

synthèse

What are the laws for Equines in Europe?



What are the laws for Equines in Europe?

Review and prospects on 5 key issues

First edition - June 2017

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Cover: Statue of Leonardo da Vinci's Horse, Milano - Fotolia / Red Fish Images

Photographies: A. Bassaler, O. Macé

Cover designer: Hervé Chéri

Author

Astrid ENGELSEN Ifce - International department

Coordination

Claire CAILLAREC, Célia LARCHER
Ifce - Département Diffusion

Collaborations

Cécile ARNAUD Ifce - SIRE	Pascale HEYDEMAN
Guillaume BLANC Ifce - Appui filière et Stratégie	Ifce - Observatoire économique
Christine BRIANT Ifce - Développement et Recherche	Bérengère LACROIX Ifce - SIRE
Claire CORDILHAC Ifce - Mission internationale	Gérard MAJOURAU Ifce - Affaires juridiques
Florence GRAS EHN	Jessica STARK World Horse Welfare (WHW)
	Caroline TEYSSIER Ifce - SIRE

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International department
Institut français du cheval et de l'équitation
Route de Troche
19230 Arnac-Pompadour
France
Tel.: +33 (8) 11 90 21 31
www.ifce.fr

The European Horse Network (EHN) has been working for the past 6 years on the European issues which impact on the equine sector. The publication of the IFCE to which it was essential to be associated, serve such purposes.

The Network has become a centre of knowledge and competences using the expertise of his members to advance files and especially raise awareness for decision-makers.

Whether on health, welfare, trade, or research issues, the equine industry often arrives lastly in the concerns of the legislators, sometimes pulling contradictions or impossibilities of implementation. EHN role is to highlight equine activities to avoid further constraints for the sector.

This publication lists the national and European texts which affect our industry. It becomes then a reference allowing to explain better and understand the current changes.

For year 2017, EHN will follow several proposals in particular on identification and taxation. A mobilization of the experts will be essential. The document of the IFCE will contribute to the involvement of all.

Mark Wentin

Chairman of the European horse Network
www.europeanhorsenetwork.eu

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Introductory section

In order to guide the reader who is not familiar with European affairs, it seems necessary to introduce this study with some elements to understand the European legal order and the comparative law.



The European legal order

A. Sources of law and hierarchy of norms within the European Union

1) European Union law, international law and national law

Unlike international law, European Union law is an integral part of the legal system of each Member State. This means that its rules apply directly and confer rights on individuals which they can invoke in courts. European Union law prevails, over domestic law. If a State would have omitted to transpose European standards, a litigant would be able to demand that the application of a national rule which is contrary to European law be ruled out.

European Union law must not be confused with the law of the Council of Europe. This organisation is an entity distinct from the European Union. Although the Council of Europe is a source of international law, its conventions are not binding for a given country until this latter has signed and ratified them individually. Some conventions (for instance the European Convention for the Protection of Animals kept for Farming Purposes) have been signed and ratified by the European Union itself, they become therefore applicable in all Member States of the Union.

2) The hierarchy of standards in European Union law

The European Union has its own legal order, and therefore its own hierarchy of norms. This hierarchy implies that a lower standard is only valid if it complies with the standards of superior rank.

The hierarchy of EU norms is as follows:

- **Primary law:** the Treaty of the European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and their protocols, as well as the Charter of Fundamental Rights;
- **International agreements signed by the Union;**
- **General principles of Union law,** developed by the Court of justice in its case-law (they will not be discussed in this study);
- **Secondary law:** the acts adopted by the European institutions on the basis of the primary law.

Within the category of secondary law, there is a hierarchy between legislative **acts** and **non-legislative acts** that are generally intended to implement

the legislative acts or some specific provisions of the treaties. Legislative acts are most often (except in case of special procedure) adopted jointly by the European Parliament and the Council, while non-legislative acts are issued by a single institution (quite often the EU Commission). Non-legislative acts may be either delegated acts or implementing acts. **Delegated acts** are acts of general scope completing or amending some non-essential elements of the legislative act. The power to adopt that kind of acts can be transferred by the legislator to the Commission. **Implementing acts** are in general adopted by the Commission to implement uniform conditions for implementing legislative acts.

Article 288 of the TFEU lists the various types of acts of secondary law that can be adopted (whatever the procedure, legislative or not): these are the regulation, the directive, the decision and the opinions and recommendations.

The **regulation** is an act having general application, binding and directly applicable in its entirety. It aims at ensuring a uniform application of the law of the European Union in all the Member States since, unlike the directive, no act of transposition in national law is required. This is therefore the privileged instrument for the implementing acts.

The **directive** binds the recipient Member States as to the result to be achieved, but leaves them the choice of form and methods. The national legislator must thus adopt a transposition act specifying how the national law is amended to reach the imposed objectives. The directive leaves thus a wider margin of appreciation to the Member States than the regulation.

The **decision** is also binding in its entirety, but it is generally addressed to specific recipients to settle an actual situation.

The **recommendations and opinions** are acts without binding force but provide indications on the interpretation and the content of EU law.

B. The ordinary legislative procedure of the European Union

The ordinary legislative procedure (article 294 TFEU) is based on the balance of the institutional triangle: the European Commission has the monopoly of the right of initiative, the European Parliament and the Council intervene in the procedure as co-legislators.

The diagram below gives in detail the steps of this legislative procedure.

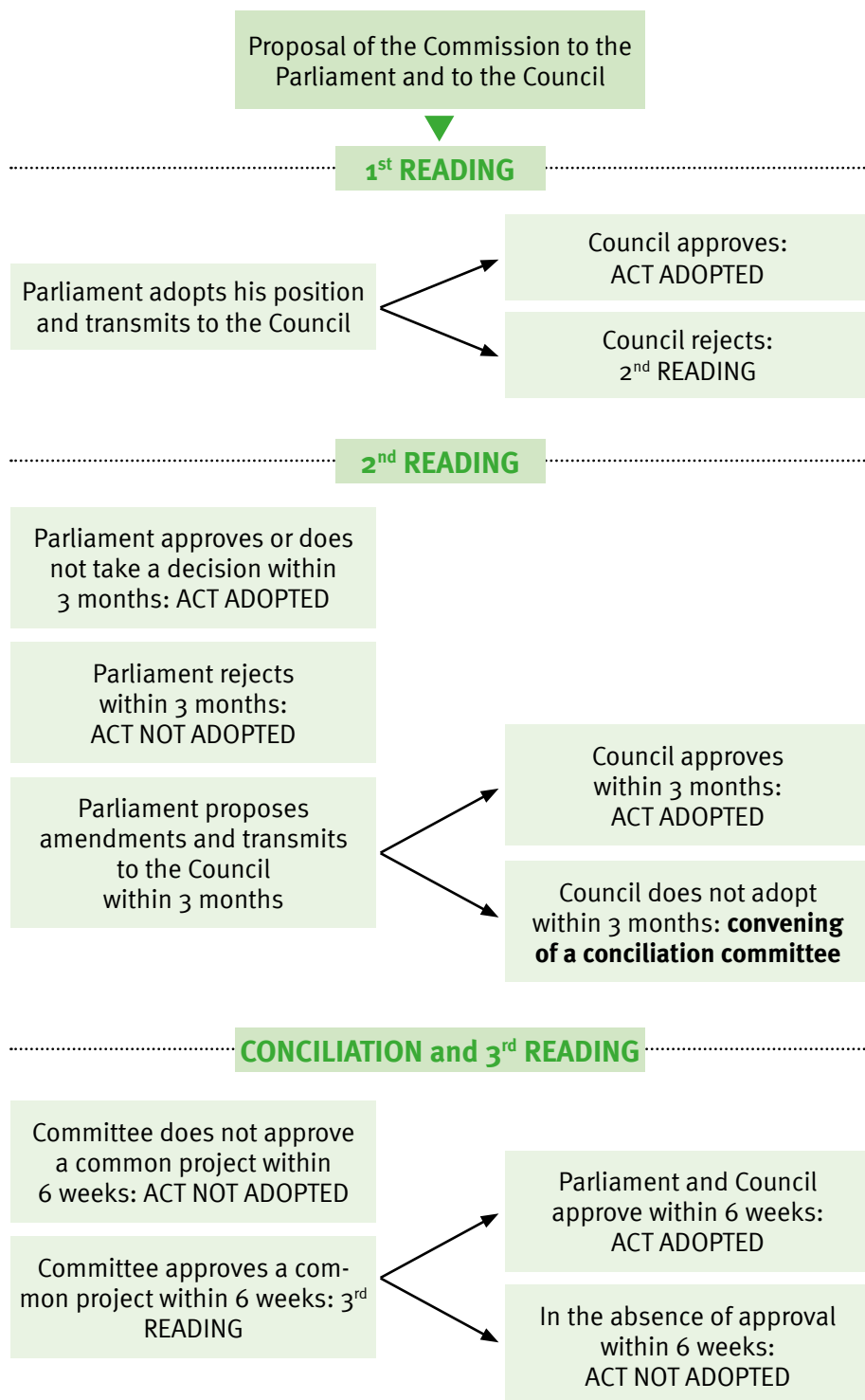


Diagram 1: Steps of the ordinary legislative procedure

C. The procedures before the Court of Justice of the European Union (CJEU)

There are five procedures before the CJEU, corresponding to classes of different action or proceeding (preliminary ruling procedure, infringement proceeding, annulment action, action for failure to act and appeal). Only two of these procedures will be discussed in this work:

1) The preliminary ruling

National judges can - and sometimes must - address to the Court of Justice when they have a doubt on the interpretation of a legal standard of the Union, among others when they want to be sure about the compliance of their national law with this European standard.

The Court of Justice answers with a judgment or a reasoned order. European judges specify the scope of the European law, without assessing the principle compliance of the national disputed rule. The interpretation of the CJEU however binds the recipient national judge when settling the pending dispute before it, as well as other national courts that could be seized with an identical problem. Thus the application of a national standard that do not comply with the interpretation of the CJEU will be disregarded within the frame of the ongoing contested proceeding or in similar situations, but its theoretical validity is not reconsidered, it may therefore still be applied in other circumstances.

2) The infringement procedure

The Court of Justice control the compliance by Member States of their obligations under the Union law. A referral to the CJEU follows a preliminary non-contentious proceeding initiated by the Commission. This first period gives Member States the opportunity to respond to allegations made or to amend their legislation. If this procedure does not prompt the Member State to put an end to the shortcoming, a prosecution for breaking the law of the Union can be lodged with the CJEU.

The preliminary infringement procedure includes the following steps:

1. Sending of a **letter of notice** in which the European Commission asks the Member State for more information regarding the disputed national legislation. The State usually has 2 months to send a detailed answer.
2. If, after receipt of the detailed response, the Commission concludes that the country does not fulfil his obligations under the European law, it addresses him a **reasoned opinion**. This is a formal request to comply with the law of the Union. The State informs the Commission, within two months, of the measures taken in this respect.
3. If the State in question still does not comply with its obligations, the Commission can decide to **seize the Court**. Most cases are settled before being referred to Court.



The various national systems of law

Using a comparative approach makes it necessary to deal with very different national legal systems. Although no legal model is similar to another but they may be classified into great families of law.

The family of the civil law concerns most of the continental European countries. French law is a typical example of it. In these legal systems, the main sources of law are statutes that are often codified. The degree of codification (very strong in France and in Germany) varies from one country to another. The benefit conferred upon by codification is to determine the state of a national law at a given time. In the absence of codification, it may be useful to produce consolidated texts. Consolidation means that all the later amendments are integrated in the body of the text. Consolidations are not always official, as they may be done by a publisher or an administration, and are not therefore as reliable as a codification.

The tradition of common law characterises the Anglo-Saxon systems, and in particular the English and the Irish law. The main source of standards is the judge. The rules are thus established as the individual decisions are taken, and not a priori through an act. In order to make sure the law is consistent and to guarantee legal certainty, these systems impose a rule of precedent according to which a court is bound by previous decisions taken by higher courts or the same court. Statutes may however be adopted punctually, in particular when the legislator wants to regulate a case-law based rule or when it is necessary to transpose in domestic law rules imposed by international agreements or by EU law. In practice, rules set out by the European Union are thus often embodied into a transposition act in Anglo-Saxon legal systems.



The objectives of this publication and the chosen methodology

The main purpose is to improve the understanding of the legal framework by the European equine stakeholders. In this aim, topics have been chosen based on the challenges perceived as being a priority at European level in 2016 and in the coming years: these are the legal definition of the equidae, rules for identification, the VAT scheme applicable to equestrian activities, regulation on horse-race betting as well as the potential standards for the welfare of equidae.

Eleven countries, besides France, have been selected to be the subject of this study. The criteria taken into account to make this choice were numerous, and include the economic and/or symbolic importance of the horse in these various countries, as well as the existing and potential relations of this sector with France.

In order to determine the characteristic elements of each national system, a questionnaire (available as appendix) has been sent to persons or organisations representative for the equine sector in their country. The received answers allowed us to identify global tendencies or particularities in each country involved. These elements have been refined and completed with a literature search that has allowed to identify the main legal sources. Legal and bibliographic references, court decisions or articles of doctrine consulted are mentioned in their original version to allow the reader to find them and to have a personal reading and interpretation.



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Paper

1

The legal status of the horse

Note on the methodology

The issue of the relevant legal definition of the horse is a prerequisite to understand most legal issues having an impact on the equine industry. The treatment of this issue may vary strongly from one country to another, in particular because of wide differences in legal systems that also imply different approaches. It is therefore recommended to refer to the introductory section on the various legal systems before starting to read this part of the publication.

In May 2015, Eurogroup for Animals and World Horse Welfare published a study on the health and welfare of the European equidae. Although an important work to make an inventory of the European legislation was performed at this occasion by the university of Barcelona, the report itself noted how difficult it is to find a clear and coherent definition of the horse throughout Europe.

Given such complexity, it is necessary to specify the methodology that has been adopted to write this first paper of the study. The following sources have been used, in order of preference:

- a regulatory text or legal doctrine;
- in the absence of such a text (either because there is no legal definition or the text has not been identified), the answers to the questionnaire of the various representative organisations of the sector in each country;
- failing that, the class used in annex 8 of the report published in May 2015 by World Horse Welfare and Eurogroup for Animals. This annex includes a survey of the legislation on equidae in the European countries, realised by the University of Barcelona.



NYMPHE DU CHER

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Annexs

A legislative perspective of the Horse industry in European countries

Please quote, as far as possible, the references of the pertinent legislation or a source where it could be found.

A. To which category of law does the horse belong? (ex. Domestic animal, farm animal, pet...) What are the legal consequences of this qualification in terms of:

- Access to agricultural lands and planning rules;
- Regulation of breeding practices;
- Rules for the sale of horses;
- Social regime applicable to people working in the industry.

B. 1. Describing the identification system:

- How many Passport issuing organizations are there? How do they work together?
- What are the rules for registration of economic operators and premises?
- How did the recent EU regulations (including Regulation 2015/262 on Equine Passport and incoming Zootechnical Regulation) impact the organization of the industry? What are the changes expected in close future in relation with the coming into force of these regulations?

2. Exclusion from the food chain:

- What are the conditions for excluding a horse from the food chain?
- What are the relevant rules applying to the entrance of horses in the slaughterhouses and controls carried out?

C. 1. What are the main taxes imposed to economic operators?

- What are the rates and rules governing VAT?
- Is there a taxation specific to farmers? If yes, does it apply to people working with horses?

2. What subsidies are granted to Horse professionals?

What are the authorities in charge of the application of the CAP and their policy as regards the Horse sector? Which kind of horse activities may be funded through the EU-framework?

3. Is there a monopoly on betting? What is its frame?

What arrangements have been made necessary to comply with EU and national competition law?

D. What are the concerns related to end of life of horses?

- Is euthanasia allowed apart from medical reasons?
- How is rendering managed? Is there any contribution from the State or the industry?
- May horses be incinerated or buried?

E. Are there any issues in your country regarding the implementation of EU rules on animal transportation? Are there specific national rules applicable to movements of horses?

F. What are the regulated professions in the Horse industry? How did it evolved since the implementation of EC directive 2005/36 on professional qualifications?

G. What are the current legal issues in your country relating to horses? Is there any political debate, specific legislative need, difficulty in applying a regulation...that is worth mentioning in this study?

Annex 2 - Synthesis of the Paper 1 “The legal status of the horse”

Legend:

ND: Not Documented, lack of information.

1(x): Referral to the corresponding legal references.

	Legal status	Benefit of a specific agricultural taxation	Authorisation of establishment in rural area
France	Production	Yes	Are only authorised the constructions required for a farm operation, subject to a building permit (3g) ; since 2005, all equestrian activities (riding schools and training centres included, but entertainment excluded) are regarded as agricultural activities (3d) .
Belgium	Production, but in practice the horse is often excluded from the agricultural provisions	ND	<p>1) Walloon Region: are authorised in agricultural area (5b):</p> <ul style="list-style-type: none"> • constructions which are essential for a professional farmer to carry out its breeding activity; • exceptionally, recreational activities in open air, including horse riding, within certain limits: <ul style="list-style-type: none"> - The permits must be delivered on a temporary basis, - The local authority may require that the facilities are removeable. • shelters of small size for animals, provided prior authorisation. <p>2) Flemish and Brussels Regions: the rules vary depending on the type of activities or buildings: (5d)</p> <ul style="list-style-type: none"> • <u>Farming activities</u> (breeding, raising young horses, service activities, production of mare milk, training and dressage): are authorised the constructions intended for professional use subject to the prior delivery of a building permit; • <u>Related agricultural activities</u> (for instance, insemination or semen collection centres, boarding for horses): the construction of new buildings is prohibited, but it is permitted to expand or change the destination of existing buildings, subject to prior authorisation of the local authority; • <u>Activities falling under leisure</u> (among others riding schools and equestrian tourism centres): an application to modify the land-use assignment of the land is required to expand the existing buildings; • <u>Shelters for privately-owned horses:</u> authorised with permit under strict conditions. (5e)
Denmark	Not determined	No	<ul style="list-style-type: none"> • Construction of new buildings and change of land-use assignment of a parcel of land or a building: compulsory permit. • Extension of an existing construction: compulsory permit if not made as part of an agricultural activity. Horse training is only considered as an agricultural activity when it is performed as part of a breeding activity, with the aim to increase the value of the horse before selling it. • Professional qualification is required above 30 hectares.
Germany	Production	Yes, for breeders only (4c) (4d)	<p>2 conditions to build equestrian facilities in agricultural area (4a):</p> <ul style="list-style-type: none"> • The building project must be integrated in a viable and long-term agricultural business; • Certain types of facilities are privileged over others: livery stables (where the total land surface of the holding is sufficient – in theory – to feed all horses) and facilities aimed at the exercise and training of horses in the course of a breeding activity. <p>The recreational or show facilities are not considered as a priority for the obtention of a building permit, even when the application is submitted by a farmer as part of his professional activity. (4b)</p>