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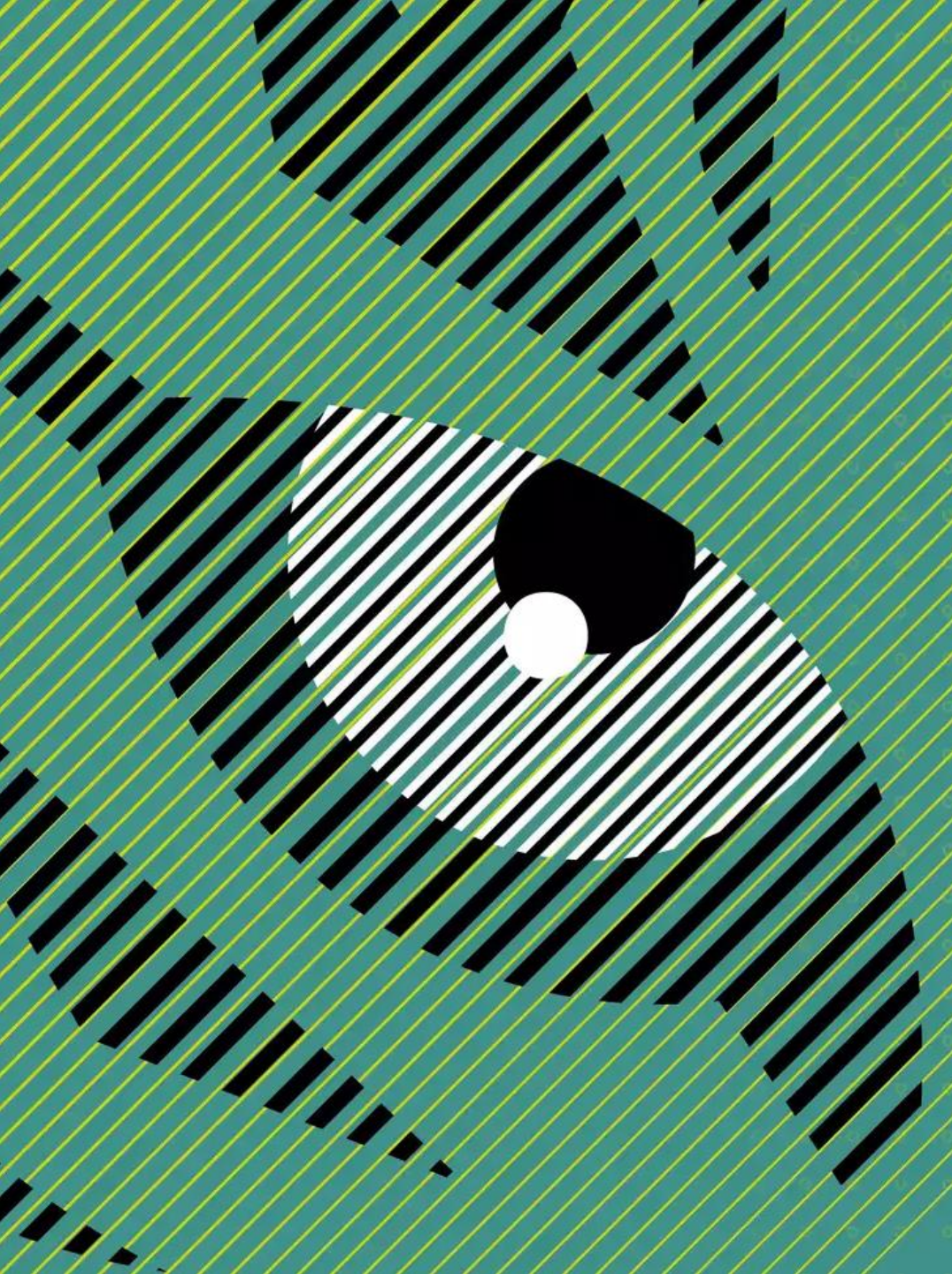


Animal Rights Law

SS 2026

Dr. Felix Aiwanger

www.mpipriv.de/aiwanger



Unit 2: Current animal welfare laws

Regulatory elements of animal welfare law: Scope and definitions

- Definition of animals

§ 2132 US Animal Welfare Act (1966)

The term "animal" means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term **excludes** (1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) **other farm animals**, such as, but not limited to livestock or poultry [...]

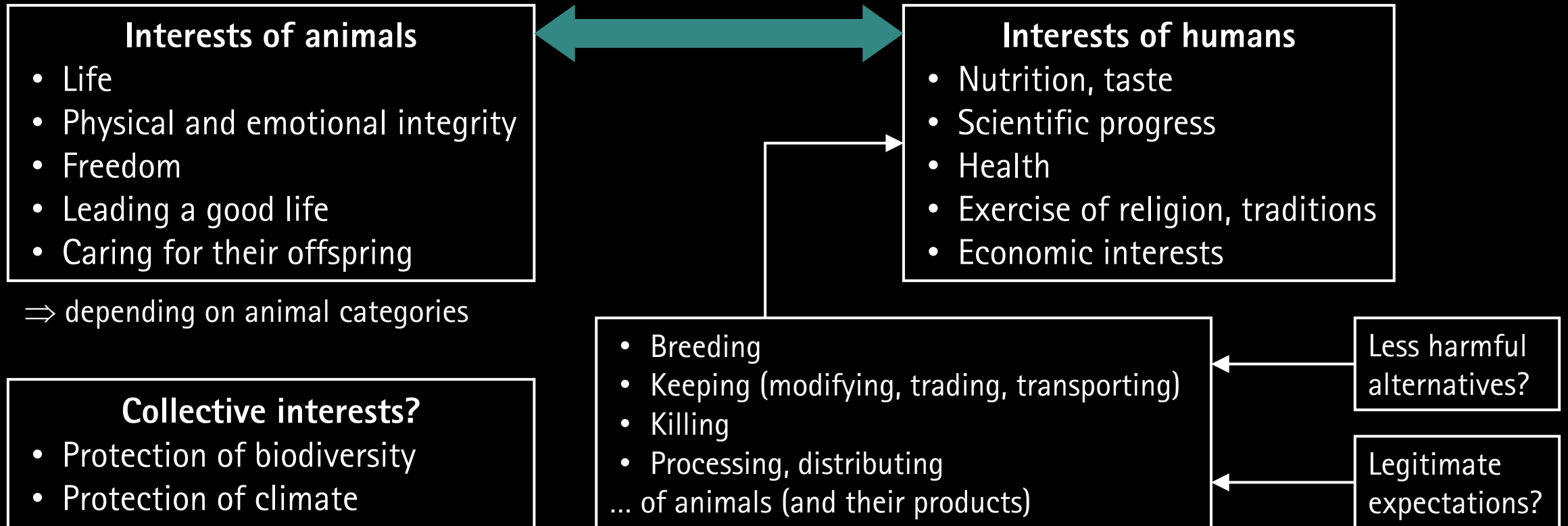
⇒ Limitation of the scope of application

- Categorisations of animals:

- According to **purpose/use** (e.g. agriculture, experimentation, entertainment)
- According to **biological classifications** as indicators for sentience (e.g. vertebrates, invertebrates, mammals, cephalopods)
- According to **species** and their specific needs (e.g. dogs, cats, horses)
- According to **societal views** (e.g. primates, companion animals)

Regulatory elements of animal welfare law: Types of obligations

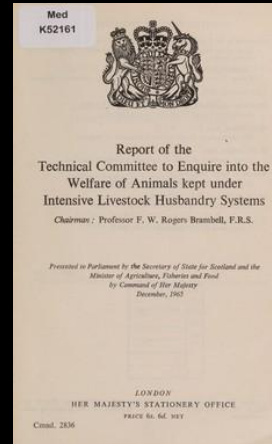
- Anti-cruelty laws
 - Prohibition of different forms of cruelty toward animals in general or towards specific animals
 - ⇒ Germany: § 3 TierSchG
 - Prohibition of "unnecessary"/"unreasonable"/"unjustifiable" pain / "without good reasons"
 - ⇒ Requirement of justification ⇒ **balancing of interests**
 - ⇒ Germany: § 1 TierSchG; see also **3Rs in animal experimentation: Replacement/Reduction/Refinement**



Regulatory elements of animal welfare law: Types of obligations

- Animal welfare laws:
 - More wide-ranging, driven by scientific insights about behaviour and need of animals
 - Positive requirements to promote animals' wellbeing
 - Drawing on **5 Freedoms** (UK Farm Animal Welfare Council 1979, based on report of the Brambell Committee 1965):
 - (1) Freedom from hunger and thirst
 - (2) Freedom from discomfort
 - (3) Freedom from pain, injury or disease
 - (4) Freedom to express normal behaviour
 - (5) Freedom from fear and distress

⇒ Germany: § 2 TierSchG
- Exceptions
 - Due to conflicting **social rules** (e.g. religious rules on slaughter without stunning, e.g. § 4a TierSchG)
 - Due to conflicting **economic reasons** (e.g. reference to industry standards: "generally accepted farming practices" in Canadian animal welfare law)



Regulatory elements of animal welfare law: Administrative enforcement

- Competent authorities: **State animal welfare agencies** (Germany: § 15 TierSchG)
- **Inspections or checks** (announced or unannounced) (Germany: § 16 TierSchG)
- **Preventive Measures** (Germany: § 16a TierSchG as legal basis for **administrative acts**)
 - Order to take measures for compliance with animal welfare law
 - Confiscation of animals
 - Temporary or permanent prohibition on keeping animals
 - Temporary or permanent closure of establishments
 - Temporary or permanent prohibition of trade in animals
 - Temporary or permanent prohibition of possessing animals
- **Licensing** for activities/premises/people
 - ⇒ preventive prohibition subject to permission (Germany: e.g. §§ 7a, 8, § 11 TierSchG)
 - ⇒ repressive prohibition subject to exemption (Germany: e.g. § 4a (2) No. 2 TierSchG)
- **Reporting/documentary/organisational** duties
- **Certification/labelling** requirements
- Representative actions by NGOs ("Verbandsklage") → Unit 8

Case 2: Tethering of cattle

During an unannounced official inspection of farmer L's cattle, the competent veterinary authority found that L's 24 cows were kept in tethered systems without daily access to a pasture, a yard or similar. Under the tethered system practised by L, almost all the basic needs of the cattle are severely restricted. The lack of exercise could also lead to frequent illness and cause pain. According to Lower Saxony's animal welfare guidelines for dairy cow husbandry and for beef cattle rearing, existing tethered systems should, where possible, be converted to loose housing systems. The Veterinary Agency therefore issued a notice ordering L to provide his cattle with free access to a pasture, paddock, exercise yard or similar area for at least two hours daily and at least during the period from 1 June to 30 September of each year. The order is declared immediately enforceable. L wishes to take legal action against this as soon as possible.



Will L's legal action succeed?

Case 2: Tethering of cattle

(adapted from VG Münster, 11 L 843/19, see also failed reform bill 2024)

A. Admissibility

- § 80 Code of Administrative Court Procedure

B. Merits

I. Formal requirements of order of immediate enforceability (+)

II. Substantive requirements of order of immediate enforceability

⇒ Legality of the administrative act

1. Legality of the administrative act

a. Legal basis: § 16a (1) TierSchG

b. Formal requirements (+)

c. Substantive requirements

- Violation of § 2 TierSchG (+)

- Lower Saxony's animal welfare guidelines as **anticipatory expert opinion** (+)

2. Special public interest in immediate enforceability (+)

C. Result: As the agency's order was legal, L will not be successful.

Case 3: Animal experimentation for basic research

Prof. K heads a department at the University of Bremen and conducts research into the neural mechanisms underlying complex brain functions. This involves animal experiments using macaques (rhesus monkeys), for which Prof. K was first granted a temporary licence in 1998. During the experiments, the animals' brain activity is measured using electrodes implanted in the brain. During the experiments, the animals are secured in a so-called primate chair and are required to respond to specific signals, for which they are rewarded with water. For one week, they therefore receive water solely as a result of their participation in the experiment. K's research project was evaluated by a commission of experts in June 2024, which concluded that the research approach was of international standing and provided fundamental insights into cognitive functions such as perception, attention and memory. In a decision dated 15 October 2025, the competent authority of the State of Bremen refused to grant further authorisation for the research project for the experimental period from 1 December 2025 to 30 November 2028. The experiments were deemed ethically unjustifiable due to the stress they caused the animals in relation to the intended scientific benefits. Following an unsuccessful appeal, K brings an action before the Administrative Court of Bremen seeking the grant of a licence.



Will K's action succeed?

Case 3: Animal experimentation for basic research

(adapted from BVerwG, 20.1.2014 – 3 B 29/13)

A. Admissibility

- "Enforcement action" against rejection of administrative act (§ 42 (1) Code of Administrative Court Procedure)

B. Merits

⇒ Entitlement of K to be granted the licence?

- Mandatory issuance of licence according to § 8 (1) TierSchG (no discretion of authorities)

§ 7a (2) No. 3 Animal Protection Act (Germany)

Experiments may be carried out on vertebrates only if the pain, suffering or harm they can be expected to inflict on the laboratory animals is **ethically justifiable** in view of the purpose of the experiment.

- Assessment of "ethical justification" **not subject to judicial review?**
 - ⇒ *Federal Administrative Court*: judicial review can only be restricted in exceptional circumstances, here (-)
- **Animal protection** (Art. 20a Basic Law) vs. **academic freedom** (Art. 5 (3) Basic Law)
 - ⇒ *Federal Administrative Court*: Science does not have to be oriented toward utility or practical application, but its **self-regulation** and the value of **basic research** should be respected
 - ⇒ **Scientific significance** to be balanced against **severity of animal suffering**

C. Result (*Federal Administrative Court*): Scientific significance prevails. K is entitled to be granted the licence and will be successful.

Regulatory elements of animal welfare law: Criminal enforcement

- Prosecution by **police, public prosecutors, courts**
- Criminal convictions: **fine or imprisonment**
- Germany: § 17 Animal Protection Act
 - Protected interest: **welfare of animals** (not: property interests of owner!)
 - Sufficiently **specific** (Art. 103 (2) Basic Law) in spite of vague terms
 - Applicable to **intensive farming practices** ([BGH, 18.2.1987 – 2 StR 159/86](#))
- Application of general criminal law:
 - Commission by **act or omission** (eg veterinarians, state officials with duties to act)
 - **Subjective** requirements (intent, cruelty in § 17 No. 2 a) TierSchG)
 - **Justification** of criminal acts (esp. "good reason" for killing, licence by authorities)
 - **Complicity, aiding and abetting** (esp. in commercial operations)
- Criminal procedure:
 - Proof of suffering: high relevance of **expert evidence** (veterinarians)
 - Animals rarely represented as **victims** in proceedings; no victim status in Germany
- Administrative fines ("Bußgeld")
Germany: § 18 Animal Protection Act

Case 4: Animal hoarding

O kept 46 dogs in his house. As he was unable to cope with their care, he moved into a flat at the end of 2025 and left the dogs to their fate. Following a tip-off from a neighbour, the completely neglected and filthy animals were discovered in February 2026 and rescued from the empty house by the veterinary authorities. The animals had too little to eat and drink and had, in some cases, been feeding on wallpaper, furniture and the faeces of the other animals. Some dogs can no longer walk properly. Furthermore, the animals' fur is, in some cases, completely matted with faeces and urine, and many dogs have infections in their eyes and teeth.

How is O's behaviour punishable under German law?



Josh Henderson, CC BY-SA 2.0

Case 4: Animal hoarding

- A. Killing of a vertebrate without good reason – § 17 No. 1 TierSchG
- **Attempted** killing not punishable
- B. Causing a vertebrate considerable pain or suffering out of cruelty – § 17 No. 2 a) TierSchG
- Commission by **omission**, § 13 Criminal Code
 - Pain: **physical** harm (+)
 - Suffering: **mental** harm (+)
 - **Considerable** pain or suffering (+)
 - Subjective element: Out of **cruelty** (-)
- C. Causing a vertebrate persistent or repeated severe pain or suffering – § 17 No. 2 b) TierSchG
- Commission by **omission**, § 13 Criminal Code
 - **Persistent** pain or suffering (+)
 - **Severe** pain or suffering (+), independent of persistence
 - **Guarantor duty to act** ⇒ § 2 TierSchG
 - Intent of O (+)
 - Defense: O's **consent** as owner?
⇒ O is not the holder of the protected interest (-)
 - Lack of **criminal responsibility** due to mental disorder?
⇒ Evidence inconclusive (-)
 - Result: O is punishable pursuant to § 17 No. 2 b) TierSchG

Enforcement gap

- Current animal protection law is often not properly enforced:
 - Low rate of **inspections** and criminal **prosecutions**
 - Inspections usually **announced** in advance
 - Industry-friendly interpretation of **vague legal terms**
 - **Low penalties** compared to possible range
 - High number of **unreported violations**
 - **Differences** between enforcement in different regions and for different categories of animals
- This enforcement gap is due to certain structural deficits:
 - Lack of **resources** in state agencies (personal, financial or other)
 - Lack of **training** and **specialisation** ⇒ lack of veterinary and legal expertise
 - **Communication barriers** between different disciplines
 - Concentration of **power** and **resources** in animal-using industries
 - Bias due to long-standing relationships, **status quo bias**
 - **Political influence** on proceedings
 - Structural imbalance: Only one side of the conflict represented in proceedings; interests of animals mostly **not represented** (→ Unit 8)

Intersections: Criminal law and private law

- Criminal law
 - Criminal liability for damage to animals as **property damage** if animal is owned ⇒ protection of owner's interests (*GER*: § 303 Criminal Code)
 - Controversy: Criminal liability for failure to **render assistance to animals** in the case of an accident or a common danger or emergency (*GER*: § 323c Criminal Code)
 - Justification of **criminal acts for the benefit of animals?** → Unit 9
- Private law
 - Animals as **things**, but certain modifications → Unit 5
 - Contract law: sale of animals or other **contracts concerning animals** (*GER*: eg § 477 (1) Civil Code)
 - Property law, eg lost and found animals
 - Renunciation of ownership of animals prohibited (*GER*: § 3 sentence 1 No. 3 TierSchG)
⇒ but: wild animals ownerless (*GER*: § 960 Civil Code)
 - Finder is entitled to deliver the animal to the competent authority (*GER*: § 967 Civil Code)
 - Finder is entitled to reimbursement of expenses from owner (*GER*: § 970 Civil Code)
 - Acquisition of ownership by finder/municipality after 6 months (*GER*: §§ 973, 976 Civil Code)
 - Tort law, eg liability for **damage caused by animal behaviour** (*GER*: §§ 833, 834 Civil Code)

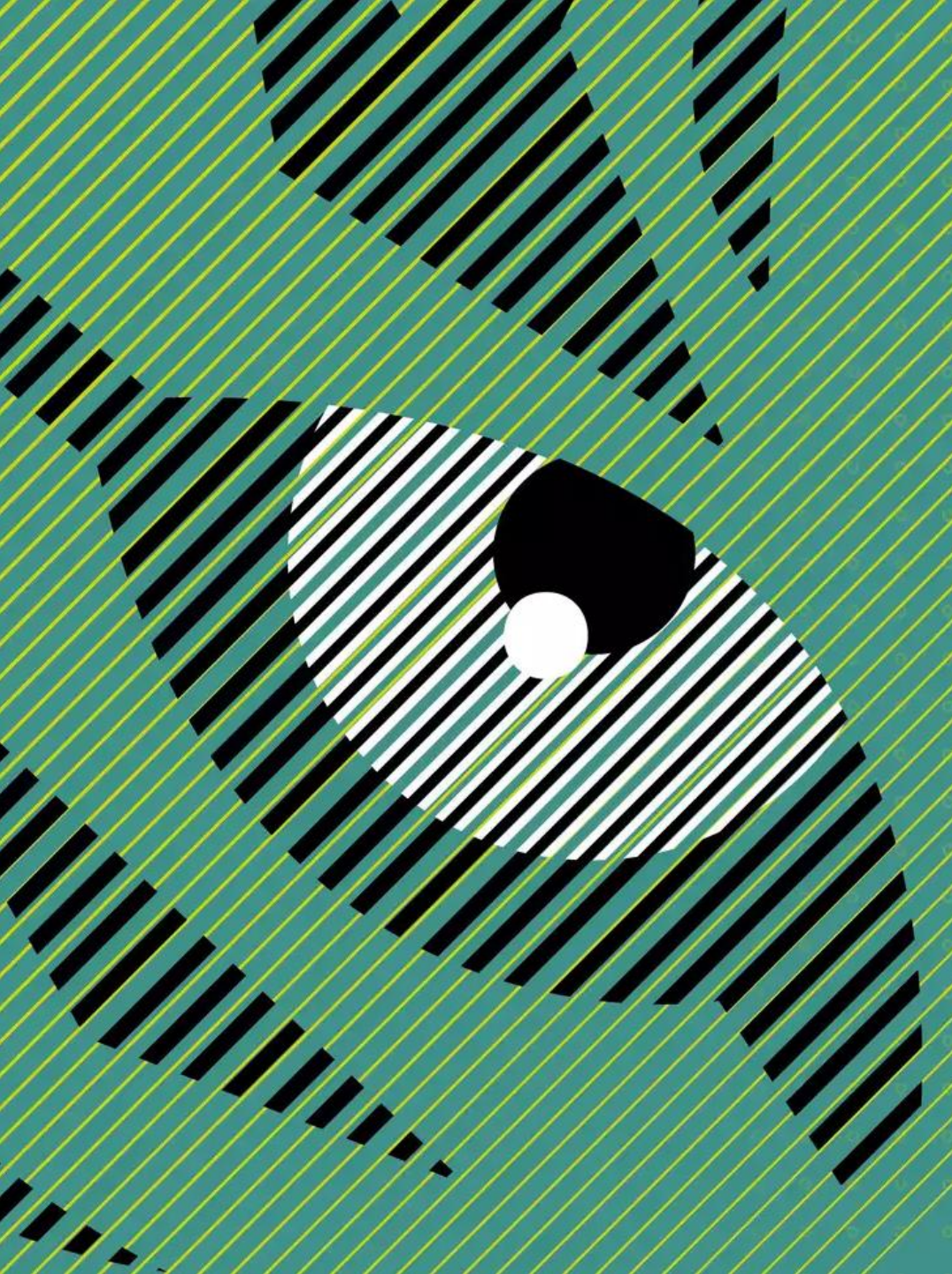
Intersections: Environmental law

- Protection of endangered species
 - Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ("**Habitats Directive**")
 - Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ("**Birds Directive**")
 - Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by **regulating trade** therein
 - Different levels of Protection:
 - **Generally** protected species (no harm without good reason)
 - **Specially** protected species (prohibition of harm, exceptional permission possible)
 - **Strictly** protected species (more comprehensive prohibitions, exceptional permission possible)
 - ⇒ Protection of species, *not individual animals*
 - ⇒ Controversial example: downgrading of protection status of wolves
- Management of invasive species
 - Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species
 - Conflicts between species (eg racoons, nutrias)
 - **Management measures** (eg birth control) → ultima ratio: killing

Intersections: Hunting law and product safety law

- Hunting Law
 - Hunting as “good reason” under § 1 TierSchG?
 - ⇒ Purpose of (private) hunting? (Hobby? Sports? Food supply? Nature protection?)
 - Prohibition of cruel hunting methods (eg certain types of traps)
 - Landowners not obliged to tolerate hunting on their premises if contrary to their ethical values (ECHR, Herrmann v. Germany, Judgement of 26 June 2012: violation of the right to property)
- Product safety law
 - Animals as food: use of medications, sanitary conditions ⇒ protection of human health
 - Animal disease culling to prevent spread of pathogens (eg culling of 17 million minks raised in Denmark for fur during Covid)
 - Risks of substances for humans ⇒ obligatory animal testing for vaccines, medicines, chemicals
 - ⇒ Licencing of activities and persons

“Animal law” in a broad sense encompasses rules applicable to animals in each area of law



Unit 3: Animals as tradable products

Overview

- 1) Animal welfare vs. free trade (*student presentation*)
- 2) Animals in the production process
 - “Surplus animals”
 - Modification of animals (esp. breeding, surgeries)
- 3) Animals in the supply chain
 - Animal transports
 - Ritual slaughter



Dr. Felix Aiwanger

**Max Planck Institute for Comparative
and International Private Law**

Mittelweg 187, 20148 Hamburg

Tel.: +49 40 41 900 426

Email: aiwanger@mpipriv.de

Internet: www.mpipriv.de/aiwanger