

*How many lives is one egg worth?*

**The Cost of Doing Business in the Egg Production Industry: An Analysis of the Current Movement to End Male Chick Culling**

Kaitilyn Bestor

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## I. INTRODUCTION

Every year approximately 7 billion male chicks are killed as a by-product of the global egg industry.<sup>1</sup> Male chicks from egg laying breeds are considered to have no economic value because they do not produce eggs, nor do they grow as rapidly as selectively bred broiler chickens.<sup>2</sup> Therefore, shortly after hatching, males are separated from the female chicks and killed, which is the industry's solution to the 'brother layer' problem.<sup>3</sup> While the egg industry has always considered the "uselessness" of male chicks a "wasted opportunity," it is only recently that the practice has garnered notable public attention, pressuring the industry to end the practice.<sup>4</sup> The vast number of chicks killed is not the only reason for public disapproval; the methods employed raise animal welfare concerns as well.<sup>5</sup> The increased awareness of this practice, as well as the inherent "wastefulness" of male chick culling, has prompted a tremendous amount of research into finding an alternative.<sup>6</sup> One of those solutions is in ovo technology, which is used to identify the sex of the embryo, thus enabling the hatcheries to kill the males before they hatch.<sup>7</sup> Although in ovo sexing technology has not replaced male chick

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<sup>1</sup> Rebecca Leigh Rutt & Jostein Jakobsen, *The 'Brother Layer Problem': Routine Killing, Biotechnology and the Pursuit of 'Ethical Sustainability' in Industrial Poultry*, EPE: NATURE AND SPACE, 2 (2022).  
<https://www.duo.uio.no/bitstream/handle/10852/97987/4/Prepublication%2Bversion%2Bfor%2Bdissemination.pdf>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Carlotta Heinemann, et al., ANIMAL SOCIETY, *THE WAY OUT: A REPORT ON ENDING CHICK KILLING IN THE EUROPEAN UNION*, 11 (Clark Wisenbaker & Alice Di Concetto eds., 2022).

<sup>5</sup> *Id.*

<sup>6</sup> Rutt, *supra* note 1.

<sup>7</sup> *Id.*

culling in most of the world, a few countries have used this as an opportunity to enact legislation banning the practice.<sup>8</sup> While purported as the answer to the ‘brother layer problem,’ in ovo technology is only one of the possible solutions and other alternatives should not be discounted. Considering that the brother layer problem is the result of the industry’s efforts to maximize profits through advancements (i.e., selective breeding), any additional advancements such as in ovo technology, that is, in part, aimed at increasing the profits of the industry, should be carefully analyzed regarding its impact on animal welfare.

This paper will explore the status of male chick culling in the egg production industry, the current efforts underway to end the practice, and the possible outcome to animal welfare as a whole, as a result of the recent trend to ban chick culling. The ban on male chick culling worldwide would reduce the violent death of male chicks, and in this shift, can illustrate to the world how the industrial animal industry is inherently cruel, and that male chick culling is one of the many side effects of large-scale agricultural industry. In the pursuit of banning chick culling, other animal welfare arguments may be furthered. Germany, for instance, banned chick culling, and in the process, the courts have questioned the balance of interests between industry and animal welfare, raising awareness not just to the immediate cause, but to animal welfare as a whole. However, animal advocates realize the risk; in ovo technology could eliminate a financial burden for the industry which could help the factory farming industry to become more profitable, and therefore, more of a leading force.

Part II of this paper provides a brief background on the practice of male chick culling in the egg-laying industry, the problems that it poses, and the suggested alternatives such as in ovo technology. Part III examines the Germany court case that led to the first ban on male chick culling, focusing on the consideration given to animal welfare. Additionally, it will address the

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<sup>8</sup> See discussion *infra* Part III.

conflicting arguments regarding the impacts of the ban both in and outside of Germany, including the push for the European Union to prohibit the practice. Part IV compares the legal framework addressing animal welfare in Germany with the United States, to offer insight into the possibility of a similar ban in the United States and to propose alternative means to achieve the same result.

Lastly, this paper will conclude with suggestions for best practice, drawing from the analysis, research, and result of the ban in Germany, to reduce animal suffering caused by the egg production industry.

## II. THE PRACTICE OF MALE CHICK CULLING IN THE EGG PRODUCTION INDUSTRY

Male chick culling, which refers to the killing of newly hatched male chicks, is a common practice within the egg-laying production industry.<sup>9</sup> Selective breeding, a part of the advancement and adoption of large-scale industrial animal agriculture facilities, has created two breeds of chickens to optimize production.<sup>10</sup> Chickens grown for meat (broilers) are “optimized to provide as much meat as possible,” and layers are “optimized to lay as many eggs as possible.”<sup>11</sup> Chicks from laying hens are considered “unqualified for the production of chicken meat” because they do not grow as large or as quickly as broiler chickens that have been selectively bred to grow at an unnaturally fast rate.<sup>12</sup> Therefore, the male chicks in the laying industry, due to their inability to produce eggs coupled with their slower growth rate, are separated from the females and killed soon after hatching.<sup>13</sup> This is commonly referred to as the

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<sup>9</sup> Elske N de Haas, et al. *The Need for an Alternative to Culling Day-Old Male Layer Chicks: A Survey on Awareness, Alternatives, and the Willingness to Pay for Alternatives in a Selected Population of Dutch Citizens*, 8 FRONTIERS IN VETERINARY SCIENCE (Jun. 17, 2022) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8248538/> (accessed Apr. 24, 2023).

<sup>10</sup> Rutt, *supra* note 1 at 2

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

‘brother layer problem.’<sup>14</sup> The most used method to kill male chicks in the industry is maceration, which is also known as “grinding” or “shredding.”<sup>15</sup> The chicks are put into an apparatus that contains rapidly rotating blades, which essentially “grind up” the chicks.<sup>16</sup> Other, less commonly used methods, are asphyxiation and electrocution.<sup>17</sup>

These methods present several animal welfare concerns. In 2019, the European Food Safety Authority identified common animal welfare issues involved with maceration which included, the “slow rotation of blades or rollers, overloading and rollers set too wide” all of which can fail to kill the chicks, instead resulting in extreme injuries, pain, and distress.<sup>18</sup>

Asphyxiation, typically performed through carbon dioxide (CO<sub>2</sub>) exposure, is not only painful, but also can lead to the slow suffocation of chicks due to the higher level of CO<sub>2</sub> needed to effectively kill chicks compared to adult birds.<sup>19</sup> While once thought of as one of the “least known facts of food production” the practice of male chick culling has become a topic of public concern, due (in part) to the high number of chicks killed, and the shockingly violent methods used.<sup>20</sup>

Additionally, because about half the chicks hatched in the laying industry are male, the brother layer problem creates a significant amount of waste.<sup>21</sup> While some hatcheries sell the bodies of the deceased chicks to companies for pharmaceuticals, fertilizer, or animal feed, the males still represent a huge loss to the industry, equating to approximately \$450 million in the

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<sup>14</sup>*Id.*

<sup>15</sup> Heinemann, *supra* note 4.

<sup>16</sup> *Id.*

<sup>17</sup> AnimalEquality, *Stop the Massacre of Male Chicks*, (Last visited Apr. 22, 2023).

<sup>18</sup> Julio Alvarez, et al., *Killing for Purposes Other Than Slaughter: Poultry*, 17 EUROPEAN FOOD SAFETY AUTHORITY, Nov. 13, 2019. <https://efsa.onlinelibrary.wiley.com/doi/abs/10.2903/j.efsa.2019.5850>.

<sup>19</sup> *AVMA Guidelines for the Euthanasia of Animals*, AM. VET. MED. ASS'N. 76, 30 (2020 ed.).

<sup>20</sup> Rutt, *supra* note 1 at 2.

<sup>21</sup> *Id.*

USA each year.<sup>22</sup> The public's disapproval paired with industry efforts to increase profits, through technology, has led to countries banning the practice, hoping to rely on alternative means such as in ovo sexing.

The primary concerns with switching to in ovo technology are economic efficiency, the accuracy of sexing, and the welfare of the chicks.<sup>23</sup> There are many costs associated with implementing in ovo technology, including purchasing the machinery and training.<sup>24</sup> Additionally, the technology must be able to sex approximately 20,000 eggs per hour, in order to maintain current output levels at most commercial hatcheries.<sup>25</sup>

As some of these technologies are invasive, (i.e. they require permeating the shell) there is concern about the timing of the procedure, and when the embryo can experience pain. Currently, scientists have said that chick embryos cannot feel pain before the 7th day of incubation.<sup>26</sup> However, this is just an estimate and there is valid concern that the chicks will still endure extreme suffering from this practice.<sup>27</sup> Additionally, in ovo technology is premised on the notion that it will enable producers to hatch more female chicks, because the male eggs will be sorted and removed from the incubator freeing up space to hatch more female chicks. With the goal of reducing animal suffering in mind, the aim should be to *decrease* industry production in order to reduce the number of animals exploited.<sup>28</sup> When considering the life of a female chick

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<sup>22</sup> Elizabeth Doughman (2021) *Gene edited mice could be key to ending male chick culls*, POULTRY TECH TRENDS (Dec. 17, 2021). <https://www.wattagnet.com/poultry-future/new-technologies/blog/15534876/gene-edited-mice-could-be-key-to-ending-male-chick-culls>.

<sup>23</sup> Alice Di Concetto, et al., *Chick and Duckling Killing: Achieving an EU-Wide Prohibition*, European Institute for Animal Law and Policy (Jan. 2023).

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 61.

<sup>26</sup> *Id.* at 6.

<sup>27</sup> Interestingly, none of the studies that were used for this paper discussed the harm or pain caused to the embryos that were used in the research to develop various sexing methods.

<sup>28</sup> Heinemann, *supra* note 4 at 23.

hatched into the industry, the instantaneous death of male chicks is arguably preferable over the years of mistreatment that female chicks endure before being slaughtered.<sup>29</sup>

Dual purpose breeding is another approach being discussed as an alternative to male chick culling. Dual purpose breeds are the combination of high-performance laying hens with heavy weight “broiler” chickens.<sup>30</sup> However, there are major drawbacks of the dual breed due to its lower performance in both laying and growth, compared to one purpose breeds.<sup>31</sup> The reduced performance threatens industry profit margins, making both the meat and egg industries reluctant to switch to using these chickens.<sup>32</sup> Further, to meet the current demands of consumers, more chickens would have to be raised and slaughtered, causing additional animal suffering and requiring more resources to be allocated to the industry.<sup>33</sup> However, by shifting away from “optimized” chickens, dual purpose breeds do address the animal welfare issues arising from selective breeding, which is absent from other alternatives.<sup>34</sup>

### III. GERMANY’S BAN ON MALE CHICK CULLING

#### *A. Background and Timeline of the Court Cases*

In 2013, the practice of male chick culling gained notable attention in Germany, when the owner of a hatchery in North Rhine-Westphalia was charged with violating the Animal Welfare Act for culling chicks.<sup>35</sup> The hatchery owner successfully argued that they had reasonably relied

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<sup>29</sup> See AnimalEquality, *What’s Wrong With Eggs?* <https://animalequality.org/issues/eggs/> (explaining the inhumane treatment of laying hens. “Hens spend up to two years packed in wire cages with six other birds. The cages are so small and crowded that hens cannot even spread their wings or exhibit other natural behaviors.”)

<sup>30</sup> Heinemann, *supra* note 4 at 5.

<sup>31</sup> *Id.* at 16.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 23 (Selective breeding for both laying and chickens used for meat has caused drastic changes in the physical anatomy, which causes severe health complications.)

<sup>35</sup> Bundesverwaltungsgericht [BVerwG] [Federal Administrative Court] 3 C 28.16 - para. 16. (Judgment of Jun. 13, 2019) <https://www.bverwg.de/en>.

on the fact that the administrative authorities had permitted this practice for many years, and therefore their “mistake of law” was a valid excuse.<sup>36</sup> The prosecutor dropped the charges, noting however, that the previous tolerance from administrative authorities as well as ignorance of the updated law, would not continue to justify the practice.<sup>37</sup> Additionally, the Ministry of Climate Protection, Environment, Agriculture, Nature, and Consumer Protection, issued an internal directive to subordinate authorities, to clarify that male chick culling was not a lawful practice under the German Animal Welfare Act, which prohibits causing an animal “pain, suffering, or harm, without good reason.”<sup>38</sup>

In response, two hatcheries sued, and in 2016, the High Administrative Court of North Rhine-Westphalia ruled in their favor.<sup>39</sup> The hatcheries argued and the court agreed that economic efficiency and the importance of producing and contributing to the national food supply, was a “reasonable reason,” and therefore, the practice did not violate the Animal Welfare Act (i.e. male chick culling was reasonable).<sup>40</sup> On appeal, the Federal Administrative disagreed, explaining that “the killing of male chicks is no longer viewed as a good reason when considered in its own right according to today’s values. The interests of animal protection weigh more heavily than the economic interest of the hatcheries.”<sup>41</sup> However, the court allowed the practice to continue during an undefined transitional period.<sup>42</sup> On May 20th, 2021, the German Bundestag passed legislation that specified an enactment date, and on January 1st, 2022, Germany became the first country to ban the practice of male chick culling.<sup>43</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Ruling on Chick Culling*, THE ALBERT SCHWEITZER FOUNDATION (June 21, 2019) <https://albertschweitzerfoundation.org/news/ruling-chick-culling>.

<sup>39</sup> Bundesverwaltungsgericht [BVerwG] [Federal Administrative Court] 3 C 28.16 - para. 16. (Judgment of Jun. 13, 2019) <https://www.bverwg.de/en>.

<sup>40</sup> *Id.*

<sup>41</sup> *Ruling on Chick Culling*, *supra* note 38.

<sup>42</sup> *Id.*

<sup>43</sup> Heinemann, *supra* note 4.

## B. *The Legality of Male Chick Culling in Germany*

The protection of animals is included in the German Constitution as a state goal and is regulated by The Animal Welfare Act.<sup>44</sup> The act protects both the lives and the wellbeing of animals and lays out the responsibilities of humans in relation to animals as “fellow creatures.”<sup>45</sup> Specifically, the act states that no person may cause an animal “pain, suffering, or harm, without a reasonable reason.”<sup>46</sup> The term “reasonable reason” is not defined in legislation, instead it is a question of proportionality, which weighs humans’ and animals’ interests and considers “German constitutional values, legislative rules and concepts of public morality and justice.”<sup>47</sup> The act, while it does not define “animal,” can be interpreted to have broad applicability to most species because vertebrates, warm-blooded animals, fish, cold-blooded animals, amphibians, reptiles, and cephalopods are referenced in various provisions and the act does not explicitly exclude any animal species from protection.<sup>48</sup>

In both the 2016 and 2019 cases, the legality of male chick culling as an industry practice, was questioned under the Animal Welfare Act. Therefore, for male chick culling to continue, the hatcheries had to show that the practice was done for a reasonable reason. Under the act, slaughtering animals for human consumption is per se reasonable, however, male chicks

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<sup>44</sup> World Animal Protection, *Animal Protection Index* (2020) <https://api.worldanimalprotection.org/country/germany#Sentience>.

<sup>45</sup> *Tierschutzgesetz* TierSchG [The Animal Welfare Act] (Ger.); World Animal Protection, *Animal Protection Index* (2020) <https://api.worldanimalprotection.org/country/germany#Sentience>

<sup>46</sup> TierSchG [The Animal Welfare Act]

<sup>47</sup> Amelie C. Buhl, *Legal Aspects of the Prohibition on Chick Shredding in the German State of North Rhine-Westphalia*, 2 GLOBAL JOURNAL OF ANIMAL LAW 6 (2013).

<sup>48</sup> World Animal Protection, *supra* 44.

are not killed directly for human consumption, but as a “by product” of the modern agricultural system.<sup>49</sup>

According to the High Administrative Court of North Rhine-Westphalia’s 2016 decision, the killing of male chicks in the laying industry was done for a reasonable reason.<sup>50</sup> Although the court considered the interest of the chicks to live and not suffer, that interest was given less weight than the economic interests of the industry.<sup>51</sup> The court relied on the constitutional guarantee of occupational freedom, and the effect that a ban on chick culling would have on commercial operations, noting that the existence of the animal welfare husbandry ordinance, illustrates that economic interests play a role in regulating the treatment of animals.<sup>52</sup> Further the court rejected the argument that there is a difference between slaughtering animals for food and killing the chicks as a consequence of the modern agricultural system.<sup>53</sup> To be considered reasonable, the chicks do not have to be consumed directly, rather the economic benefit in not having to raise them was enough.<sup>54</sup> Lastly, the court discussed the public’s changing attitudes towards animal welfare as part of the balance.<sup>55</sup> The court concluded that the claimed public disapproval of male chick culling bears little weight when compared to the demand for egg and egg products, indicating that consumers, even if they did not agree morally with the practice, still prioritized their current eating habits over the welfare of animals.<sup>56</sup>

The Administrative Court, on the other hand, disagreed that the practice of male chick culling was supported by a reasonable reason. In their 2019 decision, the court acknowledged

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<sup>49</sup> [BVerwG] Judgement of Jun. 13, 2019.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

that the industry's economic interest was twofold and even so, was not reasonable, "the economic interest in layers with high performance is in itself not a reasonable cause ... for killing male chicks from these breeding lines."<sup>57</sup>

### *C. Analysis of the Broad Implications of the 2019 Ruling for Animal Welfare*

Proponents of stricter animal welfare protections are optimistic that the 2019 ruling will have a positive impact for animal welfare. First, the court's interpretation of "good reason" under the animal welfare act is far narrower than previous court decisions.<sup>58</sup> While the Animal Welfare Act does not define a "good reason," courts have usually interpreted it broadly in favor of the industry, providing little consideration to the interests of animals.<sup>59</sup> In this case, the court ruled that economic reasons alone are not sufficient to constitute a reasonable reason to kill an animal under the German Animal Welfare Act.<sup>60</sup> Although the court acknowledged that an economic interest can be part of the balance, the court's decision states that it cannot be the sole reason. Therefore, the court in this case, rejected the hatcheries' claim that their economic interest in avoiding the cost of raising the male chicks is a "good reason" because unlike an animal for slaughter, the "male chick is not killed in order to be used for human needs but rather in order to avoid economic burden for the hatchery."<sup>61</sup> Further the court explained that the industry produces male chicks with the knowledge that the males will be immediately killed, indicating that the individual life of each male chick is "predetermined to have no value."<sup>62</sup> Previous court decisions have failed to uphold the protection of an animal's life under the Animal Welfare Act,

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<sup>57</sup> *Id.*

<sup>58</sup> Ruling on Chick Culling, *supra* note 38.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> [BVerwG] Judgement of Jun. 13, 2019.

<sup>62</sup> *Id.*

however, in this case, the court explicitly states that the Animal Welfare Act not only protects the well-being of an animal, but also the animal's life. Therefore, the court's decision confirmed that an animal's life has inherent value.

Additionally, the court's decision has possible applicability to criminalize other harmful animal practices. After the court ruling, Doctors Against Animal Experiments and the German Legal Society for Animal Welfare Law, filed criminal complaints against 15 animal testing facilities, accusing them of killing animals "without a reasonable cause."<sup>63</sup> According to the complaint, it is common practice for "surplus" animals to be killed, when the laboratories, due to various reasons such as the animals age, sex, or lack of a desired gene, etc., have no use for the animal and do not want to pay for the resources needed to keep the animals alive.<sup>64</sup> Relying on the 2019 court decision, the two groups argue that killing "unneeded" laboratory animals is not justified under the Animal Welfare Act, because economic incentives are not "good reasons."<sup>65</sup>

#### *D. Implementing Male Chick Culling Legislation and the Effects*

In accordance with the court's decision, the German Bundestag implemented a statutory ban, effectively prohibiting the practice nationwide and enabling authorities to issue sanctions for violations.<sup>66</sup> German farmers in the egg laying industry now have two options: raise the male

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<sup>63</sup>Press Release, *Uni Kiel kills 22,497 animals as "surplus"* Drs. Against Animal Experiments Registered Ass'n & Ger. Legal Soc'y for Animal Protection Law Registered Ass'n (June 30, 2022).

<https://www.aerzte-gegen-tierversuche.de/de/news/aktuelle-news/3577-uni-kiel-toetet-22-497-tiere-als-ueberschuss>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Phase-out of Chick Culling*, FED. MINISTRY OF FOOD & AGRIC. (Jan. 1, 2022)

<https://www.bmel.de/EN/topics/animals/animal-welfare/research-poultry-in-ovo.html>

chicks or adopt in ovo technology to sex chicks before they hatch.<sup>67</sup> Under the in ovo technology method, the eggs that are identified as male embryos, are either disposed of or used for other purposes such as animal feed.<sup>68</sup> When the ban was originally passed, it included a second phase of the ban that required hatcheries to sex chicks no later than day seven of incubation.<sup>69</sup> However, due to push back from the industry and new research that suggests chick embryos may not feel pain until later in the incubation process, the Bundestag decided to amend the second phase to allow all methods of in-ovo technology until the 12th day of incubation.<sup>70</sup>

### 1. The Fate of Male Chicks Post Ban

The ban on male chick culling paired with the reluctance to adopt in ovo technology has led to a large number of the male chicks being raised for meat, which presents a number of animal welfare concerns.<sup>71</sup> Because Germany does not have the market demand —nor the capacity to raise these chicks —many of the male chicks are exported to other countries, where companies are paid to raise them.<sup>72</sup> This requires long transport periods for the chicks, which can cause significant stress on them.<sup>73</sup> Additionally, the ban has no effect on the low profit margin of raising the male chicks for meat. Therefore, producers are incentivized to keep the roosters in conditions that are conducive to death, in hopes they will die quickly and rid the producer of the obligation of raising them till slaughter.<sup>74</sup>

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<sup>67</sup> *Id.*

<sup>68</sup> Andrew Gough, *Germany's Chick Cull Ban is No Cause for Celebration*, SURGE (Feb. 3, 2023).

<sup>69</sup> Entwurf eines Gesetzes zur Änderung des ÖkoLandbaugesetzes, des Öko-Kennzeichengesetzes und des Gesetzes zur Änderung des Tierschutzgesetzes – Verbot des Kükentötens (Draft law amending the Organic Farming Act, the Organic Labeling Act and the Law amending the Animal Welfare Act - ban on killing chicks), Deutscher Bundestag 20/6313( May 12, 2023). <https://dserver.bundestag.de/btd/20/067/2006783.pdf>. (Ger.)

<sup>70</sup> *Id.*

<sup>71</sup> Heinemann, *supra* note 4 (“Transport in general causes significant stress in these young animals as chicks within the first 3 days (72 hours) of their lives can be transported for up to 24 hours without any feed or fresh water.”)

<sup>72</sup> *Id.* at 19; *see also Chick Culling Ban: Where have All The Cockerels Gone?* FOODWATCH INTERNATIONAL (Jan. 3, 2023). (In the first 9 months following the ban, poultry farms transported more than 300,000 chicks to other countries.)

<sup>73</sup> Heinemann, *supra* note 4.

<sup>74</sup> *Id.* at 19.

Lastly, lack of transparency in importing countries regarding their animal welfare standards and the common circumstances raises concerns about the treatment of the chickens.<sup>75</sup> Therefore, the inhumane conditions of industrial animal facilities and the treatment the male chicks endure when raised, could be argued to cause more suffering than if the chicks were killed immediately after hatching.

## 2. Impact on German Egg Industry

Since the ban went into effect, chicks are predominantly hatched and raised in countries that allow chick culling and then imported into Germany.<sup>76</sup> Because it is cheaper to import the chicks rather than transition to a no cull practice, 40 percent of the domestic laying hatcheries in Germany have closed.<sup>77</sup> Before the second phase of the ban was amended, the hatcheries that stayed in operation were reluctant to invest in the current in ovo technology because of the concern that these technologies would need to be updated in 2024 or that these too would eventually be banned.<sup>78</sup> Consequently, it is estimated that 70% of the hatcheries that continued to operate post ban, resorted to hatching all the chicks and selling the males to be raised for meat production.<sup>79</sup> In response, the ban was amended to permit all methods of in ovo technology as well as extend the sexing deadline today 12, in hopes that the added security and flexibility will increase the willingness of hatcheries to invest in the technology.<sup>80</sup>

The German poultry industry continues to criticize the ban for its limited application to only German egg production, while essentially supporting the practice in other countries, which has led to unequal competition for the German industry.<sup>81</sup> Therefore, the German poultry

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 26

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 17

<sup>80</sup> Draft law amending the Organic Farming Act, the Organic Labeling Act and the Law amending the Animal Welfare Act - ban on killing chicks, *supra* note 73.

<sup>81</sup> Heinemann, *supra* note 4 at 27.

industry along with the European Live Poultry and Poultry Hatching Egg Association, has highlighted the need for consistency between the member states for the sake of market competition.<sup>82</sup>

### 3. Prohibiting Male Chick Culling Beyond Germany: A call for an EU Wide Ban

Germany's ban sparked other countries to follow; France and Austria have also banned the practice of male chick culling.<sup>83</sup> Additionally, during the Agriculture and Fisheries Council meeting in 2022, the French and German delegations, on behalf of the Austrian, Belgian, Cypriot, Finnish, French, German, Irish, Luxembourgish and Portuguese delegations, called for a EU ban on male chick culling.<sup>84</sup> Further, the European Commission agreed to conduct an impact assessment, addressing both the short- and long-term effects of an EU-wide ban. In April 2023, a draft of this Impact Assessment report was leaked to the public and indicated "a good start for an ambitious legislation," including a ban on the systemic culling of male chicks.<sup>85</sup>

#### *E. Effectiveness of Germany's Ban on Reducing Animal Suffering*

The ban on male chick culling in Germany is a substantial step towards reducing animal suffering. However, the unintended consequences, such as the rearing of the male chicks, threatens the effectiveness of the ban. Additionally, the limited nature of the ban has shifted the problem to other countries, instead of reducing the suffering of male chicks. Therefore, an EU wide ban on the production as well as the importation of chicks from hatcheries that practice male chick culling, would help alleviate the outsourcing and diminish the number of male chicks

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Claudia Vinci, *Male Chick Culling*, EUR. PARLIAMENT RSCH. SERV.(Dec. 2022).  
[https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/739246/EPRS\\_ATA\(2022\)739246\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/739246/EPRS_ATA(2022)739246_EN.pdf)

<sup>85</sup> Press Release, Draft Impact Assessment- A Good Start for an Ambitious Legislation (Apr. 20, 2023).  
<https://www.eurogroupforanimals.org/news/draft-impact-assessment-good-start-ambitious-legislation>

culled.<sup>86</sup> However, this does not address the problems associated with raising the ‘brother’ chicks for meat, and thus the EU should consider the feasibility of implementing in ovo technology in all the hatcheries prior to a ban.<sup>87</sup> Lastly, in light of German hatcheries reluctance to adopt in ovo technology leading to unforeseen consequences, the French government granted “between 10 to 15 million euros to hatcheries to accelerate the implementation of the prohibition on chick culling passed in 2022.”<sup>88</sup> While government aid can help ease the transition, the EU and other countries should proceed with caution to prevent enabling the growth of the already highly profitable industry.

#### IV. ENDING MALE CHICK CULLING IN THE UNITED STATES

##### *A. Prohibiting the Practice of Male Chick Culling in the United States Using Animal Welfare Laws*

The United States’ legal landscape regarding animal welfare, specifically welfare for chickens, provides much less protection than Germany’s legal landscape, leaving fewer viable legal claims.<sup>89</sup> To start, there are no federal regulations protecting the welfare of laying chickens. Unlike Germany, chickens are not protected under The Animal Welfare Act (AWA), because the AWA specifically excludes “poultry” from the definition of animal.<sup>90</sup> Additionally, the Humane

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<sup>86</sup> Heinemann, *supra* note 4 at 50.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Veronica Hirsch, *Detailed Discussion of Legal Protections of the Domestic Chicken in the United States and Europe*, ANIMAL LEGAL HIS. CTR. (2003).

<sup>90</sup> See Animal Welfare Act, 7 U.S.C. § 2132 (g) (3) (“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, used or intended for use as food or fiber, or livestock or

Methods of Slaughter Act (HMSA) does not apply to chickens because, according to the USDA, “since poultry are protected under the PPIA, they are not included under the HMSA.”<sup>91</sup> However, The PPIA (The Poultry Products Inspection Act) regulates the production of poultry products to ensure that they are “fit for human consumption,” indicating that the primary focus of the Act is to protect human health, rather than as a concern for animal welfare.<sup>92</sup> Under the PPIA “live poultry must be handled in a manner that is consistent with good commercial practices which means they should be treated humanely.”<sup>93</sup> The PPIA does not define what constitutes humane treatment but does suggest that employing “good commercial practices” is consistent with humane treatment.<sup>94</sup>

Similarly, the majority of State anti-cruelty statutes offer little to no protection to chickens.<sup>95</sup> Each state determines what constitutes animal cruelty, and often state legislatures authorize the state agricultural departments — whose interests usually weigh in favor of the industry instead of animals — to define animal cruelty.<sup>96</sup> Even if the practice by definition violates the language of anti-cruelty statutes, there are typically exemptions in place which allow “customary farming practices, ” to ensue.<sup>97</sup>

### *B. Consumer Protection Laws*

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poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.”)

<sup>91</sup> *Treatment of Live Poultry Before Slaughter*, 70 Fed. Reg. 56624 (Food Safety & Inspection Service, USDA Sept. 28, 2005).

<sup>92</sup> 21 U.S.C. § 451.

<sup>93</sup> *Treatment of Live Poultry Before Slaughter*, *supra* note 91.

<sup>94</sup> *Id.*

<sup>95</sup> Hirsch, *supra* note 89.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*; see Wis. Stat. 951.015 (1996) (“In the case of farm animals, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices in the particular county where the animal or shelter is located”).

While it seems unlikely that male chick culling will be prohibited under any federal or state animal welfare laws in the United States, consumer protection lawsuits appear to be a viable option, illustrated by a recent case where male chick culling played an integral part of the complaint.

On May 20th, 2021, a group of consumers filed a lawsuit alleging that Vital Farms, an egg production company, intentionally and knowingly engaged in false and misleading marketing schemes, violating the Deceptive Trade Practices Act.<sup>98</sup> Specifically, the complaint argues that Vital Farms markets its business model as ensuring all animals involved are treated “ethically and humane,” which enables the company to charge up to seven times the original price of store bought eggs.<sup>99</sup> To support their claim, the plaintiffs list a multitude of practices that Vital Farms engages in or supports, that are not humane, one of which is male chick culling.<sup>100</sup> Vital Farms claims that these practices are consistent with its mission to treat farm animals humanely because it “follows HFAC Standards with respect to these practices.”<sup>101</sup> The court rejected this argument and denied the motion to dismiss, citing defendant's failure to show that conforming to third party standards renders the term not misleading as a matter of law.<sup>102</sup> Although in the early stages of litigation, this case showcases the potential to reduce the practice. If the court determines that male chick culling is inconsistent with humane labeling, companies will have to disengage from the practice (i.e., they themselves do not engage in male chick culling as well as they do not purchase female chicks from hatcheries that cull the male chicks) if they wish to label their eggs as humane.

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<sup>98</sup> Complaint at \*4, *Ulcer v. Vital Farms, Inc.*, No. 1:21-CV-447-RP, 2022 WL 1514068 (W.D. Tex. 2022).

<sup>99</sup> *Id.* at 3.

<sup>100</sup> *Id.* at 5.

<sup>101</sup> Motion to Dismiss at 11-12, *Uslar v. Vital Farms, Inc.*, No. A-21-CV-447-RP, 2022 WL 1491091, at \*4 (W.D. Tex. Jan. 31, 2022), *report and recommendation adopted*, No. 1:21-CV-447-RP, 2022 WL 1514068 (W.D. Tex. Mar. 2, 2022).

<sup>102</sup> *Id.*

### *C. Non-Legal Remedies: Voluntary Commitments from the Industry*

Over the past few decades, consumers have become increasingly concerned with the welfare of animals used for food production and in recent years, the egg industry has illustrated their responsiveness to such demands.<sup>103</sup> In 2016, United Egg Producers (UEP), which represents 90 percent of the egg production in the United States, called for the end of male chick culling by 2020.<sup>104</sup> However, in 2021 the President and CEO of UEP stated that “a method that meets the food safety, ethical standards and scalable solutions needed for the United States is not yet available.”<sup>105</sup> Even if the technology was currently available, the short-term costs could discourage hatcheries from investing in technology. However, if consumer demand indicated a preference for eggs that did not come from hatcheries that practice male chick culling, then producers would be incentivized to make the switch. Additionally, the cost of implementing the in ovo technology could be externalized onto consumers, due to customers’ willingness to pay more for eggs produced without the culling of male chicks.<sup>106</sup> Although not explicitly geared to male chicks, as seen in the Vital Farm case, consumers will pay more for eggs that came from “humanely” treated animals in general.

## V. CONCLUSION

Germany’s ban on male chick culling offers insights for other countries to look to when implementing a similar ban. The unintended consequences, such as the animal welfare concerns regarding raising the male chicks, and the possibility of bolstering the industry’s profitability

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<sup>103</sup> Dr. Vincenzina Caputo, et al., *The Transition to Cage-Free Eggs*, UNITED EGG PRODUCERS, (Feb. 2023) (“State regulations, retailer pledges, and final consumer demand have contributed to a rising share of egg-laying hens housed in cage-free systems over the past decade.”)

<sup>104</sup> News Release, United Egg Producers Updated Statement on Male Chicks, United Egg Producers. (March. 25, 2021).

<sup>105</sup> *Id.*

<sup>106</sup> Heinemann, *supra* note 4 at 33.

should be considered. Therefore, by creating consumer demand for the industry to end the culling of male chicks, the industry will be incentivized to make the switch on their own, without relying on government subsidies. Additionally, the switch to in ovo technology in the long run could lead to increased profits for the industry because the hatcheries will not have to incubate all the unwanted male chicks, nor will they have to spend time sorting them.<sup>107</sup> However, that is not the case in the short and medium term, because of the high initial costs. In this window of time, animal advocates should bring awareness to the inhumane treatment practices of the egg industry, to foster public support to move away from animal products altogether. The practice of male chick culling can be used to illustrate how the industrial animal industry is driven by profits, and the value of the lives of the animals exploited by the industry, is determined by a dollar amount, not their inherent worth. As illustrated in Germany, banning the practice of male chick culling could function as a foot in the door to address the other multitude of animal welfare concerns perpetrated by the animal agricultural industry. At the very least, Germany's ban has sparked public awareness and discussion, forcing consumers to acknowledge that their breakfast is far from cruelty free.

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<sup>107</sup> *Id.*