the health status of poultry, thereby facilitating trade in poultry and poultry products and ensuring the development of this sector. Furthermore, a high level of human health protection is to be ensured when defining and implementing Community policies and activities.
- (3) Influenza viruses include a large number of different virus strains. The level of risks posed by the different strains of influenza viruses for animal and public health is very variable and to some extent unpredictable, due to rapid virus mutation and possible re-assortment of the genetic material between different strains.
- (4) The infection with certain strains of influenza viruses of avian origin may trigger outbreaks in domestic birds of epizootic proportions, causing mortality and disturbances of poultry on a scale, which can threaten in particular the profitability of poultry farming as a whole.
- (5) Community measures for the control of avian influenza were established by Council Directive 92/40/EEC of 19 May 1992 introducing Community measures for the control of avian influenza⁽³⁾, in order to ensure the protection of animal health and contribute to the development of the poultry sector.

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- (6) The measures laid down in Directive 92/40/EEC should be fundamentally reviewed in the light of recent scientific knowledge on the risks of avian influenza for animal and public health, development of new laboratory tests and vaccines and the lessons learnt during recent outbreaks of this disease in the Community as well as in third countries.
- (7) The new Community measures should also take account of the most recent opinions delivered by the Scientific Committee on Animal Health and Animal Welfare and by the European Food Safety Authority (EFSA) and the changes in the Terrestrial Animal Health Code and the Manual of Diagnostic Tests and Vaccines for Terrestrial Animals of the International Office of Epizootics (O.I.E.) on avian influenza.
- (8) Certain influenza viruses of avian origin may in some circumstances affect humans and may then pose a serious risk to public health. The provisions of this Directive, which aim at fighting the disease in farmed animals, could indirectly contribute to preventing public health problems. However, it is, at this stage, chiefly for the Member States to tackle such problems.
- (9) At Community level, the human health risks posed by influenza viruses are primarily dealt with by other actions and legal acts. These concern in particular the European Centre for Disease Prevention and Control (hereinafter referred to as 'ECDC'), established by Regulation (EC) No 851/2004 of the European Parliament and of the Council⁽⁴⁾, the recommendations issued by the Commission on Community Influenza pandemic preparedness and response planning, the European Union Early Warning and Response System and the establishment of the European Influenza Surveillance Scheme.
- (10) It is appropriate, however, for the Commission to assess together with ECDC whether further public health or workers' health and safety measures, complementing the animal health provisions of this Directive are needed at Community level to address the risks posed by certain influenza viruses of avian origin to humans and in particular for workers in contact with infected animals and to present any necessary legislative proposals.
- (11) Current knowledge indicates that the health risks posed by the so-called low pathogenic avian influenza viruses are inferior to the risks posed by highly pathogenic avian influenza viruses, which originate from a mutation of certain low pathogenic viruses.
- (12) Community legislation for the control of avian influenza should enable Member States to adopt disease control measures in a proportionate and flexible manner, taking into account the various levels of risk posed by different virus strains, the likely social and economic impact of the measures in question on the agriculture sector and other sectors involved while at the same time ensuring that the measures taken for each specific disease scenario are the most appropriate.
- (13) In view of the potential of low pathogenic avian influenza viruses to mutate into highly pathogenic avian influenza viruses, provision should be made for the early detection of infection in poultry aimed at a quick reaction and the adoption of appropriate and proportionate control and eradication measures which should include a system of active surveillance to be carried out by Member States. Such surveillance should follow

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- general guidelines to be adapted in the light of further knowledge and developments in this field.
- (14) Any suspicion of avian influenza infection which may arise from clinical or laboratory investigations or any other reason that leads to the suspicion of the presence of infection should set in motion immediate official investigations so that prompt and effective action can be taken, as appropriate. Such action should be reinforced as soon as the presence of infection is confirmed to include depopulation of the holdings infected and of those which are at risk of infection.
 - (15) In the case of detection of infection with low pathogenic avian influenza virus, control measures may differ from those which should apply in the case of detection of highly pathogenic avian influenza virus, taking into account the different levels of risk posed by these two conditions.
 - (16) Disease control measures and in particular the establishment of restriction zones should also be modulated taking into account the density of the poultry population as well as other risk factors in the area in which the infection has been detected.
 - (17) If an outbreak occurs, it is also necessary to prevent any further spread of infection by carefully monitoring and restricting movements of poultry and the use of products liable to be contaminated, by tightening biosecurity measures at all levels of poultry production, by cleansing and disinfecting the infected holding, by establishing protection and surveillance zones around the outbreak and, if necessary, by vaccination.
 - (18) Community measures for the control of highly pathogenic avian influenza should be based first on the depopulation of the infected flocks, in accordance with Community legislation on animal welfare.
 - (19) Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing⁽⁵⁾ sets out the minimum standards for the protection of animals at the time of slaughter or killing including for the purpose of disease control. Such rules apply fully to slaughter or killing pursuant to this Directive.
 - (20) Vaccination against avian influenza can be an effective tool to supplement disease control measures and to avoid massive killing and destruction of poultry or other captive birds. Current knowledge suggests that vaccination may be useful not only as a short-term measure in emergencies but also as a long-term measure to prevent disease in situations of higher risk of introduction of avian influenza viruses from wild life or other sources. Provisions should therefore be established for both emergency and preventive vaccination.
 - (21) Vaccinated poultry, although protected against the clinical signs of disease, may become infected and thus contribute to the further spread of the infection. Vaccination must therefore be accompanied by appropriate surveillance and restriction measures established at Community level. Therefore, the vaccination strategy should allow differentiation between infected and vaccinated animals. Products of vaccinated poultry, such as meat and table eggs, should be then placed on the market in accordance with the relevant Community legislation, including this Directive.

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- (22) It should also be made possible for the Community and the Member States to establish reserves of vaccine against avian influenza to be used in poultry or other captive birds in the case of an emergency.
- (23) Provisions should be adopted to ensure that harmonised procedures and methods are used for the diagnosis of avian influenza, including the functioning of a Community reference laboratory as well as reference laboratories in Member States.
- (24) Provisions should be adopted to ensure the necessary level of preparation by Member States effectively to tackle emergency situations caused by one or more outbreaks of avian influenza, in particular by drawing up contingency plans and setting up control centres.
- (25) If avian influenza is detected during importation in a quarantine facility or centre, as provided for in Commission Decision 2000/666/EC of 16 October 2000 laying down the animal health requirements and the veterinary certification for the import of birds, other than poultry and the conditions for quarantine⁽⁶⁾, this should be reported to the Commission. However, reporting as provided for by Council Directive 82/894/EEC of 21 December 1982 on the notification of animal diseases within the Community⁽⁷⁾, in cases of outbreaks in Member States would not be appropriate.
- (26) Cleansing and disinfection should be an integral part of the Community control policy for avian influenza. Disinfectants should be used in compliance with Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market⁽⁸⁾.
- (27) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption⁽⁹⁾ lays down the rules on the collection, transport, storage, handling, processing and use or disposal of animal by-products including animals killed to eradicate epizootic diseases, to prevent them from presenting a risk to animal and public health. That Regulation and its implementing measures provide for a general framework for the disposal of dead animals. Provision should be made for the adoption, by the committee procedure, of specific, additional or different measures where necessary to enhance further avian influenza control measures.
- (28) Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin⁽¹⁰⁾ and Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs⁽¹¹⁾ may be applied under certain conditions to eggs originating from holdings where poultry suspected of being infected with avian influenza is kept.
- (29) Member States should lay down rules on penalties applicable to infringements of the provisions of this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (30) Provision should be made for the possibility for amendments to be made to the Annexes to this Directive when necessary without delay in order to take account of developments in scientific and technical knowledge.

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- (31) Taking into account the unpredictability of influenza viruses, it is appropriate to ensure that a swift procedure is also in place for a rapid adoption at Community level of additional or more specific measures to control any infection of poultry and other animal species whenever such measures are necessary.
- (32) This Directive should set out the minimum control measures to be applied in the event of an outbreak of avian influenza in poultry or other captive birds. However, Member States are free to take more stringent administrative and sanitary action in the field covered by this Directive. In addition, this Directive should provide for Member States' authorities to apply measures proportionate to the health risk posed by different disease situations.
- (33) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objectives of ensuring the development of the poultry sector and contributing to the protection of animal health, to lay down rules on specific measures and minimum measures aimed at the prevention and control of avian influenza. This Directive does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.
- (34) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹²⁾.
- (35) In the interests of clarity and rationality of Community legislation, Directive 92/40/EEC should be repealed and replaced by this Directive.
- (36) The Council, in accordance with point 34 of the Inter-Institutional Agreement on better law making⁽¹³⁾, encourages Member States to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public,

HAS ADOPTED THIS DIRECTIVE:

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- (1) Opinion delivered on 1 December 2005 (not yet published in the Official Journal).
- (2) Opinion delivered on 28 September 2005 (not yet published in the Official Journal).
- (3) [OJ L 167, 22.6.1992, p. 1](#). Directive as last amended by the 2003 Act of Accession.
- (4) [OJ L 142, 30.4.2004, p. 1](#).
- (5) [OJ L 340, 31.12.1993, p. 21](#). Directive as last amended by Council Regulation (EC) No 1/2005 ([OJ L 3, 5.1.2005, p. 1](#)).
- (6) [OJ L 278, 31.10.2000, p. 26](#). Decision as last amended by Decision 2002/279/EC ([OJ L 99, 16.4.2002, p. 17](#)).
- (7) [OJ L 378, 31.12.1982, p. 58](#). Directive as last amended by Commission Decision 2004/216/EC ([OJ L 67, 5.3.2004, p. 27](#)).
- (8) [OJ L 123, 24.4.1998, p. 1](#). Directive as last amended by Regulation (EC) No 1882/2003 ([OJ L 284, 31.10.2003, p. 1](#)).
- (9) [OJ L 273, 10.10.2002, p. 1](#). Regulation as last amended by Commission Regulation (EC) No 416/2005 ([OJ L 66, 12.3.2005, p. 10](#)).
- (10) [OJ L 139, 30.4.2004, p. 55](#). Corrected version in [OJ L 226, 25.6.2004, p. 22](#).
- (11) [OJ L 139, 30.4.2004, p. 1](#). Corrected version in [OJ L 226, 25.6.2004, p. 3](#).
- (12) [OJ L 184, 17.7.1999, p. 23](#).
- (13) [OJ C 321, 31.12.2003, p. 1](#).