

Live Animal Transport: Closing the Gap between EU Requirements and Enforcement

A Collection of Academic Articles on Compliance with the EU Council Regulation 1/2005 on the Protection of Animals during Transport



Animal Welfare.
Worldwide.



Masthead

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Content

Foreword.....	4
On Compliance with Driving Times and Rest Periods for Drivers in Connection with the Long-Distance Transport of Animals.....	6
Consequences from the Verdict of the European Court of Justice on Rest Periods during Animal Transport.....	31
Animal Transports – Prolongation of the Journey Time by Illegal “Hopping” between Assembly Centres.....	38
Official Approval of Long-Distance, Border-Crossing Animal Transports.....	47
Testing the Plausibility (Art. 14(1) (a), (ii)) in the Framework of Official Permits of Long-Distance, Border-Crossing Animal Transports.....	61
Addendum to the Essay “On Plausibility Checks According to Art. 14 (1) (a) (ii) of the EU Animal Transport Regulation Regarding the Official Approval of Long-Distance, Border-Crossing Animal Transports in Third Countries”.....	72
On the Interpretation of the Terms “Journey” within the Meaning of Art. 2 (j) and “Journey Time” within the Meaning of Annex I Chapter V No. 1.2 to 1.9 of Regulation 1/2005 on the Protection of Animals during Transport.....	75
Transports of Cattle and Sheep in Animal Welfare High-Risk Countries Continue.....	91
Current Problems with the Handling / Authorization of Long Cross-Border Animal Transports in the Light of ECJ Rulings C-424/13 and C-383/16.....	113

Foreword

Dear Readers,



FOUR PAWS is pleased to share with you this compilation of translations of important articles on the live transport of animals published in professional journals. These articles were published between 2012 – 2020 and highlight many of the most discussed animal welfare issues and legal violations linked to live animal transport. The analyses and findings bring clarity to measures that need to be taken to improve enforcement of EU law on transport.

Live animal transport is linked to immense suffering, a first step to reduce the suffering is ensure proper implementation of EU law. As an animal welfare organization, that reveals suffering, rescues animals in need and protects them, FOUR PAWS strongly believes that on the short term, transports should be limited to a maximum of 8 hours (4 hours for poultry) and that the transport of unweaned animals needs to stop. The upcoming revision of the Regulation 1/2005 must include stronger safeguards to minimize and prevent animal suffering as a result of live animal transport. Moreover, the EU needs to transition away from the transport of live animals and towards the transport of meat, carcasses and genetic material. Until such measures are in place, good and consequent enforcement of existing legislation on transport must be ensured.

The articles collected in this publication are a helpful guide towards a better, and more uniform interpretation of law on live animal transport. We hope that these translations will help you in your daily work towards a successful implementation of EU law and ultimately towards ensuring an end to the suffering of animals during live animal transport.

*Dr. Martina Stephany
Farm Animals & Nutrition Director at FOUR PAWS*



The important responsibility of enforcing European law primarily lies with the EU Member States. However, the European Commission, as guardian of the Treaties, also plays a major role in ensuring that Member States respect EU Law. The Council Regulation 1/2005 on the protection of animals during transport provides a uniform frame for how transport across the European Union is to be implemented and regulated. Reports from DG Sante and various investigations by NGOs showed, that proper enforcement is lacking across Europe and different national interpretations of legislation led to the regulation being handled like a directive in the past years. The articles in this volume summarize information on consequences from the Court of Justice ruling on resting periods for animals and drivers, as well as transport planning; illegal hopping between assembly centers; important

considerations for plausibility checks when approving transports to third countries; implications of the regulation harmonizing social provisions for road traffic on transport planning as well as specifications on journey time; requirements for control posts; and problems that need to be considered when approving transports to countries where basic welfare principles are likely to be disregarded. We hope this resource assists you in ensuring the improved enforcement of EU regulation on the protection of animals during transport.

*Pierre Sultana
Director European Policy Office at FOUR PAWS*

On Compliance with Driving Times and Rest Periods for Drivers in Connection with the Long-Distance Transport of Animals



Originally published as “Zur Beachtung der Lenk- und Ruhezeiten der Fahrer im Zusammenhang mit Langstreckentransporten von Tieren” in: Amtstierärztlicher Dienst und Lebensmittelkontrolle, issue no. 19 – 2/2012, p. 99-109

Authors: Alexander Rabitsch and Wolfgang Wessely
Translation courtesy of *Eurogroup for Animals*

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Key words

Social legislation; driving and rest periods; live animal transport; animal transport regulation; animal welfare

Summary

The mandatory application of social legislation governing drivers significantly affects the transport of animals by road. With the exception of the (shorter distance) transportation of unweaned calves, lambs, kids, foals and piglets, only multi-manning with three drivers permits a journey compliant with the regulations whilst being close to the maximum permitted journey times. The organiser is responsible for making appropriate arrangements for the journey, whilst the official veterinarian is responsible for checking the suitability of the journey arrangements.

1. Introduction

In Regulation (EC) 561/2006¹, Union legislators (as previously in Regulation [EEC] 3820/851) harmonised certain social provisions concerning road traffic, in particular the longest permissible driving times and the minimum requirement for driver rest periods.

Since 5 January 2007, the essential parts of Regulation (EC) 1/2005¹ have regulated the transport of live vertebrate animals within the Union in connection with economic activity, namely the maximum permissible journey times for the animals as well as official checks within and at the external borders of the European Union.

The aim of this paper is to draw focus on the common areas between the two Regulations and thereby primarily to fully examine the time limits for animal transportation arising from the breadth of all applicable Regulations. In addition, this paper pursues the issue of the scope and level of control as set out in Art. 14 Reg (EC) 1/2005 as well as issues concerning the responsibility of the official veterinarian acting in the case of any shortcomings which may arise in this regard. We first present an overview of the provisions of the aforementioned Regulations which are significant for the subsequent considerations, namely the respective legal definitions.

2. Regulation (EC) 561/2006

2.1. Scope

Reg (EC) 561/2006 concerns amongst other things the transportation of goods using vehicles with a maximum weight, including trailer or semi-trailer, exceeding 3.5 tonnes and applies irrespective of the country of registration of the vehicle for road journeys within the Union or between the Union, Switzerland and signatory countries to the Agreement on the European Economic Area (Art. 2 [1] and [2] of the Regulation).

For road journeys taking place in part or in whole outside of the aforementioned areas, the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) applies insofar as this concerns signatory states to this agreement.

¹ See literature: Legal norms

The provisions of the AETR are similar to those of Reg (EC) 561/2006 (see <http://treaties.un.org>; <http://beck-online.beck.de>).

2.2. Responsibility of the Transporter

The Regulation in question concerns on the one hand the vehicle crew (Chapter II). On the other hand, the law also places a duty upon the transporter (Chapter III) to organise the work of the vehicle crew in such a way that they are able to comply with the social provisions. The drivers must duly be instructed to comply with the provisions of this Regulation and of Reg (EEC) No. 3821/851 and regular checks must be carried out to ensure that this is the case (Art. 10 [2]).

As a final step, the Regulation expands the circle of responsibility to include certain participants in the journey process to a certain degree. According to Art. 10 [4], undertakings, consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies shall ensure that contractually agreed transport time schedules respect this Regulation.

2.3. Definition of Terms

2.3.1. Driving Times

The permissible daily driving time^{2,3} is 9 hours, but may (no more than twice per week) be extended to 10 hours (Art. 6 [1]). This 'daily driving time' is the total accumulated driving time in one day. It begins at the end of one daily rest period and ends at the beginning of the following daily rest period⁴. The complete period for the calculation is 24 hours (Art. 4 [k]).

The provisions regarding driving times apply within the Union area and in the territory of third countries.

2.3.2. Breaks

The driving time allowed "in one block" is 4 ½ hours. After this time there must be a break of at least 45 min. A break (driving break) is not the same as a rest period (Art. 7).

During the break the driver may not carry out any driving-related activity and may not carry out any other work; the driving break may only be used for rest (Art. 4 [d])⁴.

2.3.3. Daily Rest Periods

The prescribed daily rest period is 11 hours; it may (no more than 3 times per week) be shortened to a minimum of 9 hours. A rest period is an uninterrupted period in which a driver is free to do as he wishes (Art. 4 [g]).

Rest periods may not be taken in a moving vehicle driven by another driver.

² Driving times are, according to Art. 4 (j) Reg (EC) No. 561/2006, driving activities recorded by either fully automatic or semi-automatic control devices or recorded by hand during any malfunction of the control device (POMPLUN, 2007).

³ All time actually taken up with driving activities counts as driving time. This also includes in particular waiting times in traffic, at traffic lights, at railway crossings, at junctions or in traffic jams. Waiting times at border crossings must be counted as time at the wheel if the vehicle must be moved forward every few minutes, i.e. if the driver must be in the vehicle and paying attention (THOMANN, 2010).

⁴ Breaks serve to break up the monotonous driving of the vehicle by the driver in order that he or she may rest for at least a short time. The driver may not carry out any other work during breaks (THOMANN, 2008).

2.3.4 Multi-Manning

Multi-manning takes place if, during a journey between two rest periods, at least two drivers are in the vehicle to do the driving. In this case the second driver must be present after the first hour of multi-man operation (Art. 4 [o]).

In the case of multi-manning, the aforementioned Regulation regarding driving times and breaks applies. Each driver's daily rest period must last for at least 9 hours and the complete period for the calculation of the rest period for both drivers together is 30 hours (Art. 8 [5]).

Where a second driver is present in the vehicle, the time spent by the non-driving person sitting next to the person actually driving the vehicle counts as availability for duty (THOMANN, 2008) and not as rest period.

2.3.5 Other Work

"Other work" is all other activities (according to Directive 2002/15/EC)¹ that are not driving activities, as well as any work for the same or a different employer whether it be within or outside of the transport sector, for example watering, feeding or other animal care activities.⁵

2.3.6 Travel to Take over the Vehicle

If the driver travels in his own private vehicle to a goods vehicle which is not situated at the company premises in order to take on a driving job, this journey counts as working hours which must be entered on the tachograph chart or on the driver card (POMPLUN, 2007).

2.3.7 Graphic Representation (Intermediate Results)

The above results in the following maximum possible driving times and the associated rest periods and driver breaks:

1. Within a 24-hour period, a single person may serve as driver for a maximum of 11 ½ hours including breaks (fig. 1), whereby "other work" done during this 24-hour period must not be included (fig. 2).

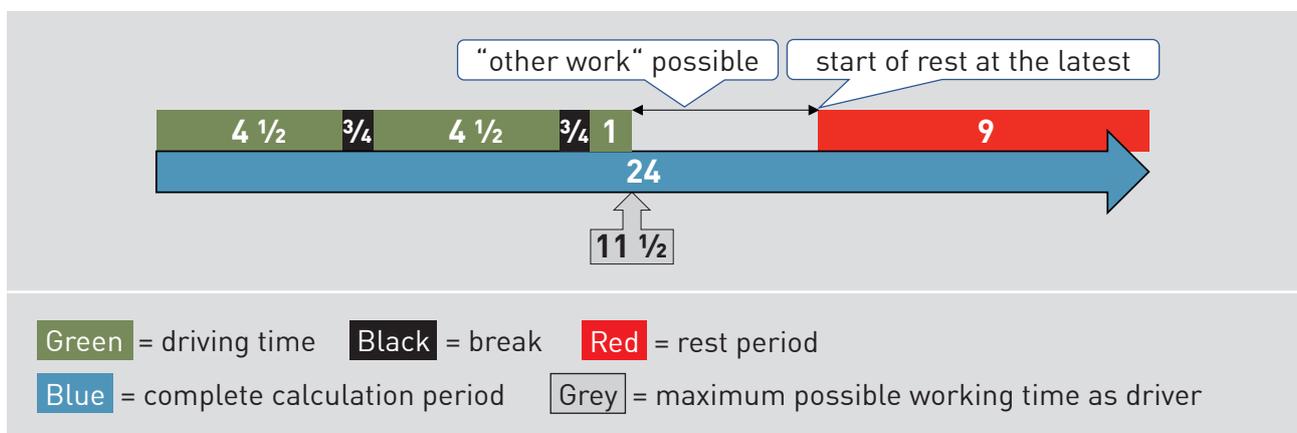


Fig. 1: Representation of 1-driver operation in accordance with Reg (EC) 561/2006. All figures are times in hours.

⁵ The driver must consider as other work all time spent on "other work" and all driving time in a vehicle which is used for commercial purposes outside of the area of application of Reg (EC) 561/2006. These times must either be recorded by hand on a tachograph chart or printout or entered manually into the control device (THOMANN, 2010).

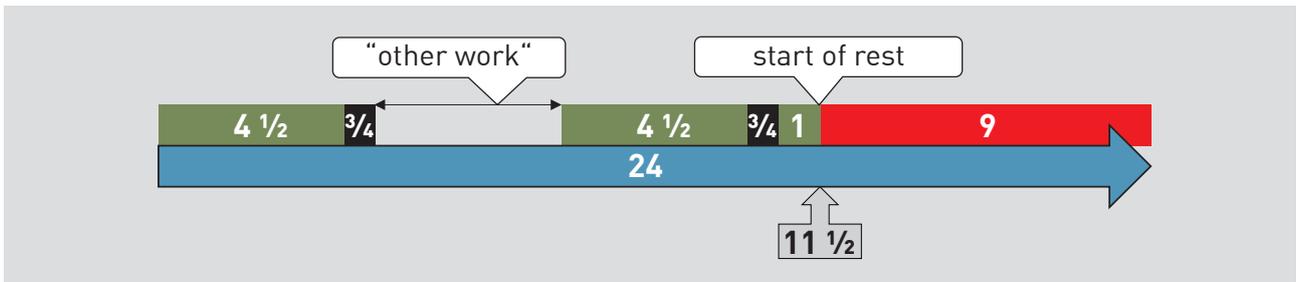


Fig. 2: Representation of 1-driver operation in accordance with Reg (EC) 561/2006 with "other work" in between (key as in fig. 1).

- In the case of multi-manning with two people, the total driving time within a 30 hour period must not exceed 20 hours (fig. 3).

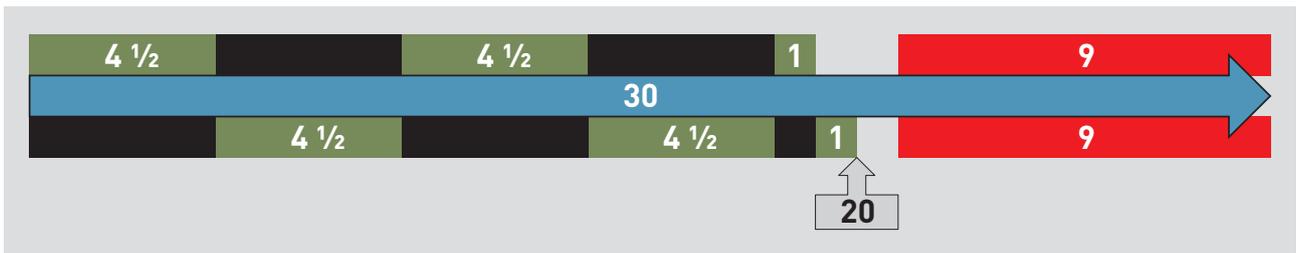


Fig. 3: Representation of 2-driver operation in accordance with Reg (EC) 561/2006 . (Key as in fig. 1).

3. Regulation (EC) 1/2005

3.1. Journey Time and Rest Periods

Reg (EC) 1/2005 sets out in Annex I, Chapter V the following maximum journey times for the transport of certain domestic animals in vehicles equipped in accordance with Annex I, Chapter VI; after this maximum journey time the animals must be unloaded, fed and watered and a rest period of at least 24 hours must be observed.

Pigs may be transported for a maximum period of 24 hours. The animals must have access to water throughout the journey (fig. 4). Due to the obligatory constant access to water in the case of pig transport lasting more than 8 hours, no watering break is required.

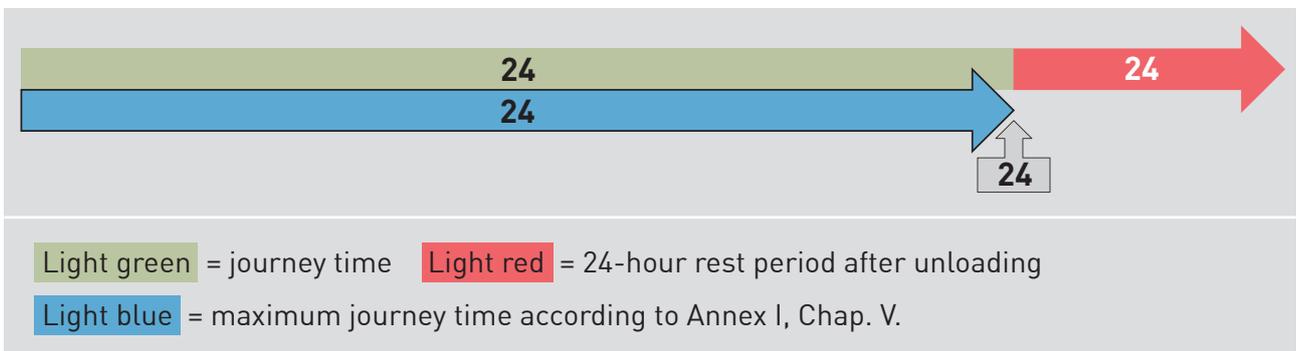


Fig. 4: Journey times for pigs in accordance with Reg (EC) 1/2005. All figures are times in hours.

Domestic Equidae may be transported for a maximum period of 24 hours. During this time the animals must be watered every 8 hours and, if necessary, fed. The duration of watering and (if necessary also) feeding breaks in the transport of Equidae is not specified (fig. 5).



Fig. 5: Journey times for domestic Equidae in accordance with Reg (EC) 1/2005.

After a journey time of 9 hours, **unweaned calves, lambs, kids and foals** which are still on a milk diet and **unweaned piglets** must be given an adequate break of at least 1 hour, in particular so that they can be watered and, if necessary, fed. After this break the journey may continue for a further 9 hours (fig. 6).

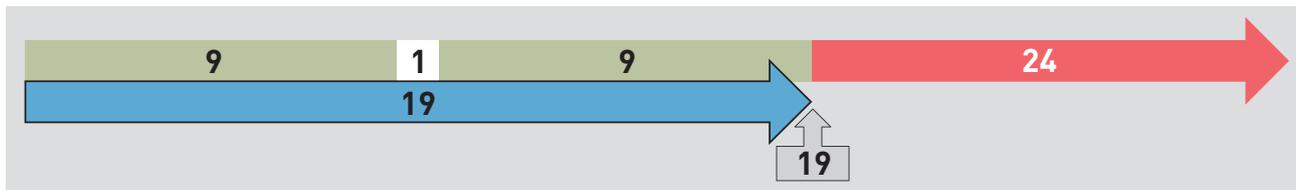


Fig. 6: Journey times for unweaned calves, lambs, kids and foals (key as in fig. 4, the break period given is a minimum time).

So long as they are weaned, **domestic cattle, sheep, goats and pigs** must be given an adequate break of at least 1 hour after a journey time of 14 hours, in particular so that they can be watered and, if necessary, fed. After this break the journey may continue for a further 14 hours (fig. 7).

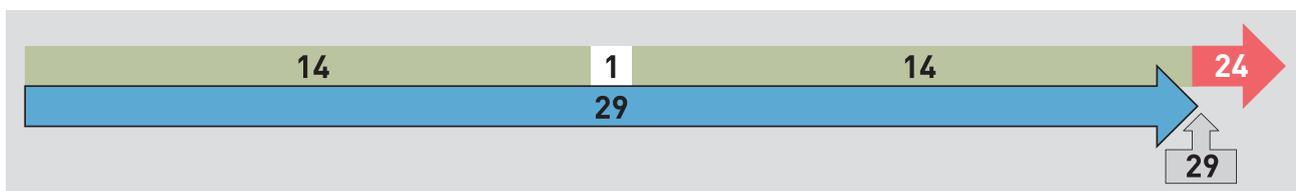


Fig. 7: Journey times for (weaned) domestic cattle, sheep and goats (key as in fig. 4, the break period given is a minimum time).

For **unweaned calves, lambs, kids and foals** and for (weaned) **domestic cattle, sheep and goats** there are no specified maximum journey times, especially as the 1-hour break between journey blocks can be extended according to need. This means that the total journey time may be longer than 19 or 29 hours.

3.2. Transport Arrangements

Art. 5 paragraph 4 regulates the use of the journey log in long journeys with domestic Equidae (other than registered Equidae), cattle, sheep, goats and pigs between member states as well as from and to third countries.

In Section 1 of the journey log (= "Planning") the following entries, amongst others, must be made by the organiser:

- Place of departure with date and time of planned loading
- Place of destination with date and time of planned unloading
- Total expected journey duration in hours and days
- Names of places where the animals are to be rested or transferred with date and time of planned arrival and planned time taken in hours.

The organiser or livestock keeper must enter the actual time (date and time) of loading at the place of departure in Section 2 of the journey log (= "Place of Departure"), amongst other things.

The remaining parts of the journey log are concerned with checks at the place of destination (Section 3), the actual route taken (Section 4) and the entry and communication of anomalies (Section 5).

3.3. Monitoring Obligations of the Competent Authority

3.3.1. General

At the place of departure of domestic Equidae, cattle, sheep, goats and pigs before long journeys between member states and from⁶ and to third countries, Art. 14 requires the competent authority to check whether the journey log submitted by the organiser contains realistic information and whether this information leads to the conclusion that the journey complies with the provisions of this Regulation.

The authority's representative stamps the journey log if satisfied with the results of this check and if the other documents (transporter authorisations, certificates of approval for means of transport, certificates of competence of drivers and attendants) are present and valid. There is no need to stamp the journey log if a navigation system is in use.

In addition, in accordance with Art. 6 (5), the certificate of competence of the drivers and attendants must be submitted to the competent authority at the time when the animals are transported. While the latter provision speaks for itself, in several regards Art. 14 essentially gives rise to two questions with which the authority's representative and the official veterinarian find themselves confronted when carrying out the journey log check. First of all, the question of the effect of loading and unloading activities with regard to the time limitations in forwarding animals, and secondly the question of the parameters to be considered in the plausibility check.

3.3.2 Consideration of Loading and Unloading Times

In considering the first question, one is unavoidably struck by the judgement of the European Court of 23rd November 2006, case C-300/05 ([Hamburg-Jonas main customs office] curia.europa.eu). In this preliminary ruling, the Court approached the Federal Fiscal Court (Germany) and established – against the background of the Regulations then in force (Directive 91/628/EEC1) – that the time taken to load and unload should be included in the travel time.

Whilst this at first provided clarity for all concerned, European Union legislators reopened the discussion with Reg (EC) 1/2005 because it set the term travel (Art. 4 (w)) against the term journey (Art. 4 (w)). Whilst the former term includes loading and unloading, the latter describes the entire transportation process from the place of departure to the place of destination and thus only a part of all that is involved in the transportation (DÖRFLINGER, 2007).

If we take the Union legislators at their word, then linking Annex I, Chapter V to the term 'journey' can be understood in no other way than that, in a deviation from the legal position thus far, loading and unloading times should not be considered in the assessment. However, as with numerous items of

⁶ The duty also imposed on third country authorities (!) from this wording seems in this context to be problematic with regard to international law, especially as the Union evidently has no authority to regulate the activities of, for example, Russian authorities. This duty can therefore – according to international law – only become binding if the third country concerned undertakes to comply (for example in an agreement).

Union legislation, there is a stronger argument for not adhering too strictly to the letter of the Regulation, which is flawed in many respects. The reasoning for the finding quoted provides an approach to the solution: “Since the directive contains no restriction on the time taken for loading and unloading the animals as such, it follows that, if point 48(4)(d) of the Annex to Directive 91/628 were interpreted as meaning that that time is not included in travel, the duration of those loading and unloading operations would not be taken into consideration in any way, which would render that provision ineffective.”

Point 48 (4)(d) of the Annex to Directive 91/628/EEC contains provisions regarding feeding and watering intervals as well as journey time and rest periods for (weaned) domestic cattle, sheep and goats. It was incorporated into Annex I, Chapter V without changes.

Keeping the unchanged ratio legis in mind, it seems that in reading the judgement quoted, the time constraints for feeding and watering as well as the journey time and rest periods are to be calculated from the loading of the first animal and not from the departure of the transport vehicle. The transport of the animals therefore begins with the loading of the first animal and ends with the unloading of the last animal (www.bmg.gv.at, 2010; www.bmelv.de, 2007).

3.3.3 Plausibility Check

Based on the considerations above, it is necessary to clarify the plausibility check required by the authority. The term “realistic information” used includes two overlapping aspects: what is technically possible on the one hand and what is legally permissible on the other. Therefore information can only be considered to be realistic if the arrangements actually appear achievable (on the basis of technical limits and taking experience into account) and do not conflict with the legal conditions.

The time to be taken for **loading and unloading** must first of all be considered in the assessment. Taking into account the space allowances set out in Annex I, Chapter VII, the following approximate numbers of animals are usually loaded into heavy goods vehicles, trailers or semi-trailers; 20 horses, 35 cattle, 200 pigs, 400 sheep, 600 lambs or kids.

The primary author was present at the regular loading of cattle at the auction hall in St. Veit an der Glan and at the unloading and reloading of various species of animals at the emergency centre of the Austrian province of Carinthia in Lind ob Velden and anticipates the following loading times (Table 1):

Loading and unloading times	
20 horses	½ – 1 hour
35 cattle	+/- 1 hour
200 pigs / 400 sheep	+/- 1 ½ hours
600 lambs / 600 kids	1 ½ – 2 hours

Table 1: Time required for loading and unloading.

The numerous factors involved, such as for example the number of animals, group size, herd composition, tolerance, ease of handling, ground and ramp characteristics, type and amount of litter, qualifications and experience of the attendant and many more factors besides may considerably extend or shorten the stated times.

To simplify the representation and to make it easier to understand, in the following a duration of 1 hour has been assumed in each case for loading and unloading.

A further pivotal factor is the **possible average speed**. In all the practical experience of the primary author and veterinary and police colleagues, an average speed in long-distance transport of less than 70 km/h must be anticipated – even on motorways. The maximum permitted speed on motorways is 80 km/h, on federal and state roads this is 70 km/h. The vehicles are usually restricted to a maximum speed of 90 km/h. At the same time the imponderabilities of the road, in particular on lower category roads (country roads), and the traffic situation rarely permit a speed higher than 70 km/h.

The following calculations were based on a realistic average speed of 65 km/h and a second and unrealistically high, but “industry-friendly” average speed of 70 km/h.

The aforementioned constraints derived from Reg (EC) 1/2005 and 561/2006 must also be considered in addition to these speeds. The following possibilities and incompatibilities may be concluded from these factors:

Long-distance single driver transport

It is possible to move weaned **domestic Equidae, cattle, sheep, goats** and **pigs** in long-distance transport. The animals’ entire journey process including loading and unloading will however be limited to approximately 13 ½ hours, whereby driving may take place for only a maximum of 10 hours (fig. 8).

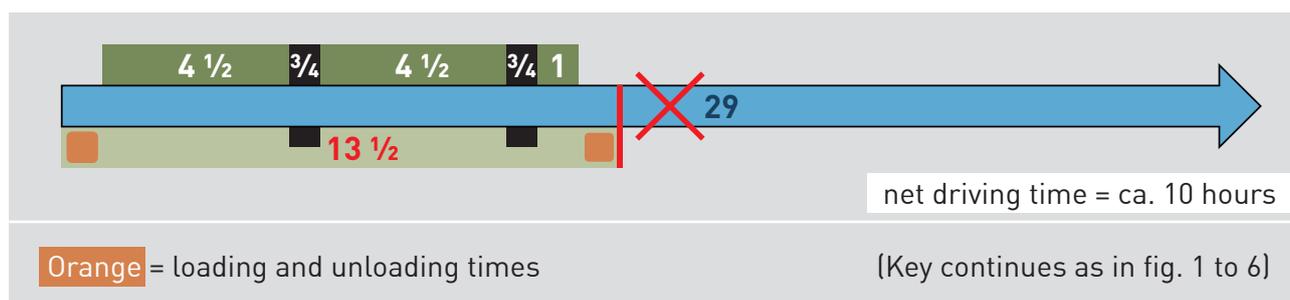


Fig. 8: Fastest possible single driver journey process for (weaned) domestic cattle, sheep and goats as well as domestic Equidae and pigs.

The long-distance transport of **unweaned calves, lambs, kids, foals** and **piglets** is equally possible. The actual travel time however is limited to only approximately 10 hours – even where the driver break and watering break for the animals are coordinated to maximise efficiency – whereby the entire journey process for the animals, including loading and unloading, may take up to 14 ½ hours (fig. 9 to 11). A significant factor here is that the driver break (break in journey of 45 min) serves only to give the driver a rest and may not be taken up with other work such as watering the animals.

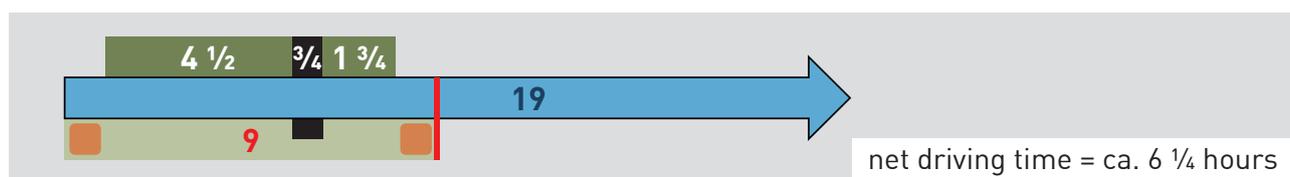


Fig. 9: Possible journey process for unweaned calves, lambs, kids, foals and piglets in single driver operation. (Key as in fig. 1 to 6)

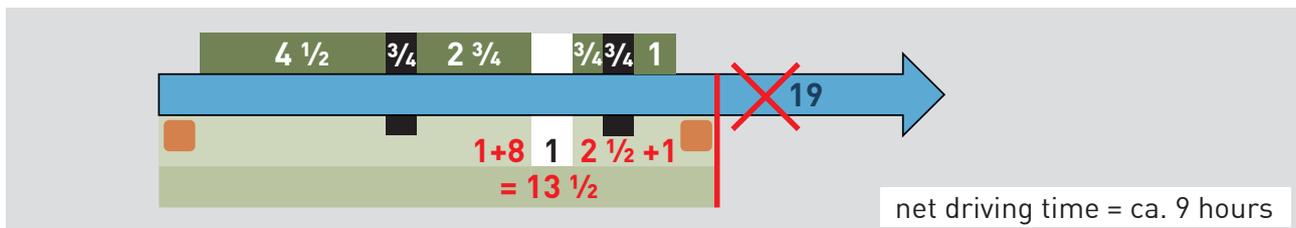


Fig. 10: Possible journey process for unweaned calves, lambs, kids, foals and piglets with watering break in single driver operation. (Key as in fig. 1 to 6)

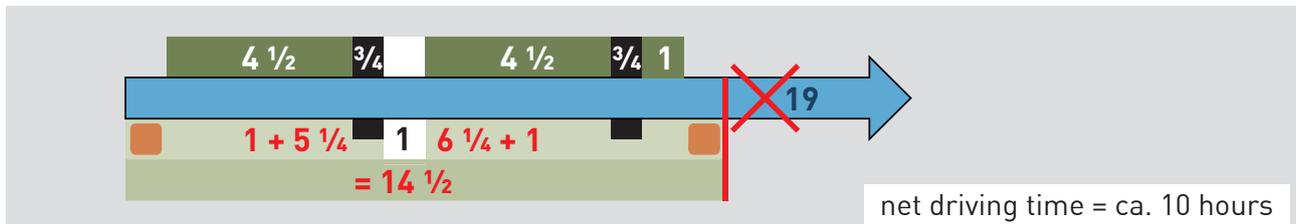


Fig. 11: Possible journey process for unweaned calves, lambs, kids, foals and piglets with watering break and longest possible journey in single driver operation. (Key as in fig. 1 to 6)

Long-distance 2-driver transport

The long-distance transportation of **unweaned calves, lambs, kids, foals and piglets** appears to be easily possible with two drivers with regard to travel times. Pure travel time is approximately 16 hours, the journey process takes approximately 19 hours (fig. 12). The drivers' driving times can be altered as long as neither driver exceeds 4 1/2 hours of uninterrupted driving time.

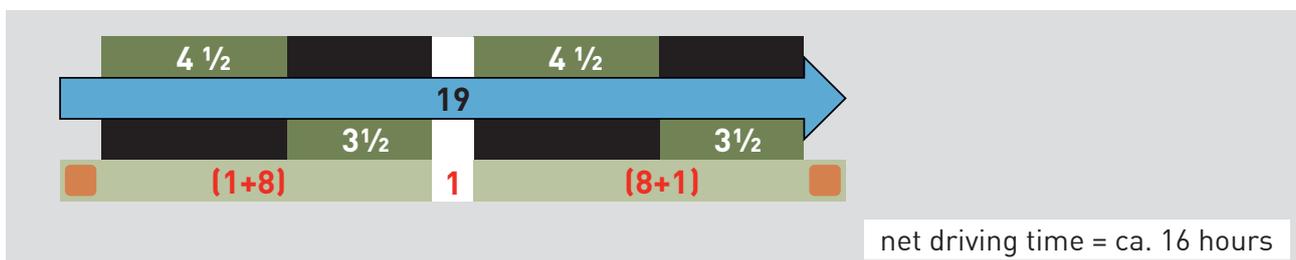


Fig. 12: Possible journey process for unweaned calves, lambs, kids, foals and piglets in 2-driver operation. (Key as in fig. 1 to 6)

When transporting animals other than unweaned calves, lambs, kids and foals over long distances it is not possible to exploit the maximum permissible journey times under Reg (EC) 1/2005 with 2-driver operation.

In addition, it must absolutely be taken into account that at least the driver who finishes his driving time last may participate in only one of the two processes – loading or unloading – or that the combined time for loading and unloading does not exceed one hour since otherwise it is not possible to complete the daily rest period of 9 hours within the complete calculation period of 30 hours.

In the transport of **pigs**, the only way to avoid breaking the law in 2-driver operation is a journey of 22 hours. By exploiting the possibility of extending daily driving times to 10 hours twice a week for both drivers it is possible to drive for a total of 20 hours (fig. 13).

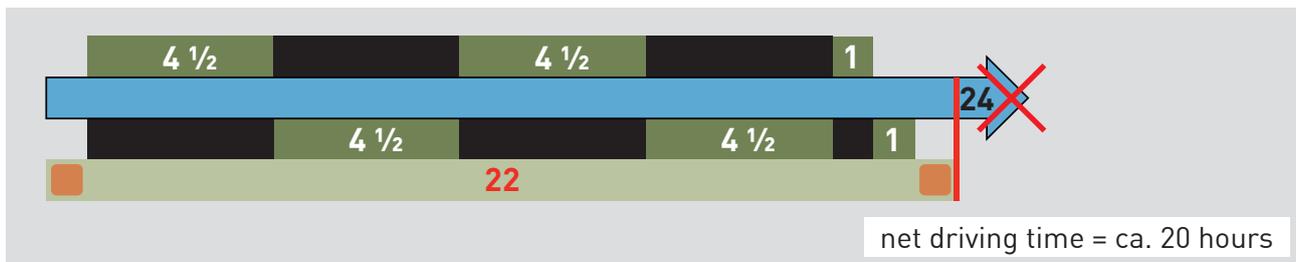


Fig. 13: Journey process for domestic pigs in 2-driver operation. (Key as in fig. 1 to 6)

In the long-distance transport of **Equidae** the total time is similar; the net driving time however is shortened to approximately 18 hours by the (unregulated) length of the two watering breaks (fig. 14).



Fig. 14: Journey process for domestic Equidae in 2-driver operation. (Key as in fig. 1 to 6)

The duration of these two watering breaks for the Equidae, which must each take place at the latest after 8 hours, could be considerably shortened – to approximately 15 minutes – through the installation and use of watering systems which comply with the requirements of Annex I, Chapter VI, 2.3. If in fact automatic water drinkers connected to the water supply tank were permanently installed in the individual boxes (fig. 15), then all the animals being transported could drink at the same time once the water flow has been turned on and could take on the required volume of water within approximately one quarter of an hour, whereupon the plumbing system could quickly be emptied and the journey continued (fig. 16).

This is not currently the case. At the moment, according to the experience of the primary author (RABITSCH, 2008), and contrary to the text of the Regulation, in the transport of horses for slaughter or otherwise hook-on plastic watering bags are used in insufficient number in each vehicle (fig. 17); watering is thus essentially similar in process to the lengthy watering of an individual animal.

Taking in water in this way, which is often insufficient, can lead to considerable physical harm to the horses (SCAHAW, 2002).

The primary author wishes to point out here the inadequate fittings in a significant proportion of long distance transport vehicles (in particular), using unsuitable watering systems which make it difficult if not impossible for the animals to take in sufficient water. Personal experiences (RABITSCH, 2002; RABITSCH, 2003; RABITSCH, 2005a; RABITSCH, 2005b; RABITSCH, 2010; RABITSCH, 2011) and numerous inspection reports by the European Commission Food and Veterinary Office⁷ concerning officially authorised and nevertheless unsuitable means of transport indicate poor compliance by the responsible authorities (e.g. FVO, 2009a; FVO, 2009f; FVO, 2010a; FVO, 2010b; FVO, 2010d; FVO, 2010f; FVO, 2010g; FVO, 2011a; FVO, 2011b; FVO, 2011c).

⁷ http://ec.europa.eu/food/fvo/index_en.cfm



Fig. 15: Regulation compliant [Reg (EC) 1/2005], integral trough with direct connection to the water tank in the transport of horses in individual stalls. The watering trough shown here can also be used for storing feed outside of watering times.

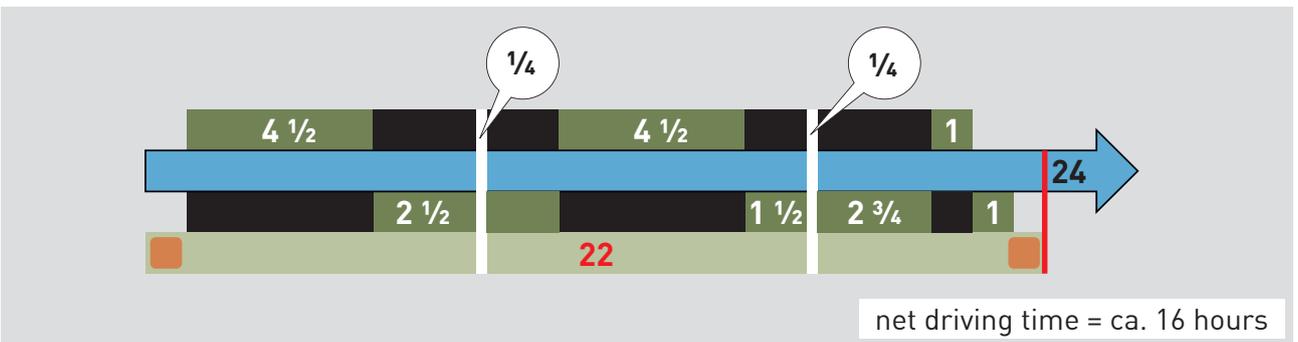


Fig. 16: Journey process for domestic Equidae when using regulation compliant watering systems in 2-driver operation. (Key as in fig. 1 to 6).



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Fig. 17: These frequently-used hook-on watering troughs for horses are unsuitable for quickly taking in the required volume of drinking water (30 to 60 litres per adult horse within a 24 hour period) and when used as the sole water container are in breach of the Regulation [Reg (EC) 1/2005].

The maximum possible long-distance transportation of **weaned domestic cattle, sheep and goats** with 2 drivers is 22 ½ hours. The net travel time here is a maximum of 19 ½ hours (fig. 18).

The sum of the driving times and breaks and feeding and watering the animals in the transport of livestock in this category is 20 ½ hours, so that by the time the prescribed daily rest period of 9 hours begins only half an hour remains. This makes it impossible for the drivers to participate in loading and unloading processes; the loading and unloading of the animals must be carried out by other workers.

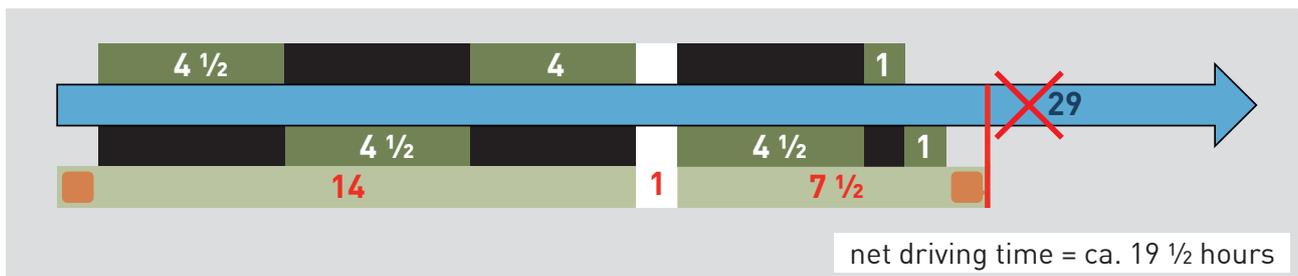


Fig. 18: Journey process for (weaned) domestic cattle, sheep and goats in 2-driver operation. (Key as in fig. 1 to 6)

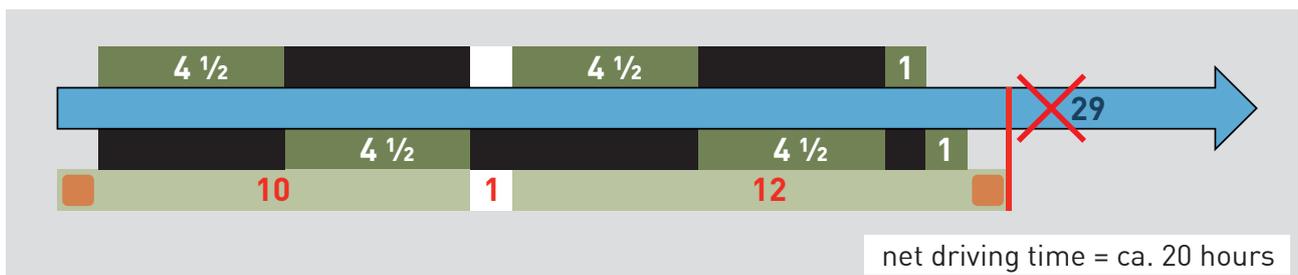


Fig. 19: Journey process for (weaned) domestic cattle, sheep and goats in 2-driver operation with an early watering break. (Key as in fig. 1 to 6)

To summarise, the journey process and net driving times in long-distance transport can be shown as follows (Table 2):

	Reg (EC) 1/2005	taking into account Reg (EC) 561/2006			
		(maximum values)			
	Journey	Journey Process	Net Driving Time	Distances	
				at 65 km/h	at 70 km/h
	(hours)	(hours)	(hours)	(kilometres)	
1-driver operation					
Pigs	24	13.5	10	650	700
Equidae	24	13.5	10	650	700
	(inc. 2 watering breaks)				
unweaned calves, lambs, kids and foals	9+≥1+9	14.5	10	650	700
(weaned)					
cattle, sheep and goats	14+≥1+14	13.5	10	650	700
2-driver operation					
Pigs	24	22	20	1300	1400
Equidae	24	22	19.5	1267	1365
	(inc. 2 watering breaks)				
unweaned calves, lambs, kids and foals	9+≥1+9	19	16	1040	1120
(weaned)					
cattle, sheep and goats	14+≥1+14	23	20	1300	1400
3-driver operation					
Pigs	24	24	22	1430	1540
Equidae	24	24	21.5	1397	1505
	(inc. 2 watering breaks)				
unweaned calves, lambs, kids and foals	9+≥1+9	19	16	1040	1120
(weaned)					
cattle, sheep and goats	14+≥1+14	29	25.25	1641	1767
In the case of calves, lambs kids and foals and domestic cattle, sheep and goats it is assumed here that the break between the 2 journey sections actually lasts 1 hour and is not extended.					

Table 2: Duration of the journey (maximum values), net driving times (maximum values) and possible achievable distances (maximum values) depending on the animal category and number of drivers.

When transporting unweaned calves, lambs, kids and foals only, the maximum journey duration for long-distance transport is shortened by the time required for loading and unloading; the two journey blocks are reduced here from a maximum of 2 times 9 to approximately 2 times 8 hours.

For all other animals referred to here, it is simply not possible to transport the animals in the maximum journey times set out in the Regulation without contravening at least one of the two Regulations.

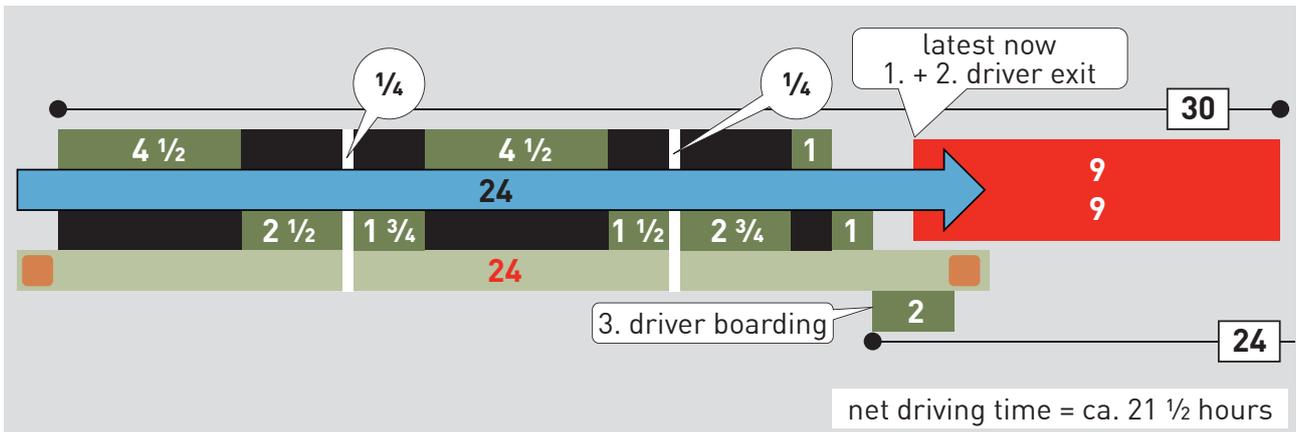


Fig. 21: Journey process for domestic Equidae in vehicles equipped with regulation-compliant watering systems in 3-driver operation. (Key as in fig. 1 to 6)

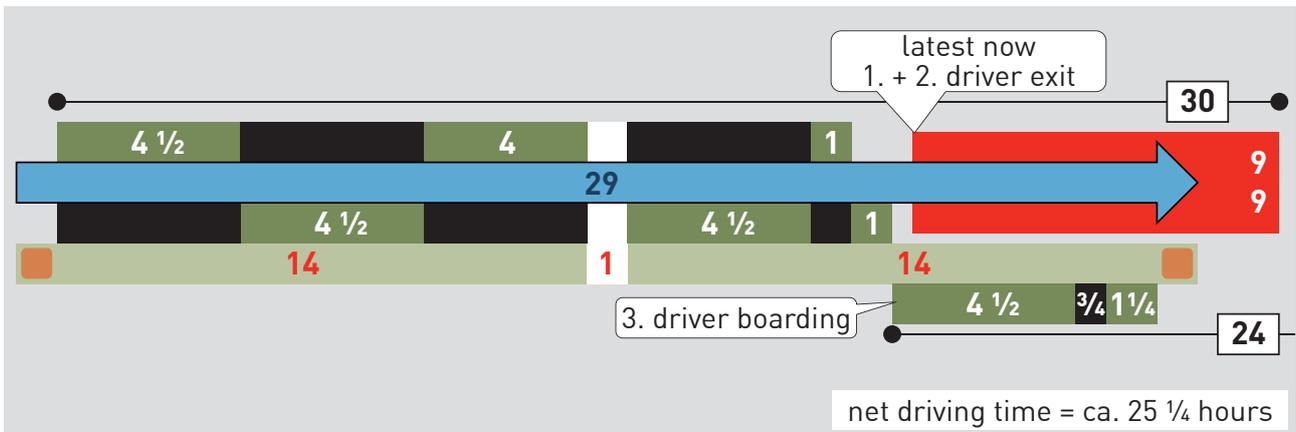


Fig. 22: Journey process for (weaned) domestic cattle, sheep and goats in 3-driver operation. (Key as in fig. 1 to 6)

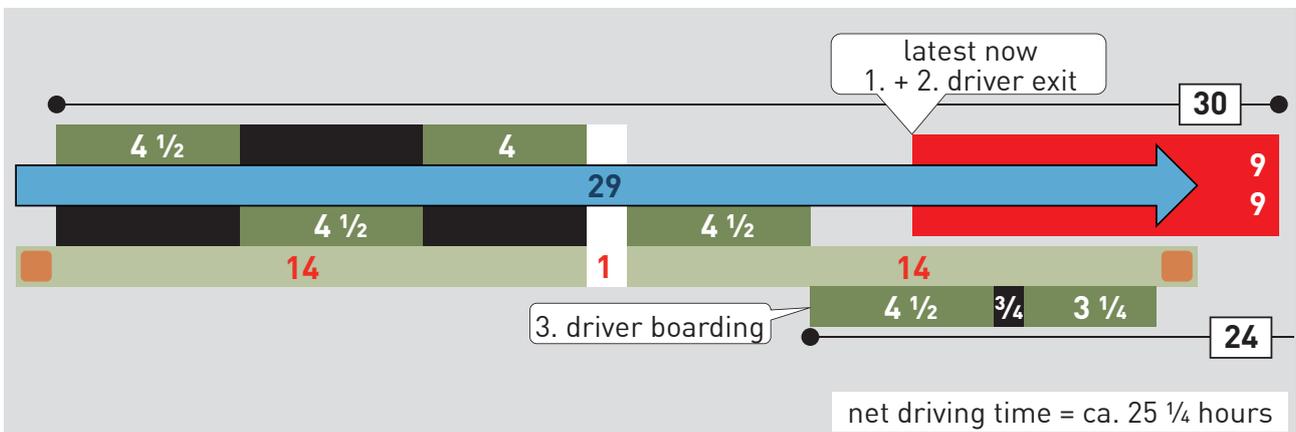


Fig. 23: Journey process for (weaned) domestic cattle, sheep and goats in 3-driver operation. (Key as in fig. 1 to 6)

Two drivers are sufficient for transporting unweaned calves, lambs, kids, foals and piglets in compliance with the regulations in 2-driver operation.

Transport processes in which the attendant is not also a driver

If we now theoretically consider to what extent an independent attendant undertaking no driving duties would enable a live animal transport to be carried out over a longer period of time then we see that – irrespective of employment law and pecuniary implications – this would be of little advantage, particularly as the gain in possible additional driving time is extremely modest.

In single driver operation with an additional attendant there would be changes only in the transport of young animals: in the case of unweaned calves, lambs, kids, piglets and foals in the best possible situation the journey process would be reduced by three quarters of an hour to 13 ³/₄ hours to the benefit of the animals, the maximum possible net driving time would however remain unchanged at 10 hours (fig. 24).

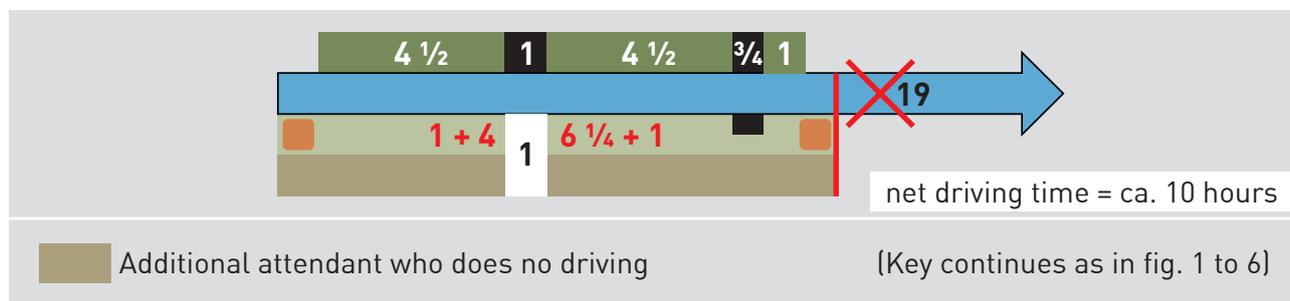


Fig. 24 (see also fig. 11): Possible journey process for unweaned calves, lambs, kids, foals and piglets with watering break and longest possible journey in single driver operation with additional non-driving attendant.

Only in the transport of domestic Equidae and only if journey breaks are optimised by using regulation-compliant watering systems, in 2-driver operation an additional non-driving attendant would provide an additional half hour of driving time whereby the total journey process would also be increased by half an hour (fig. 25).

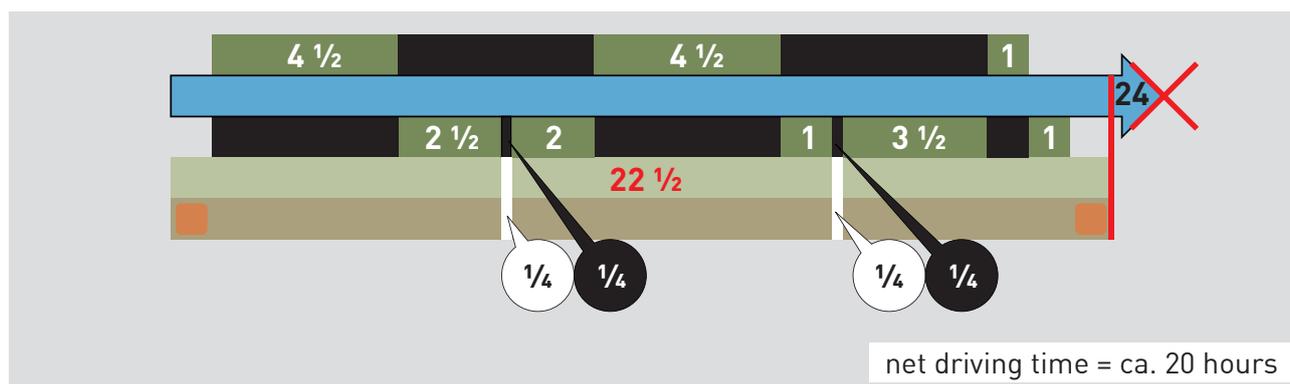


Fig. 25 (see also fig. 16): Possible journey process for domestic Equidae with watering breaks 2-driver operation with additional non-driving attendant. (Key as in fig. 24)

4. Transport Planning and Responsibility

4.1. Aspects of Planning

The following considerations and parameters must be taken into account in the planning of transport (not complete):

- Species
- Number of animals
- Category of animals to be transported
- Health condition of animals to be transported (veterinary certificates)
- Suitability of animals for transport
- Size (height) of animals
- Group size
- Type, suitability and approval of means of transport

- Suitability, number, type and distribution of watering equipment
- Type, suitability and amount of litter
- Type, suitability and amount of feed
- Loading and unloading times
- Route selection and character (road categories)
- Route distances
- Average possible speed on individual journey legs
- Coordination of the various journey legs
- Ambient temperatures and climate variations to be expected
- Quality and evaluation of the route-specific emergency plan
- Qualification of driver and attendant (evidence of competence) and
- Number of drivers and attendants as well as
- The chosen checkpoint (= control post⁸) (or rest locations in third countries) with proof of agreement and acceptance of unloading at that place (if necessary)
- The timetables of connecting ferries (ro-ro) (where appropriate)
- Departure times for any connecting transport by ship (where appropriate).

4.2 Responsibility for Route Planning

4.2.1 General

Responsibility for making the arrangements for a transport journey rests in the first instance with the **organiser** as in Art. 2 (q) Reg (EC) 1/2005⁹. Irrespective of the intrinsic logic, this is elucidated by Art. 14 1. (b) according to which the organiser can, where necessary, be obliged by the authority to make changes to the arrangements.

The Regulation quoted states that “the competent authority of the place of departure shall, where the outcome of the checks [...] is not satisfactory, require the organiser to change the arrangements for the intended long journey so that it complies with this Regulation,” thus clarifying that the authority is obliged to oversee the arrangements. However, to date it must be doubted whether the authorities are in fact fulfilling this duty of oversight in any meaningful way. The Food and Veterinary Office, FVO, (<http://ec.europa.eu/food/fvo>) has found many serious failings on the part of the authorities in their checking of the journey logs submitted to the official veterinarians (FVO, 2008; FVO, 2009a; FVO, 2009b; FVO, 2009c; FVO, 2009d; FVO, 2009e; FVO, 2009f; FVO, 2009g; FVO, 2010c; FVO, 2010d; FVO, 2010e; FVO, 2010f). In particular they criticised the frequent absence of any check of the journey duration and they pointed out that the “loading veterinarian” accepted planned journey times which were unrealistically short as well as speeds which were unrealistically high.

It is striking that in none of the (retrospective) check reports is any reference made to the social legislation (in particular Reg (EC) 561/2006) or to compliance with the regulations contained within it. This suggests the conclusion that the Food and Veterinary Office also merely checked that the transports were compatible with the provisions of Reg (EC) 1/2005 but did not also check whether the transport should have been permitted to go ahead in the light of the provisions of the social legislation, i.e. with the planned driver manning levels.

⁸ The use of checkpoints is limited ex lege to species susceptible to foot and mouth disease (cloven-hoofed animals)

⁹ It should also be noted that this definition fails completely as in all cases in which the transport is carried out by just *one* transporter, strictly speaking there would be no organiser who *must* sign Section 1 of the journey log. Here it must be assumed that the (one single) transporter is responsible for signing and that he thus becomes the organiser as in Art. 2 (q) (iii); in the regulation this is clearly not mentioned.

Certainly it is the responsibility of the Food and Veterinary Office primarily to check compliance with Reg (EC) 1/2005, whereas checking compliance with the social legislation in connection with animal transport is not part of the FVO's original area of responsibility. At the same time it is worth asking whether the applicable social legislation must indeed be taken into account in the evaluation.

One answer may be drawn from the central provision of Art. 14 1. (b). According to this provision, the competent authority at the place of departure may only require the organiser to change the arrangements for the planned journey if "the outcome of the checks provided for in point (a)" of Art. 14 1. is not satisfactory, i.e. only if

- The transporter does not have authorisation
- There are no valid certificates of approval for means of transport
- The drivers and attendants have no valid certificates of competence and/or
- If the journey log submitted by the organiser contains no realistic information and indicates that the journey does not comply with this Regulation.

The passage quoted in the last point needs further clarification. The authority is required to check two things: firstly, they must check whether the journey log submitted by the organiser contains realistic information; secondly, they must check whether the journey log submitted by the organiser indicates that the journey complies with this Regulation.

Checking the provision of realistic details consequently serves not only to elicit information with regard to compliance with the Regulation in question but is more comprehensive than that. If this were not the case the provision would read, "The authority must check by means of appropriate controls whether the journey log submitted by the organiser contains realistic information which indicates that the journey complies with this Regulation."

This is not the case.

From a legal perspective even in the German language version of the Regulation the two criteria can be seen. It says: "Die Behörde am Versandort [...] überprüft durch geeignete Kontrollen, ob [...] das vom Organisator vorgelegte Fahrtenbuch wirklichkeitsnahe Angaben enthält und darauf schließen lässt, dass die Beförderung den Vorschriften dieser Verordnung entspricht."

The authority is not restricted with regard to the selection of the means by which they gain the information, this is made clear by the phrasing "by appropriate checks".

Coming back to the second check criterion of Art. 14 1. (a) (ii) there is no doubt that the journey only complies with this Regulation [(EC) 1/2005] if transport journeys are carried out with disregard for the provisions of Reg (EC) 561/2006, if for example only two drivers transport pigs for slaughter over a period of 24 hours with no breaks.

Close examination of the first, considerably more rigorous and comprehensive check criterion of Art. 14 1. (a) (ii) shows that it may be an European reality that in contravention of Reg (EC) 561/2006, for example, only two drivers transport pigs for slaughter over a period of 24 hours with no breaks. However, this may not be regarded as realistic as per this Regulation (as set out above), otherwise one would allege that the legislators are essentially assuming that the Regulations which they have passed will not be observed anyway. If we assume this, however, then **arrangements which are necessarily and obviously based on a breach of the Regulations may neither be permitted**

not tolerated by the authorities. Thus, for example, information contained in the journey log concerning 2-driver multi-manning on a 24-hour journey is not realistic when seen against the background of Reg (EC) 561/2006 quoted above.

This could clearly be countered – at least at first glance – by saying that it is not the task of the competent authority of the place of loading, i.e. the veterinary authority, to check observation of the drivers' driving and rest times in the case of a long journey (see also CASSIDY, 2011, for a lively discussion). Should the veterinary authority perhaps be obliged when carrying out checks to work on behalf of agencies responsible for overseeing the roads or the Labour Inspectorate for Transport (<http://www.bmvit.gv.at/verkehr/vai/index.html>) for example? It is not only that such an approach would be impracticable and unreasonable, it would not be apparent what these agencies should be checking. In contrast to Reg (EC) 1/2005, social and road traffic Regulations do not foresee ex-ante checks in relation to transport planning. Here is the central difference between this and the EU transport Regulations in which an ex-post check is not sufficient but – at least insofar as long journeys are concerned – foresee a specific authorisation or accreditation process. The criteria for this are found only in Art. 14 (1), although the interests (especially animal welfare interests) pursued by Reg (EC) 1/2005 and aspects from other regimes by virtue of express legal requirements also indirectly become criteria.

Based on this we can turn in conclusion to the following questions arising in practice:

What is the significance of official approval in the case of a transport plan which specifically breaches the aforementioned social provisions?

Does the authorising person lay himself open to prosecution if he approves transport journeys which can only be carried out in breach of the law (a law which does not fall under his area of responsibility)?

Turning to the first question, one can firstly only conclude from approval as in Art. 14 1. (c) of Reg (EC) 1/2005 that the transport arrangements agree with point (a) of this provision. Accordingly, however, the significance of the aforementioned declaration only extends to the field of animal transport law and outside of this has no effect as justification or excuse. It can lead neither to the conclusion that authority has been given not to have to observe the Regulation driving and rest times nor to the conclusion that, for example, permissible maximum speeds may be exceeded. The more difficult question to answer on the other hand is what the organiser stands to gain from such an approval from an animal transport law point of view. It seems for one thing that it must be assumed here that the information in the journey log will agree without exception with the timing provisions in Reg (EC) 1/2005. For another the Regulation makes it clear that all non-compliant arrangements or official approvals (excepting where this is expressly foreseen, e.g. Art. 23 [3]) cannot make any changes (in the way of exceptional approval) to the timing-related transport parameters. Inaccurate estimates in planning are attributed to the organiser, especially as the provisions of Annex I, Chapter V remain applicable even after taking into account Art. 14 1¹⁰. The approval therefore has no impact as justification or excuse in this respect. An infringement under § 21. (1) 10. TTG [*Tiertransportgesetz/Animal Transport Act*] 2007,¹¹ is the only thing with which the organiser cannot be charged.

¹⁰ See § 21. (1) 21. TTG 2007.

¹¹ The provision reads: Anyone who [...] as an organiser or transporter in contravention of Art. 5 (4) or as a keeper in contravention of Art. 8 (2) sentence 2 and in each case in connection with Annex II of Regulation (EC) No.1/2005 does not comply with the requirements concerning the journey log relevant to him in each case [...] is committing a regulatory offence and shall be penalised by being made to pay a fine of up to 4,360 euros where the offence or non-compliance is deliberate, and in the case of negligence a fine of up to 1,450 euros.

If we bear this in mind when considering the second question then we must differentiate: first of all it is true that the approval itself, granted where the legally required conditions have not been met and therefore granted unlawfully – presuming the necessary deliberate intention¹² – is grounds in Austria for the charge of misuse of power as in § 302 StGB [*Strafgesetzbuch/Criminal Law Code*]. In addition, the (unlawful) approval could be considered as an act contributing to offences against animal transport law by the organiser, transporter or driver. An administrative penal law decision based on § 7 of the VStG [*Verwaltungsstrafgesetz/Administrative Penal Act*],¹³ compared with § 21. (1) 21. TTG [*Tiertransportgesetz/Animal Transport Act*] 2007¹⁴ would be considered in the same way as one based on § 222 (2) StGB [*Strafgesetzbuch/Criminal Law Code*]¹⁵ (in this instance as the direct perpetrator).

5. Summary and Conclusion

Reg (EC) 561/2006 (on the harmonisation of certain social provisions for road traffic) obliges the drivers of live animal transport vehicles to observe driving times and rest periods. The long-distance transport of animals is only possible to a limited extent if these social provisions are complied with. Thus the still common transport of cattle right across Europe by two drivers over a period of 29 hours in most cases must now be reduced to a maximum of 20 hours' net driving time. Far more than the Animal Transport Regulation (EC) 1/2005, the limiting factor in the transport of animals is the driving time and rest period regulation (EC) 561/2006. Knowledge of the drivers' maximum possible driving times must influence the plausibility check carried out by official veterinarians before loading the animals and if necessary must result in a requirement to improve as in Art. 14 1. (b) Reg (EC) 1/2005.

Legal norms

- 1960 StVO = Straßenverkehrsordnung [Road Traffic Ordinance] 1960, BGBl. No. 159/1960, last amended by BGBl. I No. 59/2011, Austria.
- 1967 KFG = Kraftfahrgesetz [Road Transport Act] 1967, BGBl. No. 267/1967, last amended by BGBl. I No. 117/2005, Austria.
- 1974 StGB = Strafgesetzbuch [Criminal Law Code], BGBl. 60/1974 last amended by BGBl. I No. 130/2011, Austria.
- 1975 Europäisches Übereinkommen über die Arbeit des im internationalen Straßenverkehr beschäftigten Fahrpersonals [European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport] 1970 (AETR), BGBl. No. 518/1975.

¹² The knowing misuse of power required by Austrian law is indicated in particular by lengthy service in a particular position (e.g. OGH [Austrian High Court] 14.12.1999, 14 Os 149/99).

¹³ The provision reads: § 7. Anyone who deliberately causes another person to commit a regulatory offence or who deliberately makes it easier for another person to commit a regulatory offence is subject to the penalty set out for this offence and this also applies if the direct perpetrator can himself not be penalised.

¹⁴ The provision reads: Anyone who [...] as a transporter does not comply with the rest periods or the regulations on journey times as in Annex I, Chapter V of Regulation (EC) No. 1/2005 or, [...] or who commits a regulatory offence shall be penalised by being made to pay a fine of up to 4,360 euros where the offence or non-compliance is deliberate, and in the case of negligence a fine of up to 1,450 euros.

¹⁵ The provision reads: "Anyone who, even if through negligence, in connection with the transport of several animals subjects said animals to suffering over a lengthy period by failing to provide food or water or in any other way shall be similarly penalised [note: by imprisonment of up to one year or by a fine of up to 360 days' pay]." This primarily addresses those inflicting suffering by exceeding transport times (i.e. in the sense of this law "in any other way").

1985 VERORDNUNG (EWG) Nr. 3820/85 DES RATES vom 20. Dezember 1985 ueber die Harmonisierung bestimmter Sozialvorschriften im Strassenverkehr (ABL. L 370 vom 31. 12. 1985). [REGULATION (EEC) No. 3820/85 OF THE COUNCIL of 20 December 1985 on the harmonisation of certain social provisions in road transport (Official Journal L 370 of 31.12.1985)].

VERORDNUNG (EWG) Nr. 3821/85 DES RATES ueber das Kontrollgeraet im Strassenverkehr vom 20. Dezember 1985 (ABL. L 370 vom 31. 12. 1985). REGULATION (EEC) number 3821/85 OF THE COUNCIL concerning the control device in road transport of 20th of December 1985 (Official Journal L 370 of 31.12.1985).

1991 RICHTLINIE 91/628/EWG DES RATES vom 19. November 1991 ueber den Schutz von Tieren beim Transport sowie zur Aenderung der Richtlinien 90/425/EWG und 91/496/EWG (ABL. L 340 vom 11. 12. 1991). [COUNCIL DIRECTIVE 91/628/EEC of 19th of November 1991 on the protection of animals during transport and on amending Directives 90/425/EEC and 91/496/EEC (Official Journal L 340 of 11.12.1991)].

VStG = Verwaltungsstrafgesetz [Administrative Penal Act], BGBl. No.

1995 RICHTLINIE 95/29/EG DES RATES vom 29. Juni 1995 zur Aenderung der Richtlinie 91/628/EWG ueber den Schutz von Tieren beim Transport (ABL. L 148 vom 30. 6. 1995) [COUNCIL DIRECTIVE 95/29/EC of 29 June 1995 on amending Directive 91/628/EEC on the protection of animals during transport (Official Journal L 148 of 30.06.1995)].

1997 VERORDNUNG (EG) Nr. 1255/97 DES RATES vom 25. Juni 1997 zur Festlegung gemeinschaftlicher Kriterien fuer Aufenthaltsorte und zur Anpassung des im Anhang der Richtlinie 91/628/EWG vorgesehenen Transportplans (ABL. L 174 vom 2.7.1997)
VERORDNUNG (EG) Nr. 1255/97 DES RATES vom 25. Juni 1997 zur Festlegung gemeinschaftlicher Kriterien fuer Aufenthaltsorte und zur Anpassung des im Anhang der Richtlinie 91/628/EWG vorgesehenen Transportplans (ABL. L 174 vom 2.7.1997)

[COUNCIL REGULATION (EC) No. 1255/97 of 25 June 1997 concerning Community criteria for staging posts and amending the transport plan as set out in the Annex to Directive 91/628/EEC (Official Journal L 174 of 2.7. 1997)].

2002 RICHTLINIE 2002/15/EG DES EUROPAEISCHEN PARLAMENTS UND DES RATES vom 11. 3. 2002 zur Regelung der Arbeitszeit von Personen, die Fahrtaetigkeiten im Bereich des Strassentransports ausueben (ABL. L 80 vom 23. 3. 2002)

[DIRECTIVE 2002/15/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11th March 2002 on the organisation of the working time of persons performing mobile road transport activities (Official Journal L 80 of 23.3.2002)].

2005 VERORDNUNG (EG) Nr. 1/2005 DES RATES vom 22. Dezember 2004 ueber den Schutz von Tieren beim Transport und damit zusammenhaengenden Vorgaengen sowie zur Aenderung der Richtlinien 64/432/EWG und 93/119/EG und der Verordnung (EG) Nr. 1255/97 (ABL. L 003 vom 5. 1. 2005)

[COUNCIL REGULATION (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No. 1255/97 (Official Journal L 003 of 5.1.2005)].

2006 VERORDNUNG (EG) Nr. 561/2006 DES EUROPÄISCHEN PARLAMENTS UND DES RATES vom 15. 3. 2006 zur Harmonisierung bestimmter Sozialvorschriften im Strassenverkehr und zur Aenderung der Verordnungen (EWG) Nr. 3821/85 und (EG) Nr. 2135/98 des Rates sowie zur Aufhebung der Verordnung (EWG) Nr. 3820/85 des Rates (ABl. L 102 vom 11. 4. 2006)

[REGULATION (EC) No. 561/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No. 3821/85 and (EC) No. 2135/98 and repealing Council Regulation (EEC) No. 3820/85

Bibliography

BECK-ONLINE.BECK.DE: <http://beck-online.beck.de/default.aspx?bcid=Y-100-G-AETR>, last consulted 11.2.2012, 19:00.

BMELV.DE (2007): Bundesministerium fuer Ernaehrung, Landwirtschaft und Verbraucherschutz (Deutschland), Tierschutzbericht 2007 [Federal Ministry for Food, Agriculture and Consumer Protection (Germany), Animal Welfare Report 2007], http://www.bmelv.de/cae/servlet/contentblob/383104/publicationFile/22248/Tierschutzbericht_2007.pdf

BMG.GV.AT (2010): Bundesministerium fuer Gesundheit, Handbuch Tiertransport [Federal Ministry for Health, Animal Transport Handbook], http://bmg.gv.at/home/Schwerpunkte/Tiergesundheit/Tierschutz/Tierschutz_beim_Transport/Handbuch_Tiertransport

CASSIDY, T. (2011): personal statement.

CURIA.EUROPA.EU (2006): <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=65422&pageIndex=0&doclang=DE&mode=doc&dir=&occ=first&part=1&cid=956225>

DÖRFLINGER, M. (2007): Das oesterreichische Tiertransportgesetz [the Austrian Animal Transport Act], Edition Juridica, Manzsche Verlagsbuchhandlung (2007).

FVO (2008): DG (SANCO)/2008-8347 – final report, Spain, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2506

FVO (2009a): DG(SANCO)/ 2009-8245 – MR FINAL, France, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2318

FVO (2009b): DG(SANCO) 2009-8252 – MR FINAL, Lithuania, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2446

FVO (2009c): DG(SANCO) 2009-8255 – MR FINAL, Belgium, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2337

FVO (2009d): DG(SANCO) 2009-8256 – MR FINAL, Romania, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2341

FVO (2009e): DG(SANCO) 2009-8263 – MR FINAL, Bulgaria, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2330

FVO (2009f): DG(SANCO)/ 2009-8271 – MR FINAL, Latvia, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2236

FVO (2009g): DG(SANCO) 2009-8284 – MR FINAL, Spain, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2340

FVO (2010a): DG(SANCO) 2010-8383 – MR FINAL, Bulgaria, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2534

FVO (2010b): DG(SANCO) 2010-8384 – MR FINAL, Czech Republic, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2558

FVO (2010c): DG(SANCO) 2010-8385 – MR FINAL, Luxemburg, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2439

FVO (2010d): DG(SANCO) 2010-8387 –MR FINAL, Poland, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2498

FVO (2010e): DG(SANCO) 2010-8388 – MR FINAL, Italy, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2526

FVO (2010f): DG(SANCO) 2010-8389 – MR FINAL, Romania, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2535

FVO (2010g): DG(SANCO) 2010-8400 – MR FINAL, Netherlands, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2600

FVO (2011a): DG(SANCO) 2011-6039 – MR FINAL, Belgium, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2801

FVO (2011b): DG(SANCO) 2011-6045 – MR FINAL, Hungary, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2802

FVO (2011c): DG(SANCO) 2011-6212 – MR FINAL, Greece, http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2753

POMPLUN, S. (2007): Bundesamt fuer Gueterverkehr [Federal Office for Goods Transport] (Germany), http://www.ostwestfalen.ihk.de/uploads/media/Lenk_Ruhezeiten_561_06.pdf; last consulted 11.2.2012, 18:55.

RABITSCH, A. (2002): Controls of animal transports in Carinthia, Austria. Abstract; Proceedings World Buiatrics Congress, Hanover, Germany, 15.

RABITSCH, A. (2003): Erfahrungen bei der Kontrolle von Tiertransporten in Oesterreich [Experiences of Checks on Animal Transport in Austria]. *VetJournal* 56, 12 – 13.

RABITSCH, A. (2005a): Eine Langzeitstudie von Maengeln beim Transport von Tieren [A Long-Term Study of Failings in the Transport of Animals]. Fachhochschule Nuertingen [Nuertingen University], Germany, Proceedings 10. Internationale Fachtagung zum Thema Tierschutz [International Conference on Animal Welfare], 133 – 144.

RABITSCH, A. (2005b): Tiertransportkontrollen in Kaernten; eine Langzeit- studie von Maengeln beim Transport von Tieren [Animal Transport Checks in Carinthia; a Long-Term Study of Failings in the Transport of Animals]. Proceedings Internationaler Veterinaerkongress 2005 des Bundesverbandes der Beamteten Tieraerzte [2005 International Veterinary Congress of the [German] Federal Association of Official Veterinarians], Bad Staffelstein, Germany, 53 – 61.

RABITSCH, A. (2008): Intensitaet, Kontrolle und Probleme bei Tiertransporten in und durch Oesterreich, Proceedings Nutztierschutztagung [Intensity, Checks and Problems in Animal Transport in and through Austria, Proceedings of the Livestock Welfare Conference], HBLFA Raumberg-Gumpenstein, Gumpenstein, Austria, 63 – 67.

RABITSCH, A. (2010): Does Implementation of Transport Law Cause Route Deviations?, EFSA Stakeholder Technical Meeting Animal welfare during Transport, Parma, Italy, <http://www.efsa.europa.eu/en/events/documents/ahaw101013-ax8.pdf>

RABITSCH, A. (2011): Tiertransporte – gibt es Verbesserungsmoeglichkeiten? [Animal Transport – Are There Ways to Improve?], Abstract, Bundesverband der beamteten Tieraerzte Deutschlands [Federal Association of Official Veterinarians of Germany], 30. Internationaler Veterinaerkongress, Seminar “Tierschutz bei Tiertransporten – spezielle Probleme der Umsetzung geltenden Rechtes“ [International Veterinary Conference, Seminar “Animal Welfare in Live Animal Transport – Particular Problems in Applying the Law”, Bad Staffelstein, Germany.

RABITSCH, A. (2012a): Fahrtzeitbegrenzungen im Rahmen der Tiertransport-gesetzgebung, handouts, Seminar Tiertransporte des Bundesverband der beamteten Tieraerzte (BbT) und Tieraerztliche Vereinigung fuer Tierschutz e. V. (TVT) [Driving Time Limitations in the Context of Live Animal Transport Legislation, Handouts, Seminar on Live Animal Transport by the Federal Association of Official Veterinarians and the Veterinary Association for Animal Welfare e.V.], Fulda, Germany, <http://bbtshop.amstierarzt.de/seminarberichte/inhaltsverzeichnisse-seminarsberichte>

RABITSCH, A. (2012b): Die Lenk- und Ruhezeiten der Fahrer bei Lebend- tiertransporten; Informationsblatt (eingereicht), tieraerztliche Vereinigung fuer Tierschutz [Drivers' Driving Time and Rest Periods in Live Animal Transports; Handout (submitted), Veterinary Association for Animal Welfare, Germany.

SCAHAW (2002): Report of the Scientific Committee on Animal Health and Animal Welfare (2002), The welfare of animals during transport (details for horses, pigs, sheep and cattle), http://ec.europa.eu/food/fs/sc/scah/out71_en.pdf

THOMANN, A. (2008): Arbeitszeitregelungen fuer Lenker im Kraftverkehr [Working Time Regulations for Drivers in Road Transport]. RDB Content-Portal / RDB Rechtsdatenbank GmbH, Manz, Germany. rdb.tso.Llasok2008120006.xml.htm, last consulted 11.2.2012, 19:25.

THOMANN, A. (2010): Europaeische Arbeitszeitregelung fuer Lenker im Kraft verkehr [European Working Time Regulations for Drivers in Road Transport]. RDB Content-Portal / RDB Rechtsdatenbank GmbH, Manz, Germany. rdb.tso.Llasok20100104.xml.htm, last consulted 11.2.2012, 19:15.

TREATIES.UN.ORG: <http://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20XI/XI-B-21.en.pdf> ; last consulted 11. 2. 2012, 18:35

FVO ´s inspection reports: http://ec.europa.eu/food/fvo/ir_search_en.cfm

Consequences from the Verdict of the European Court of Justice on Rest Periods during Animal Transport



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Animal Welfare.
Worldwide.



Key words

Long-distance animal transports; resting times for truck drivers and for the animals.

Summary

The article analyses the consequences of the verdict of the European Court of Justice (Res C-469 / 14) on planning, approving and controlling long-distance animal transports.

ECJ 28 July 2016, C-469 / 14 (EU:C:2016:609)

Annex 1, Chapter V, point 1.4 (d) Regulation (EC) No. 1/2005 must be interpreted as meaning that, in the context of the transport by road of the animals belonging to the bovine species referred to first, in particular the bovine species except calves, the rest period between the journey intervals may, in principle, be longer than one hour. However, that length of time, if it exceeds one hour, must not be such that, in the specific conditions of that rest and the transport occur together, it constitutes a risk of injury or undue suffering for the transported animals.

Furthermore, the combined journey time and rest periods as provided for under point 1.4 (d) of that chapter, must not exceed 29 hours, subject to the possibility of extending those periods by two hours in the interests of the animals, in accordance with point 1.8 of that chapter and without prejudice to the application of Art. 22 of that regulation in the event of unforeseeable circumstances. Second, the periods of movement of a maximum of 14 hours may each include 1 or more stop periods. Those break periods must be in addition to the periods of movement that count towards the overall period of movement of a maximum of 14 hours to which they belong.

From the facts

In June 2011, Masterrind GmbH applied for export of six breeding cattle to Morocco and received the advance payment of the export refund by decision of the main customs office Hamburg-Jonas. The transport went by truck from the place of loading in Northeim (Germany) to the port in Sète (France), where they were loaded onto a ship for onward transport as follows:

- 16 June 2011 from 10:30 on: loading;
- at 11:30 on the same day: departure from the place of loading;
- at 19:00 on the same day: stop for a one-hour care break;
- the same day at 22:00: stop for a second 10-hour break to meet the obligation to observe driver rest periods pursuant to Regulation 561/2006;
- 17 June about 08:00: continuation of the journey;
- at 17:00 on the same day: arrival at Sète.

Since the French veterinary authorities assumed that the maximum permitted transport duration of 31 hours had been exceeded, the main customs office Hamburg-Jonas requested Masterrind GmbH to pay back the advance payment of the export refund plus a surcharge of 10%.

The GmbH [limited liability company] objected and contacted the European Commission to find out how the latter would interpret the relevant provisions of Annex 1, Chapter V of Regulation (EC) 1/2005 on journey time and rest periods. The Commission stated that it considers that the permitted journey time without unloading for bovine animals is not more than 29 hours from the

date of loading and including a one-hour rest period in the vehicle, but that this period may be extended by two hours in the interest of the animals, in particular considering the vicinity of the place of destination. The journey time must therefore by no means exceed 31 hours.¹

The main customs office Hamburg-Jonas subsequently rejected the appeal. Masterrind GmbH filed a complaint with the Finance Court (FG) Hamburg against this, in which they stated that the rest period between the two transport phases could last longer than one hour as can be deduced from the phrase “at least one hour rest” in Annex 1 Chapter V, No. 1.4 (d) of Regulation (EC) 1/2005.

The FG Hamburg then asked, *inter alia*, the following question to the ECJ:

“Is the rule set out in point 1.4. of Chapter V of Annex I to Regulation No. 1/2005 according to which, after 14 hours of travel, animals are to be given a rest period of at least 1 hour sufficient for them in particular to be given liquid and if necessary fed, after which they may be transported for a further 14 hours, to be interpreted as meaning that the periods of transport may ... be interrupted by a rest period of more than 1 hour or by several rest periods, at least one of which lasts for 1 hour?”

More precisely, it is to be clarified whether the term “at least one hour rest” actually means that the rest period between two journey times can last longer than one hour. It was irrelevant to the FG Hamburg that the transport at issue in the main proceedings was not broken down into two, but rather into three journey intervals of 8 hours 30 minutes, then 2 hours and then 9 hours, since neither one of these phases nor two consecutive phases together would have exceeded the maximum duration of 14 hours.

It furthermore took the view that this provision demanded a rest period of at least one hour, that could, however, also be longer, having regard to the comments in point 15 of the verdict of 9 October 2008, *Interboves* (C-277/06, EU: C: 2008: 548), and to point 18 of the Opinion of Advocate General Mengozzi in this *Interboves* case (C-277 / 06, EU: C: 2008: 162). The general rule in Art. 3 para 2 (a) of Regulation (EC) 1/2005, according to which all necessary arrangements would have to be made prior to transport in order to minimize the journey time and to meet the needs of the animals during transport was made more specific by the EU legislature with regard to the road transport of bovine animals in the provision of Annex 1, Chapter V, point 1.4 (d) of this Regulation, which prescribed a rest period of at least one hour between two transport times rather than a rest period of one hour as requested by the Commission. It also stated that the reason for the rest period should not solely consist of watering or feeding the animals but, as in the present case, could be justified by compliance with the rules on driving and rest periods applicable to the drivers, provided that the animals were cared for at the same time, as the words “in particular” indicate. Finally, the rest periods between two journey intervals of a maximum of 14 hours were not in themselves supposed to exceed 14 hours in total, which is the maximum duration of a journey interval. This limit, which is well below the 24-hour rest period after two journey intervals of no more than 14 hours as laid down in Annex I, Chapter V, No. 1.5, Regulation (EC) 1/2005, is justified by the fact that a rest period without unloading provides less rest and that an accumulation of long journey times without unloading should be limited to the extent possible.

The Court stated the following in regard to this question referred to it:

34 It should be noted that the answer to that question follows expressly from the very wording of that provision, according to which animals belonging to the species referred to must, after 14

¹ See RABITSCH and FRANZKY (2015) and TVT (2015) on the Commission’s legal opinion on the purpose and duration of the rest period.

hours of transport, be given a rest period 'of at least one hour'. Those unambiguous terms show that the length of the intermediate rest period may exceed one hour.

35 However, as the Advocate General observed in points 58, 59 and 62 of his Opinion, a transport of live animals must, also as regards that aspect, comply with the general requirements of Art. 3 of Regulation No. 1/2005. As set out in recital 11 of that regulation, the detailed provisions addressing the specific needs in relation to the various types of transport, such as Annex I, Chapter V, point 1.4 to that regulation, must be interpreted and applied in accordance with the principle that animals must not be transported in a way likely to cause them injury or undue suffering, a principle which features in the first paragraph of Art. 3 and of which some general conditions are referenced in the second paragraph of that article. Among those conditions are the need to minimise the length of the journey and carry out the transport without delay, referred to in points (a) and (f) of that second paragraph.

36 As regards the 'rest period' within the meaning of point 1.4 (d) that the animals are to be given, in particular in order to be given liquid and if necessary to be fed, the purpose of that rest period is, as the terms of that provision indicate, to allow the transported animals to recover from tiredness and inconvenience suffered during the preceding movement period and thus to begin the second period of movement in a good condition. As long as the stop of the vehicle satisfies that essential need to rest, that stop can be considered to be justified regardless of whether its extension fulfils solely that need or also other needs linked to the transport itself.

37 Consequently, the length of the intermediate rest period can never be such that, in the specific conditions in which that rest and the transport occur together, it constitutes a risk of injury or undue suffering for the transported animals. It is for the national authority competent for the payment of the export refund and, where appropriate, the national courts, to carry out the necessary assessments in that regard in each case, taking account of all the relevant evidence and in particular of the suitability of the organisational measures employed.

38 At the same time, it must be stated that Regulation No. 1/2005 precludes a combined journey time and rest period, as provided for under Annex I, Chapter V, point 1.4 to that regulation, in excess of 29 hours, subject to the possibility of extending those periods by 2 hours in the interests of the animals, in accordance with point 1.8 of that chapter, and without prejudice to the application of Art. 22 of that regulation concerning delays during transport in cases where unforeseeable circumstances prevent the application of that rule.

39 First, as observed by the Advocate General in points 51 to 55 of his Opinion, to authorise combined journey times and resting periods in excess of 29 hours would run counter to the principle established in the first paragraph of Art. 3 of Regulation No. 1/2005, referred to paragraph 35 above, namely to avoid the risk of injury and undue suffering on the part of the transported animals, as well as the implications of that principle that obligations to minimise the length of the journey and to carry out the transport without delay. In that regard, under Annex I, Chapter V, point 1.5 to that regulation, after the journey time set out in accordance with point 1.4 of that chapter, the animals must be unloaded, fed and watered, and must be rested for at least 24 hours. Second, that interpretation is supported by the fact that point 1.8 of that chapter provides that the journey time laid down in point 1.4 can be extended only by 2 hours, and only in the interests of the animals, taking account in particular of proximity to the place of destination.

40 By the second part of its first question the referring court then asks, in essence, whether Annex I, Chapter V, point 1.4 (d) of Regulation No. 1/2005 must be interpreted as meaning that, in the context of the transport by road of the animals belonging to the species referred to, in

particular the bovine species, the two periods of movement of a maximum of 14 hours each, which must be interrupted by a rest period of at least 1 hour, may also include other break periods.

41 Regardless of the fact that to force the drivers of the animal transport vehicles concerned to stop only after a period of movement of a maximum of 14 hours would be unworkable in practice, it must be noted that, in normal circumstances, a period of movement during which the vehicle is removed from traffic and makes a stop is objectively less discomforting for the transported animals than a period of movement, as is apparent from the definition of the term 'place of rest' in Art. 2 (t) of Regulation No. 1/2005, which covers 'any stop during the journey which is not a place of destination', and of certain passages of the opinions on animal welfare during transport adopted on 11 March 2002 by the Scientific Committee on Animal Health and Animal Welfare, which highlights the negative consequences of the movement by vehicle on the welfare of the animals transported. Accordingly, the fact that a period of movement of a maximum of 14 hours includes one or more periods of stops cannot, in principle, be considered as detrimental to the welfare of the animals.

42 However, that or those additional break periods must, first, be justified by the needs linked to the transport itself and, second, be in addition to the periods of movement that count towards the period of movement of a maximum of 14 hours to which they belong in accordance with point 1.4 (d) of Annex I, Chapter V, point 1.4 to Regulation No. 1/2005.

43 The answer to the [...] question is therefore that Annex I, Chapter V, point 1.4 (d) to Regulation No. 1/2005 must be interpreted as meaning that, in the context of the transport by road of the animals belonging to the species referred to, in particular the bovine species except calves, first, the rest period between the periods of movement may, in principle, be longer than one hour. However, that length of time, if it exceeds one hour, must not be such that, in the specific conditions in which that rest and the transport occur together, it constitutes a risk of injury or undue suffering for the transported animals. Furthermore, the combined journey time and resting periods, as provided for under point 1.4 (d) of that chapter, must not exceed 29 hours, subject to the possibility of extending those periods by 2 hours in the interests of the animals, in accordance with point 1.8 of that chapter and without prejudice to the application of Art. 22 of that regulation in the event of unforeseeable circumstances. Second, the periods of movement of a maximum of 14 hours may each include one or more break periods. Those stop periods must be in addition to the periods of movement that count towards the overall period of movement of a maximum of 14 hours to which they belong.

Commentary

As far as can be seen, the present verdict addresses for the first time the relationship between journey times and rest periods within the meaning of Regulation 1/2005 on the one hand and driving and rest periods within the meaning of Regulation 561/2006 on the other. Besides answering the actual question, the ECJ also uses it to make a number of fundamental clarifications to Regulation (EC) No. 1/2005.

Not really surprisingly, since this was already hinted at in case C-277/06 (Interboves GmbH, EU:C:2008:162), the Court first of all follows the view of the referring court whereby the rest periods after maximum journey phase of 14 hours according to Annex 1 Chapter V No. 1.4 (d) of Regulation (EC) No. 1/2005, may also last longer than one hour (point 34), already by reason of the clear wording (arg: at least). The option of such extension is of course not unrestricted, but is limited in three ways:

- This first of all refers to the **absolute limit of 29 hours, including rest periods**, for (weaned) cattle which on principle must not be exceeded (point 38 f).

- The next factor, which constitutes a flexible parameter as it were, is the principle derived from Art. 3 of the Regulation (EC) whereby **the journey time should be kept as short as possible** and that **transports should be carried out without delay in order to prevent unnecessary suffering** of transported animals. Citing Recital 11, the Court stresses first of all in that regard that the detailed rules set out in Annex 1 to the Regulation must always be interpreted and applied in accordance with that principle². Although rest periods therefore may and possibly must³ last for more than one hour, they may find their **limit where the extension is contrary to the principles and objectives of Art. 3** of the Regulation. The clarification of this and, in particular, the questioning of the “appropriateness of the organizational measures taken” (not further determined by the Court) remains the task of the national authorities and courts (point 37).

The assumption of a mandatory implementation of a two or three-driver operation with a correspondingly planned long transport – which sometimes is postulated against the background of Art. 3 (a) ATR⁴ – cannot be derived from this, of course, but it can be derived from the third restriction:

- The Court recognizes the mandatory implementation of a two or three-driver operation in **the function of the rest period**: The function is namely to allow the transported animals to recover from tiredness and inconvenience suffered during the preceding journey interval and thus to begin the second journey interval in good condition. If this can no longer be argued and the extensions of the rest periods exclusively serve other purposes (such as the observance of rest periods according to Regulation (EC) 561/2006), this action violates the Regulation (point 36)⁵.

According to the verdict and under these provisos, several stop periods within a maximum period of 14 hours do not conflict with the Regulation per se. However, they must be justified by the needs linked to the transport itself (and they must thus ultimately be in the interest of the well-being of the animals; point 36) and be added to the journey phases (!) that count towards the journey interval of a maximum of 14 hours to which they belong, in accordance with Annex 1, Chapter V, point 1.4 (d) of Regulation No. 1/2005.

In summary, the present verdict provides a number of clarifications in connection with Regulation 1/2005. The central clarification is notably the fact that the obligation to observe rest periods within the meaning of Regulation 561/2006 alone cannot be used to extend rest periods in accordance with Regulation 1/2005⁶. It should be noted that thus more stringent requirements are to be made on transport planning, as now covered by the ECJ.

1. The “maximum journey time” of Regulation (EC) 1/2005 specifies absolute limits.
2. The principle of keeping the journey time as short as possible is to be observed.
3. An extension of the rest period of the animals solely to comply with the rest periods of the drivers is inadmissible.

² on that note, Hirt et al., Animal Protection Act (2016) Simple Intro: Animal Transport – Regulation pt. 5, 7 f.

³ This is the case when a longer rest pause is necessary in the interests of animal welfare; see: HIRT et al., Animal Protection Act (2016) Annex I EU Animal Transport Regulation Chapter V point No. 6; RABITSCH, Animal Transport – Expectations and Reality (2014) 138.

⁴ see HIRT et al., Animal Protection Act (2016) EU – Animal Transport Regulation Art. 3 point 4, which in some cases require several drivers.

⁵ Hirt et al., Animal Protection Act (2016) Annex 1 EU Animal Transport Regulation Chapter V point 6; Rabitsch, Animal Transport – Expectations and Reality (2014) 213.

⁶ On the application of Regulation (EC) 1/2005 and Regulation (EC) 561/2006 in animal transport see: Rabitsch and Wessely, Zur Beachtung der Lenk- und Ruhezeiten der Fahrer im Zusammenhang mit Langstreckentransporten von Tieren (2012) (On compliance of driving and rest periods of drivers in connection with the long-distance transport of animals (2012)).

Legal norms

- 2005 COUNCIL REGULATION (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No. 1255/97 (Official Journal L 003 of 5 January 2005).
- 2006 REGULATION (EC) No. 561/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No. 3821/85 and (EC) No. 2135/98 and repealing Council Regulation (EEC) No. 3820/85 (Official Journal L 102 of 11 April 2006)

Abbreviations

Anh.	Annex
Art.	Article
EC	European Community
ECJ	European Court of Justice
FAQ	frequently asked questions
FG	Finance Court
GA	Advocate General
No.	Number
Rn	Point

Bibliography

Curia.Europa.EU (2016): Urteil des Gerichtshofs (Dritte Kammer) vom 28. Juli 2016 in der Rechtssache C 469/14 betreffend ein Vorabentscheidungsersuchen nach Art. 267 AEUV, eingereicht vom Finanzgericht Hamburg (Deutschland) mit Entscheidung vom 29. August 2014, beim Gerichtshof eingegangen am 14. Oktober 2014, in dem Verfahren Masterrind GmbH gegen Hauptzollamt Hamburg-Jonas, <http://curia.europa.eu/juris/document/document.jsf?docid=182291&doclang=DE&mode=lst&occ=first&part=1&cid=896286>

Hirt, A., Maisack, C., Moritz, J. (2015): Tierschutzgesetz. Vahlcns Kommentare, ISBN: 978-3800&37997.

Rabitsch, A. (2014): Tiertransporte – Anspruch und Wirklichkeit, Veterinärspiegel Verlag, Berlin, ISBN: 978-3-86542-065-7.

Rabitsch, A., Franzky, A. (2015): Unbestimmte Rechtsbegriffe und häufig gestellte Fragen zur Europäischen Tiertransportverordnung und deren authentische Interpretation, <http://www.tierschutz-tvt.de/index.php?id=merkblaetter#c12>: "FAQ Tiertransporte", Q+A Nr. 17.

Rabitsch, A., Wessely, W. (2012): Zur Beachtung der Lenk- und Ruhezeiten der Fahrer im Zusammenhang mit Langstreckentransporten von Tieren, Amtstierärztl. Dienst und Lebensmittelkontrolle 2 / 2012, S. 99 – 109.

TVT (2015): Tierärztliche Vereinigung für Tierschutz e.V., FAQ Tiertransporte, [http://www.tierschutz-tvt.de/index.php?id=merkblaetter&elD=tx_rtgfiles_download&tx_rtgfiles_pi1\[uid\]=260](http://www.tierschutz-tvt.de/index.php?id=merkblaetter&elD=tx_rtgfiles_download&tx_rtgfiles_pi1[uid]=260), Q+A Nr. 17.

Animal Transports – Prolongation of the Journey Time by Illegal “Hopping” between Assembly Centres



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Key words

European Animal Transport Regulation; place of departure; place of destination; assembly centres; maximum journey time.

Summary

The maximum journey time during which an animal may be transported begins with its loading at the place of departure, i.e. usually at the farm where it was previously housed. In order to transport longer, animals are often sent to assembly centres and these are specified as places of departure. However, according to Art. 2 (r) Cl. 2 of the European Animal Transport Regulation this is permissible only in exceptional cases. One requirement inter alia is that a new animal consignment is actually put together so that the animals are really regrouped there. In addition, this rule can only be applied once during the shipment of an animal. Otherwise – when these prerequisites for the exemption under Art. 2 (r) Cl. 2 are not or only partially fulfilled – the maximum permissible transport time is calculated according to Art. 2 (r) Cl. 1 exclusively from the loading place where the animal was previously housed for at least 48 hours. Sometimes an assembly centre is falsely indicated as place of destination, although it is intended to restart an additional haulage after a break of only a few hours. If indications of such faulty declarations are evident, the competent authority at the place of departure shall not grant the authorization required for cross-border long livestock transports under Art. 14 Reg (EC) 1 / 2005 without a prior change of the arrangements for the intended long journey such that it complies with this Regulation. The organizers, the transporters and the animal keepers who give such false statements or participate in them, commit misdemeanours (or in Austria, administrative offenses).

1. Introduction

“Assembly centre hopping” is a colloquial expression denoting the consecutive use of more than one assembly centre during one and the same transport operation. In doing so, the second available assembly centre is declared as the place of destination in the documents of the first transport section.

According to Art. 2 (j) of the Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No. 1255/97 (as known as European Animal Transport Regulation / ATR), an animal transport begins with the loading of the first animal at the place of departure and ends with the unloading of the last animal at the place of destination.¹ The maximum permissible journey time before the expiry of which the animals must be unloaded at the place of destination or – in the case of a long transport – at an approved control post and then fed and watered is calculated pursuant to this.

However, one exception concerning the place of departure applies pursuant to Art. 2 (r) sentence 2 ATR for assembly centres: If these are approved under the applicable veterinary legislation of the European Union, they may be considered a (second) place of departure under the conditions

¹ See Letter from the European Commission dated 9 January 2008 on the interpretation of Art. 2 (j); as well as the German Federal Government, Declaration of 9 April 2013, BUNDESTAG PUBLICATION 2013 (17/13006 p. 2); see also DEUTSCHES HANDBUCH TIER-TRANSPORTE [German Manual on Animal Transports], I No. 5.

specified therein. As a result, the maximum journey time does not begin when the first animal is loaded at the farm it was housed in until then, but only when the animals are (re-)loaded at the assembly centre.

In practice it happens that assembly centres are indicated as places of departure although the legal conditions under which this is permissible according to Art. 2 (r) sentence 2 ATR are not met, and that the animals are nevertheless transported for as long as it would be permitted at the most if the assembly centre could be considered an acceptable place of departure. It also happens that assembly centres are wrongly designated as places of destinations in order to disguise the fact that a long, cross-border transport is actually planned – for which an authorization would have to be obtained according to Art. 14 ATR before the start of transport or also in order to allow animals to be transported for longer periods without temporary unloading and resting for 24 hours at “control posts”² than would be permitted if correct information had been given.

Examples of such cases of illegal “assembly centre hopping” will be described and discussed below and evaluated in legal terms.

II. Example cases

Example case A: Unweaned calves are transported from an assembly centre near Salzburg, Austria to Bolzano, South Tyrol. The pure travel time Salzburg-Bolzano is about four and a half hours. Bolzano is indicated as the place of destination in the transport document according to Art. 4 ATR. However, the animals are housed there for only six hours after being unloaded. One part of them goes on to Italy after that, while the bulk is transported to Vic, Spain. According to the knowledge of the second author, however, Vic in turn is only intended to be the distribution centre for farms in the neighbouring villages.

Example case B: Unweaned calves are transported from various assembly centres in Latvia to Kapčiamiestis, Lithuania. The pure travel time is less than eight hours, respectively. Kapčiamiestis is indicated as the place of destination in the transport document according to Art. 4 ATR. However, the animals are housed there for only six hours after being unloaded. Most of them thereafter continue in several transport sections to Vic, Spain.

Example case C: Fattening bulls are transported from an assembly centre in Lower Saxony to Kapıkule, Turkey. Kapıkule is specified as the place of destination in the journey log. However, the animals are loaded onto Turkish trucks there within a few hours after unloading, to be subsequently transported to Anatolia.

III. Definitions

Place of departure within the meaning of Art. 2 (r) sentence 1 ATR is on principle only the place where an animal is first loaded onto a means of transport, providing it had previously been kept at this location for at least 48 hours.

² “Control posts” means “staging points” within the meaning of Regulation (EC) No. 1255/97 (concerning Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC): “Staging points accommodating for at least 24 hours domestic solipeds and domestic animals of the bovine, ovine, caprine and porcine species in the Community in accordance with Chapter VII of the Annex to Directive 91/628/EEC and without prejudice to Directives 64/432 / EEC (2), 80/213 / EEC (3), 85/511 / EEC (4), 89/608 / EEC (5), 90/425 / EEC (6), 90/426 / EEC (7), 91 / 68 / EEC (8), 91/496 / EEC (9), 92/102 / EEC (10) and 93/119 / EC (11).”

However, Art. 2 (r) sentence 2 ATR also allows assembly centres which are approved for intra-Community trade in animals of the same species to be considered as the place of departure if:

- i. either less than 100 kilometres have been travelled between the place of first loading and the assembly centre, or
- ii. the animals were unloaded there and accommodated there for at least six hours with sufficient bedding, fresh water and untied, before being sent from the assembly centre³.

According to Art. 2 (o) of Directive 64/432/EEC, any place [...] where cattle or pigs from different holdings are grouped together to form consignments of animal for trade shall be considered an **assembly centre**. Assembly centres thus serve to combine⁴ animal consignments from different origins into a single consignment and then regroup⁵ them.

Place of destination within the meaning of Art. 2 (s) ATR is the place where an animal is unloaded from a means of transport and

- i. either kept for at least 48 hours prior to its onward transport, or
- ii. slaughtered.

IV. Legal assessment

According to Annex I, Chapter V, No. 1.5 ATR, the animals must have arrived and been unloaded either at the place of destination or at a control post approved in accordance with Art. 3 of Regulation (EC) No. 1255/97 before the expiry of the maximum permissible journey time⁶ (loading and unloading times are to be included!), must then be fed and watered and given a rest period of at least 48 hours (place of destination) or 24 hours (control post).

If the place of destination is reached after the set journey time, then the prescribed and compulsory minimum period of stay there is 48 hours.

Therefore, an assembly centre cannot be the place of destination, unless it is intended to house the animals there at least 48 hours prior to further transport.

If, however, the animals are housed for less than 48 hours at an assembly centre declared as a place of destination, then the previous transport to that assembly centre, the stay there and the subsequent onward transport constitute a contiguous transport operation which

1. started at the first place of departure
2. at which the feeding intervals and the watering time and the maximum permissible journey time and the prescribed rest periods, calculated from the first place of departure, are to be observed in accordance with Annex I, Chapter V ATR,
3. the sections of which are to be coordinated by the organiser in accordance with Art. 5 para 3 (a) of the ATR and which
4. only ends at the actual final place of destination.

³ cf. RABITSCH, A. 2014 (Tiertransporte, Anspruch und Wirklichkeit, Berlin 2014, p. 153).

⁴ cf. DEUTSCHES HANDBUCH TIERTRANSPORTE, E.

⁵ cf. DEUTSCHES HANDBUCH TIERTRANSPORTE, I No. 6.

⁶ It is not more than eight hours when using "normal vehicles"; when using vehicles in accordance with Annex I, Chapter VI, it is a maximum of 19 hours for non-weaned calves, lambs, kids and foals, including the feeding and watering rest period, a maximum of 24 hours for pigs and horses, and a maximum of 29 hours for weaned ruminants. Loading and unloading times must be included in each case.

In accordance with Art. 2 (r) sentence 2, an assembly centre may only be a new – second – place of departure, if the following conditions are cumulatively met:

1. A new animal consignment must in fact be put together there.

It is therefore not permissible to handle complete consignments which actually come from another place of departure via an assembly centre as the place of departure and thus conceal the actual start of transport and the actual journey time⁷.

The same applies if the consignment that has arrived at the assembly centre remains essentially complete during its onward transport because only a single animal or a few animals are exchanged⁸; rather, the animals must be “newly grouped” at the assembly centre; cf. also the assembly centre definition according to Art. 2 para. 2 (o) of Directive 64/432/EEC: A new batch of animals must be formed, and one cannot call it that if only a single animal or only a few animals are exchanged;

2. The animals have either been transported to this assembly centre for less than 100 km, or they have been housed untied at the assembly centre for at least six hours with sufficient bedding and fresh water;
3. It must be the first assembly centre during the transport (cf. DEUTSCHES HANDBUCH TIERTRANSPORTE, I No. 6: “This rule may only be applied once during the transport of an animal, i.e. the maximum permissible journey time begins upon loading at the first assembly centre”).

If even one of these requirements of the second sentence of Art. 2 (r) sentence 2 is not met, the assembly centre cannot be the place of departure, unless the animals were housed there for at least 48 hours (Art. 2 (r) sentence 1). It is of particular importance that the exemption clause in the second sentence of Art. 2 (r) sentence 2 cannot be applied twice during one transport.

In example case A, the assembly centre in Bolzano is not the place of destination because the animals were not housed there for at least 48 hours and because the onward transport to Italy / Spain was most likely also intended from the beginning. The calves’ stay at the Bolzano assembly centre was therefore not able to interrupt the complete period for the calculation for the maximum permissible journey time according to Annex I, Chapter V, No. 1.4. (a), since that time already started to run with the loading of the first animal at the first assembly centre in Salzburg. On their way to Italy / Spain, the calves must be unloaded, watered and fed at an approved control post after a total of 19 hours at the latest (counted from the loading in Salzburg on) and must be able to rest for 24 hours. The organiser committed an administrative offence pursuant to § 21 para 1 No. 10 Austrian Animal Transport Act (TTG) 2007 or in Germany – if the place of the offence had been there – a misdemeanour pursuant to § 21 para 3 No. 5 and 6 Animal Protection Transport Regulation (TierSchTrV), since he did not enter the actual place of destination (Vic, Spain) in the journey log which is necessary in view of the planned long journey and since he did not submit the journey log to the authority of the place of departure for stamping/approval prior to the start of transport in Salzburg. In addition to aiding and abetting, a misdemeanour pursuant to Section 21 para 3 No. 2 TierSchTrV could be considered as well for both the carrier and the driver if the journey had gone through Germany⁹, since they did not carry the transport documents in the means of transportation as required by Art. 4 para 1 (d) ATR due to the incorrect specification of the

⁷ cf. DEUTSCHES HANDBUCH TIERTRANSPORTE, E and I No. 6.

⁸ cf. DEUTSCHES HANDBUCH TIERTRANSPORTE [I.c.], I No. 6.

⁹ cf. § 5 Code of Administrative Offences (OWiG): Unless otherwise provided by law, only misdemeanors committed within the territorial scope of this law [...] can be prosecuted.

place of destination contained therein¹⁰; in Austria, this constitutes an administrative offence under section 21 para 1 No. 8 TTG 2007 (carrying inadequate transport documents).

In example case B, the unweaned calves' stay in Kapčiamiestis, Lithuania was also not able to interrupt the period of calculation for the maximum permissible journey time according to Annex I, Chapter V, No. 1.4. (a); it had already started with the loading of the first animal at the first assembly centre in Latvia.



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¹⁰ in this regard, cf. HIRT, A., MAISACK, C, MORITZ, J. 2016 (Animal Welfare Act, 3rd edition 2016, EU-Animal Transport Regulation Art. 4 MN 3: "The conditions for the application of that provision are not only fulfilled if the transport documents are not carried at all, but also if they are incorrect or incomplete in view of one of the points referred to in para 1 (a-e).").

The second assembly centre in Kapčiamiestis, Lithuania cannot be the place of departure within the meaning of Art. 2 (r) sentence 2 ATR, because this rule can only be applied once during the transport of an animal¹¹, and that already happened in Latvia. Consequently, the calves must be unloaded, watered and fed at an approved control post after a total of 19 hours at the latest (counted from the assembly centre in Latvia on) on their way to Spain and must be able to rest for 24 hours. Due to the large distance to Spain, the entire transport operation cannot be managed in three sections of 19 hours each, interrupted by two unloadings of 24 hours – unloading rather has to occur three times. Due to the specification of the wrong place of destination in the transport documents, both the carrier and also the driver are guilty of misdemeanours according to § 21 para 3 No. 2 TierSchTrV in case the place of offence was in Germany, if they acted at least negligently; in case the place of offence was in Austria¹² they are guilty of administrative offences pursuant to § 21 para 1 No. 8 TTG 2007. In the case of Germany being the place of offence, the organiser has violated § 21 para 3 nos. 5 and 6 TierSchTrV because he did not create a journey log for the planned long journey or at least did not submit it to the authority for approval at the place of departure prior to the start of transport pursuant to Art. 14 ATR; in the case of Austria being the place of offence, this behaviour constitutes an administrative offence under § 21 para 1 No. 10 TTG 2007.

In example case C, the transport operation continues during the transport of the animals on the Turkish trucks, because Kapıkule is not the place of destination but merely a place of rest or reloading within the meaning of Art. 2 (t) ATR due to the stay there only lasting a few hours. The transport is not completed with the reloading on vehicles of the destination country but continues¹³. In case of any indication of the serious, realistic possibility of an infringement of the ATR during the onward transport, the transport should not have been authorized without a corresponding change in the transport planning, or it may only be cleared by the official veterinarian at the place of departure, in case these indications are identifiable to him, if he can ensure through appropriate, necessary and proportionate instructions that these violations are avoided. According to the judgment of the ECJ dated 23 April 2015, C-424/13, the ATR must also be fully complied with during the further transport from Kapıkule, in particular with regard to the equipment of the vehicles and the necessary feeding and watering intervals as well as the unloading and rest periods.

Since these requirements are very unlikely to be met (since there are no supply stations with unloading facilities that meet the requirements of a control post in accordance with Annex I of Regulation (EC) No. 1255/97 in Turkey), the approval for transport under Art. 14 should not have been granted from the outset with this planning.

In example cases A and B, the transport was declared a short-distance transport because the second assembly centres, which were less than eight hours away, were designated as places of destination. Since the real destination was Vic in Spain in both cases, both cases constituted a long, cross-border transport of livestock for which a journey log indicating the first assembly centre as the place of loading and the correct place of destination should have been specified according to Art. 5 para 4 and submitted to the authority of the actual place of departure (Salzburg or first assembly centre in Latvia) for approval under Art. 14 ATR. As already stated, this omission constitutes a misdemeanour on the part of the organiser under Section 21 para 3 No. 5 and 6 TSchTrVO in the case of the place of offence being in Germany, and an administrative offense pursuant to Section 21 (1) No. 10 TTG 2007 in the case of the place of offence being in Austria.

11 cf. DEUTSCHES HANDBUCH TIERTRANSPORTE, I No. 6..

12 cf. § 2 para 1 Administrative Penal Act 1991 Austria.

13 also WISSENSCHAFTLICHE DIENSTE DES DEUTSCHEN BUNDESTAGS (SCIENTIFIC SERVICES OF THE GERMAN PARLIAMENT) 2017 [27 January 2017, file reference WD 5 – 3000 – 001 / 17 p. 17, elaboration on "Regelungen der europäischen Tiertransportverordnung zu langen Tierbeförderungen im Licht des Urteils des Europäischen Gerichtshofs v. 23.4.2015, C-424/13"] [Provisions of the European Animal Transport Regulation concerning long animal transports in the light of the ruling of the European Court of Justice, dated 23 April 2015, C-424/13].

Furthermore, transport documents in which the place of destination was incorrectly stated as “Bolzano” or “Kapčiamiestis” were carried along on both transports in violation of Art. 4 para 1 (d) ATR. If occurring in Germany, the use of transport documents with an incorrectly stated place of destination constitutes a misdemeanour under § 21 para 3 No. 2 TSchTrVO 14. In Austria, the conditions for an administrative offence according to § 21 para 1 No. 8 TTG 2007 are met.

In example case C, the organiser submitted a journey log in which the place of destination was incorrectly specified to the authority of the place of departure (since the place of destination was not Kapıkule, but another place in Anatolia which was not stated in the journey log and to which the animals from Kapıkule were transported with Turkish trucks). In Germany, this constitutes a misdemeanour on the part of the organiser (as well as the carrier and keeper if they were either intentionally or negligently involved) pursuant to § 21 para 3 No. 5 TierSchTrV in conjunction with Art. 6 para 4, 8 para 2 sentence 2 ATR (“incorrect keeping of the journey log”); in Austria, § 21 para 1 No. 10 TTG 2007 applies again. The public official who granted the authorization according to Art. 14 ATR despite the incorrect specification of Kapıkule as the place of destination can be fined or punished as a party to this misdemeanour or administrative offence if it he can be proven to have acted intentionally.

Legal norms

- 1964 Dir 64 / 432 / EEC: COUNCIL DIRECTIVE of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine.
- 1997 Reg (EC) No. 1255 / 97: Council Regulation of 25 June 1997 concerning Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC
- 2005 Reg (EC) 1 / 2005 of the European Council, dated 22 December 2004, on the protection of animals during transport and related operations and amending Directives 64/632/EEC and 93/119/EC and Regulation (EC) No. 1255/97 (Animal Transport Regulation; ATR).
- 2007 Federal Act on the Transport of Animals and Related Operations (Animal Transport Act 2007 – TTG 2007, Federal Law Gazette I No. 54/2007, Austria).
- 2009 Regulation on the protection of animals during transport and for implementing Council Regulation (EC) No. 1/2005 (Animal Protection Transport Regulation; TierSchTrV, Germany) dated 11 February 2009 [BGBl. [Federal Law Gazette] I p. 375 as amended].

Abbreviations

Art.	Article
ATR	European Animal Transport Regulation (EC)1 / 2005 (Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations)
Dir.	Directive
EC	European Community
ECJ	European Court of Justice
ef.	Compare, see
EU	European Union

i.e.	this is
[l.c.]	reference as specified
Para	Paragraph
Reg.	Regulation
TierSchTrV	Animal Protection Transport Regulation (Germany)
TTG	Animal Transport Act 2007 (Austria)

Bibliography

Bundestags-Drucksache (2013): 17 / 13006 v. 9.4.2013, Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Friedrich Ostendorff u. a. und der Fraktion BÜNDNIS 90 / DIE GRÜNEN, Zusammenhang zwischen den maximal erlaubten Transportzeiten für Tiere sowie den Lenk- und Ruhezeiten für Fahrer.

Deutsches Handbuch Tiertransporte (2013): Vollzugshinweise zur Verordnung (EG) Nr. 1 / 2005 des Rates v. 22. Dezember 2004 über den Schutz von Tieren beim Transport und damit zusammenhängenden Vorgängen ... und zur Tierschutztransportverordnung v. 11.2.2009. Ansprechpartner: Mitglieder der Länderarbeitsgruppe Dr. Marschner, Goller-Englberger, Dr. Marahrens, Dr. Franzky, Eggert-Satzinger, Dr. Maurer, Dr. Knipf, Dr. Herzog. Redaktion: Dr. Ulrike Marschner (Ulrike.Marschner@stmuv.bayern.de). Stand Mai 2013.

Hirt, A., Maisack, C., Moritz, J. (2016): Tierschutzgesetz, Kommentar, 3. Aufl., Verlag Franz Vahlen, München 2016, ISBN: 978-3-8006-3799-7.

Rabitsch, A. (2014): Tiertransporte, Anspruch und Wirklichkeit, Veterinärspiegel Verlag in der schaefermueller publishing GmbH, Berlin 2014, ISBN: 978-3- 86542-065-7.

Wissenschaftliche Dienste des Deutschen Bundestages (2017): Ausarbeitung WD 5 – 3000 – 001 / 17, Regelungen der europäischen Tiertransportverordnung zu langen Tierbeförderungen im Licht des Urteils des Europäischen Gerichtshofs v. 23.4.2015 (C-424 / 13)

Official Approval of Long-Distance, Border-Crossing Animal Transports

Plausibility Checks According to Art. 14 (1) of the EU Animal Transport Regulation



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Key words

long-distance; border-crossing animal transport; plausibility testing; approved maximum transport duration; distance to the vehicle ceiling of standing animals; ship transport; Non-Governmental Organizations; driving and resting time periods.

Summary

Long-distance, border-crossing animal transports need approval by the veterinary authority at the beginning of the transport according to Art. 14 of the European Animal Transport Regulation. Apart from the control of all documents, the plausibility testing of the Journey log reg. – realistic entries is important. Since the verdict C-424 / 13 of April 23, 2015, of the European Court, it has been made clear that the rules of the European Transport Regulation have to be complied with also in non-European countries. If the time period of the maximum allowed transport duration might be exceeded (according to Appendix I, Chapter V, No. 1.4. and 1.5), the transport may not be approved. However, even if there is information not drawn from the Journey log that presumably there is no compliance with the rules, the approval for the transport may be rejected. In this respect, even NGO records may be taken into consideration. The same is true, even if there is no violation of the European Animal Transport Regulation or other valid rules, e. g. about the European social rules on the driving and resting times of drivers. Such violations are also of importance if the welfare of the transported animals is impaired, since the precautionary principle according Art. 3, sentence 2 (a) of the European Animal Transport Regulation has to be taken into consideration.

I. Introduction

If a long animal transport, i.e. longer than eight hours, of livestock (domestic Equidae, domestic cattle, domestic sheep, domestic goats or domestic pigs) is planned in which a border (be it a border between Member States or an external border into a third country) is to be crossed, then the transport requires a prior approval by the competent authority at the place of departure (i.e. by the veterinary office in whose district the place of departure lies) in accordance with Art. 14 para 1 ATR. This approval is granted by the authority stamping the journey log in accordance with Art. 14 para 1 (c). The stamping is not required according to para 2 if a navigation system according to Art. 6 para 9 ATR is available and used in the vehicle¹.

According to Art. 14 para 1 (a), (i) of the ATR, the conditions for approval must first include a successful document check, i.e. an assessment that the required transporter authorisation, Certificate of approval of means of transport as well as the necessary certificates of competence for drivers and attendants are present. The second focal point of the approval procedure is the plausibility check required by Art. 14 para 1 (a), (ii): Accordingly, it must be verified whether the journey log submitted by the organiser contains realistic information (i.e. whether the transport planning, as described in section 1 of the journey log is realistic) and whether the journey log indicates compliance with the ATR during the entire journey. The latter requirement is lacking if, on the basis of concrete evidence, there is a serious, realistic (and not merely remote) possibility of a violation of one or more ATR provisions during the transport²; in this case, the approval under

¹ But this only concerns the form requirement "stamping of the journey log"; nothing is changed by virtue of Art. 14 para 2 with regard to the fact that the transport must be approved by the veterinary office at the place of departure.

² cf. German Federal Parliament, Scientific Services, Elaboration on "Rules of the ATR concerning long distance transports in the light of the ECJ decision in case No. C-424/13, 21. April 2015, p. 10f.

Art. 14 is to be refused if this possibility cannot be excluded with sufficient reliability by an order to change the transport planning or if an appropriate request has been made to the organiser, but is not carried out. Individual questions arising in connection with this plausibility check will be discussed below using practical examples.

II. No approval if it is apparent from the journey log submitted that an ATR provision is not complied with on a transport section.

The verdict of the European Court of Justice (ECJ) dated 23 April 2015 in the legal matter C-424/13 was based on such a case. The journey log presented by the organiser (section “Planning”) for an animal transport with a place of destination in Uzbekistan revealed that during a transport section lasting approximately 146 hours between Belarus and Kazakhstan, the animals were to be supplied with water and feed, but no unloading was to take place.

The ECJ has ruled that in such a case the authority of the place of departure has to request that the transport planning be amended in such a way that compliance with ATR’s provisions is guaranteed – i.e. unloading of the animals after 29 hours of transport at the most in this case and a subsequent rest period of at least 24 hours.

It follows from this that: Whenever there is a serious possibility from the journey log submitted that a provision of the ATR might not be complied with on a transport section (be it within the EU or in a third country), the authority must not approve this transport. It must, if possible, ensure that the organiser modifies the planning of the transport so as to ensure compliance with all provisions of the ATR throughout the entire journey time. If this is not possible or if the organiser does not comply with such a request, the authority of the place of departure must definitively refuse to authorize the transport.

III. No approval either if it is not apparent from the journey log submitted but from other information that is available to the authority at the place of departure that it is likely that an ATR provision is not complied with on a transport section?

Example case A:

In Lower Saxony, there are districts where bovine transports are authorized in accordance with Art. 14, where, in the case of two-story loading, the distance between the highest point of the largest animal and the inner ceiling of the hold per level is less than 20 cm. It is known from other districts that the competent authorities there insist on maintaining a distance to the vehicle ceiling of 20 cm. Transport companies are now switching their routes to districts that grant approval even with a smaller distance to the vehicle ceiling.

Example case B:

The use of the Bulgarian border control post Kapitan Andreewo to Turkey (border town Kapıkule) is planned for a cattle transport to Turkey. According to a letter from the EU Commission³, a wait of at least six hours can be expected for the customs clearance on the Turkish side.

³ Letter from Commissioner V. Andriukaitis to the competent Ministers of the Member States of 26 April 2018, ARES (2018) 2268610

- This time is neither included in the section “Planning” in point 2 for the total journey time, nor is it specified in point 6.1. of the journey log;

or,

- taking into account the journey time since leaving the last control post and the Turkish place of destination, this waiting time will result in the animals remaining in the vehicle for more than 29 hours;

or,

- considering the season, Kapitan Andreewo can be expected to have an environmental temperature of 30°C or more.

Example case C:

A ship transport from Raša / Croatia to Beirut is planned for a cattle transport to Lebanon. The keeping of the journey log is usually discontinued on transport ships.

Example case D:

Reports from international non-governmental organizations (NGOs) which are available to the authority at the place of departure show that occurrences must regularly be expected at a certain transport section in a third country (e.g. in a loading port) which violate provisions of the ATR (e.g., Annex I, Chapter III, Nos. 1.8 to 1.12).

Example case E:

Although the organiser of the transport has specified a control post in a third country in the “Planning” section of the journey log which is to be reached after expiry of the maximum transport duration in accordance with Annex I Chapter V No. 1.4 and 1.5, the authority at the place of departure, however, has doubts as to whether there are really stables in which the animals can be unloaded and in which they can rest for 24 hours.

Example case F:

An animal transport to Turkey is to be approved. However, information was obtained which indicates that Turkey does not currently have control posts where animals can be fed and watered and can rest for 24 hours, and which meet the requirements of Art. 3 of Regulation (EC) No. 1255/97.

Regarding example case A:

In the case of bovine, ovine and porcine animals, the required minimum distance to the inner ceiling must be determined by interpretation of Annex I, Chapter II, point 1.2 and Art. 3 (g) (for horses, in contrast, the minimum distance between the highest point of the withers of the largest animal and the inside ceiling is prescribed with detailed dimensions in Annex I, Chapter III, point 2.3: 75 cm). In its letter of 4 September 2009⁴, the responsible General Directorate SANCO states that the recommendations and conclusions of the SCAHAW in its Scientific Opinion of 11 March

⁴ Letter to Sophie Greger, Animals' Angels, D5 DS/fr D 2009 450334

2002 constitute a guideline for the interpretation of the ATR. According to Recommendation No. 12.3.30 in this Opinion, the recommended distance to all vehicle ceilings should be at least 20 cm above the head of the largest, comfortably positioned animal where cattle are concerned⁵. Consequently, Annex I, Chapter II, No. 1.2 must be interpreted as meaning that transports of cattle are only permitted if the distance from the head of the largest, comfortably standing (this also means: in an upright position) animal to the vehicle ceiling is not less than 20 cm in the transport vehicle. Authorities at places of departure who authorize transports even though this provision is not complied with violate Art. 14 para 1 (b) ATR, because they would have to oblige the concerned to change the transport planning, namely to use a transport vehicle with a greater interior height or only single-storey loading, but do not do this.

Consequently, transports where the minimum loading space height of 20 cm above cattle is not met are not to be approved because

1. the organiser's statement in Section 1 (Planning) of the journey log given under No. 7 and signed in writing under No. 8 whereby he/she will ensure (i.e. guarantee) compliance with all ATR provisions governing animal welfare throughout the entire journey time is obviously incorrect and thus not realistic in the sense of Art. 14 para 1 (a), (ii); and because
2. in addition, Art. 3 sentence 1 ATR prescribes that no one shall transport animals or cause animals to be transported in a way that could be likely to cause injury or undue suffering to them; the provision on the necessary interior height is based on the idea that the animals might otherwise suffer from to lack of proper air circulation and/or the impossibility of normal movement (in particular adjustment movements during defecation and urination). A falling below the required interior height is therefore always a violation of the precautionary principle under Art. 3 sentence 1. Since, according to the wording "likely" in Art. 3 sentence 1 ATR, the serious possibility that suffering (i.e. impairments of the welfare) could be inflicted on the transported animals due to the insufficient interior height, it does not matter if an onset of actual suffering can be proven.

Thus, the authority of the place of departure must not authorize such transport, even if falling below the necessary interior height is not directly evident from the journey log. It must take action to ensure a change in transport planning, in this case, for example, a single-storey loading or the use of a low-floor truck which allows compliance with the prescribed internal height even without exceeding the maximum permissible total height of the vehicle of 400 cm in most European MS's.

Regarding example case B:

Since the expected at least six hours waiting time on the Turkish side of the Kapitan Andreewo / Kapikule border crossing are part of the total journey time, they should be specified in the "Planning" section of the journey log under No. 2, possibly also under No. 6. If this was not done, as in the example case, the journey log is not realistic in this respect (according to Art. 14 para 1 (a), (ii)). Without a corresponding change in the planning, the transport must not be approved in accordance with Art. 14 para 1 (b).

⁵ European Commission, The welfare of animals during transport (details for horses, pigs, sheep and cattle), Report of the Scientific Committee on Animal Health and Animal Welfare, adopted on 11 March 2002, Recommendations No. 12.3.30: "The height of the compartment for cattle should be at least 20 cm above the top of the head of each animal when it is standing in a comfortable position. This figure applies for all vehicles." In contrast, the 'Scientific Opinion Concerning the Welfare of Animals during Transport' of the EFSA Panel on Animal Health and Welfare (AHAW) from 2011 in 'Conclusions and Recommendations', Chapter VII, Space allowances, does not focus on the head but on the height above the withers: "Ceiling height should be at least 20 cm above the withers height of the tallest animal."

As far as the organiser and the transport operator in Germany are concerned, this inadequate keeping of the journey log constitutes a misdemeanour under § 21 para 3 No. 5 TSchTrVO, and in Austria, it constitutes an administrative offence pursuant to § 21 para 1 No. 10 TTG 2007.

Even if the journey log at first glance gives the appearance of having a proper transport planning, the information about the minimum expected waiting times at the mentioned border crossing shows that the journey log is not realistic – in that it is incorrect.

This also applies to exceeding the maximum permissible length of stay of the animals in the transport vehicle. If the maximum permitted 29 hours are exceeded, Annex I, Chapter V, No. 1.4 (d) and No. 1.5. of the ATR are violated; the guarantee statement given in section 1, No. 7 of the journey log is therefore incorrect and not realistic.

Besides the misdemeanour pursuant to § 21 para 3 No. 5 Animal Protection Transport Regulation (TierSchTrV) (intentional or negligent incorrect keeping of the journey log), the carrier may also be subject to a misdemeanour under § 21 para 3 No. 34 TierSchTrV, since he did not grant a rest period in time as prescribed by Annex I, Chapter V, No. 1.5. In Austria, the organiser and the transporter may be subject to administrative penalties pursuant to § 21 para 1 No. 10 of the TTG 2007, the carrier may also be subject to an administrative penalty pursuant to § 21 para 1 No. 21 TTG 2007 for non-compliance with a rest period as prescribed in Annex I, Chapter V. As far as the public official granting approval under Art. 14 ATR is concerned, if all parties act intentionally with regard to the infringement, they can be charged with aiding and abetting / being accessories to these misdemeanours and administrative offences.

The EU Commission notes the following regarding the temperatures inside the transport vehicle: “Due to the inability of the livestock vehicles’ ventilation systems to lower the temperatures in the animal compartments below the external environmental temperature and the limited opening hours of the veterinary control point, it is generally impossible for transporters to comply with EU rules on this route when ambient temperatures are over 30°C (with a 5° C tolerance). This is made worse by the lengthy administrative procedure.”⁶. Based on this, the State Ministry for Social Affairs and Consumer Protection in Saxony has issued a decree⁷ which states: “Among others, tools such as information from the German Weather Service or international meteorological weather services must be used in the plausibility check [...]. A prediction of 30°C at the border control post does not allow clearance since, according to the Commission’s findings, the fans cannot lower the temperature inside the vehicles to below the outside temperature when the vehicles are stationary.”

In this case, too, an approval of transport under Art. 14 para 1 (a), (ii) must therefore be rejected without a prior change in the transport planning that precludes the infringement with sufficient certainty (which may be considered in this case only if another border crossing is chosen or a transport time that would allow for lower outside temperatures), although the expected violation of the ATR is not directly indicated by the information in the journey log, but by other sources of information. All that is required for a refusal of the approval – request to change the transport planning accordingly – is information from the German Meteorological Service or international meteorological services to be obtained from the authority at the place of departure indicating that outside temperatures of 30°C or more must be expected on arrival at the border or during the waiting period to be realistically planned.

⁶ European Commission, Final Report of a fact-finding mission carried out in Turkey from 05 September to 8 September 2017 on animal welfare during transport to non-EU countries, DG(SANTE) 2017-6110, p. 9

⁷ Sächsisches Staatsministerium für Soziales und Verbraucherschutz, [Ministry of the Federal State of Saxony for Social and Consumer Issues], decree of 30 January 2018, Aktenzeichen [ref. no] 24- 9161.42/10, p. 5

Regarding example case C:

In the ECJ verdict of 19 October 2017 (C-383/16), the Court ruled that not only Regulation (EC) 817/2010 on the granting of export refunds, but also Annex II, No. 3, 7 and 8 ATR must be interpreted as meaning that the carrier must continue to keep a copy of the journey log until the place of first unloading in the final third country of destination after leaving the Union territory. "Continue to keep" in this sense means that the copy of the journey log not only physically accompanies the onward transport in the third country, but that it must continue to be correctly and completely filled out in its sections 3, 4 and 5.⁸

In the present case, decided by the European Court of Justice, cattle from Koper/Slovenia were transported on a livestock transport ship to Beirut/Lebanon, without any information being provided in the journey log or without any data on the progress of the transport in a copy thereof. According to the non-governmental organization (NGO) Animal Welfare Foundation Germany (www.animal-welfare-foundation.org), this is true for most ship transports, i.e.: Journey logs are generally not continued to be kept on ship transports in the sense of the requirements of the judgment of the European Court of Justice (C-383/16).

As long as this is the case, animal transports (in particular to the Middle East or Maghreb States) where a ship loading is part of the planned journey must no longer be authorized under Art. 14 para 1 (a), (ii), since a non-continuation of the journey log and thus a non-compliance with Annex II, No. 3 (e) of the ATR must be assumed.

The fact that the relevant information not only stems from the judgment of the European Court of Justice but also from a non-governmental organization (NGO) does not give grounds in any case to disregard them in the approval procedure under Art. 14 para 1 ATR. This would be a violation of the principle of investigation governing the administrative procedure (in Germany § 24 Administrative Procedure Act, in Austria § 37 General Administrative Procedure Act), which obliges the authority to take into account all circumstances relevant to the individual case, no matter from which sources they become aware of them. The general disregard of information only because it does not stem from authorities but from NGOs or even from journalists or reporters would violate the principle of investigation and also put the authority at risk of aiding and abetting acts of animal cruelty or other incorrectly granting approvals or other incidents in contradiction to animal welfare – albeit unintentionally. Likewise, the EU Commission's findings and assessments of compliance with or non-compliance with the ATR are based not only on the information it receives from its Food and Veterinary Office (FVO) and the authorities of the Member States, but also on the Reports from several NGOs working in the field of animal protection, including Eurogroup for Animals, Animal Angels, Compassion in World Farming and Eyes on Animals, in order to gather all facts⁹.

The credibility of such reports shall be judged on the basis of the criteria generally used when assessing the credibility of individuals or groups of persons. The following is to be asked, among other things: Is the report enriched by description of details and free from contradiction? Are there

⁸ ECJ, Verdict of 19 October 2017, C-383/16, pt. 45, 46: "Furthermore, if point 3(e) of Annex II to Regulation No. 1/2005 provides that, in case of export to a third country, the organiser must ensure that the journey log accompanies the animals during the journey at least until the exit point of the Union, that suggests that the organiser must continue to fill in a copy of that log until the place of the first unloading in the third country of final destination. Accordingly, the link which Regulation No. 817/2010 establishes with Regulation No. 1/2005 permits the inference that the copy of the journey log must perform the same function during transport to the place of the first unloading in the third country of final destination as the original version of the log during transport to the exit point of the Union."

⁹ European Commission, Report dated 10 November 2011 to the European Parliament and the Council on the effects of Regulation (EC) No. 1/2005 on the protection of animals during transport, COM (2011) 700 final, p. 10: "This correlates with the information gathered by several non-governmental animal welfare organisations – Such as Eurogroup For Animals; Animal Angels; Compassion in World Farming; Eyes on Animals. – and presented to the Commission via official reports. Some major deficiencies and problems highlighted by these reports are described in the following Chapters."

possibly image documents that could corroborate the given information? Have earlier reports by the NGOs turned out to be true in hindsight? Is the provided information also confirmed from other sources? Are there several or even a larger number of NGO reports or journalistic reports that point in the same direction and thus convey a relevant overall picture?

In any event, according to these criteria, it is likely that journey logs will generally be discontinued on animal transport vessels and not duly completed during a ship transport as prescribed in Annex II, sections 3 to 5. Since the timely completion of the journey log serves the welfare of the animals and since, according to Art. 3 sentence 1 ATR, a transport must already be prohibited if the animals could thereby be subjected to unnecessary suffering – i.e. if there is a justifiable, serious and obvious possibility with concrete indications that a violation of regulations might occur which is important for the welfare of the transported animals –, this means that transports including a ship's passage must no longer be approved in accordance with Art. 14 ATR for the time being.

In example case D

the authority of the place of departure must take note of the reports of the NGO and, if they prove the serious, obvious possibility of an infringement or multiple violations of ATR's provisions in the event of their accuracy, to check their veracity (that is, among other things, their level of detail, the absence of internal contradictions, the presence of any confirmatory image documents, similar information from other sources, as well as whether reports by these NGOs have already proven to be substantially accurate in the past). Should this examination lead to the conclusion that the reports are very likely to be correct, they must be taken as the basis for the decision on the approval under Art. 14 ATR according to § 24 German Administrative Procedure Act (or § 37 Austrian General Administrative Procedure Act) and they oblige the respective authority not to grant the approval of transport without a prior change in the transport planning which would ensure that the infringements in question are avoided.

Regarding example case E:

In the television program "Kontraste" on 24 May 2018 at 21:45 on ARD (an Association of German public service broadcasters), an official veterinarian explained in essence that she must grant the approval of transport under Art. 14, para 1 ATR, as long as she was unable to prove the non-existence of the specified control post or their inappropriateness – even if she had doubts that the control posts specified by the organiser in the planning actually existed and that the animals were able to be unloaded, fed, watered and rested for 24 hours there. This legal opinion is incorrect and incompatible with Art. 14 para 1 (a), (ii): It is not the responsibility of the veterinary authority at the place of departure to prove to the organiser that the transport is likely to be in breach of the ATR, but it is the organiser who must convince the veterinary authority that compliance with all ATR provisions can be expected, in this case also that a control post will be reached in good time before the expiry of the journey time laid down in Annex I, Chapter V, points 1.4 and 1.5, where all animals can be unloaded and rested and which meets the requirements of Art. 3 Regulation (EC) No. 1255/97. Such prima facie evidence includes: detailed factual information (e.g. details of the exact address of the control post), photos, videos, excerpt from Google Maps, declaration under oath).

Only after the organizer has thus succeeded in convincing the Authority that compliance with all provisions is predominantly likely – in this case, that a control post will be reached in good time with all probability, which meets the requirements of Art. 3 of Regulation (EC) No. 1255/97 –, may the approval be granted.

Regarding example case F:

In Turkey, there are no control posts with unloading facilities¹⁰. Instead, it is customary to immediately transfer animals to domestic trucks when they have arrived at the place of destination specified in the transport documents and to transport them further inland. However, “place of destination” within the meaning of Art. 2 (s) ATR is the place where an animal is unloaded from a means of transport and either kept for at least 48 hours prior to its onward transport, or slaughtered. The above practice therefore results in the fact that the transport is not already completed with the arrival of the animals at the place specified as the place of destination in the transport documents – as this is in fact not a place of destination within the meaning of Art. 2 (s) –, but continues with the drive inland. However, since neither the Turkish trucks comply with the requirements placed on means of transportation for long-distance journeys according to ATR Art. 7 and 18 and Annex I Chap. II and VI, nor control posts with unloading facilities and resting facilities compliant with Art. 3 of Regulation (EC) No. 1255/97 exist inland, this further transport section infringes the ATR and results in the entire transport not being permissible. Therefore, the veterinary office at the place of departure must refuse the authorization of the entire transport in accordance with Art. 14 para 1 (a), (ii) if there are indications of the practice described.

The German government too indirectly admits that there are currently no control posts with unloading facilities and rest facilities in Turkey. In its response to a request from the AfD political party, it states: “The competent authorities of the Federal States are responsible for examining whether the transport planning to be submitted in advance by the traders indicates that the transport complies with animal welfare provisions. The Turkish Ministry of Agriculture has provided the *prospect* (highlighted by the authors) construction measures to improve the care of the animals. Supply stations *are to be built* (highlighted by the authors) both at the border of the country as well as inland.”¹¹ Since, according to a statement by the Federal Government of February 2018, the Turkish Ministry of Agriculture “has provided the prospect” of constructing control posts and that these are “yet to be built”, this can only mean that there are currently no functioning control posts in existence in Turkey.

The same can also be deduced from a recent statement by the German Federal Ministry of Agriculture [Bundeslandwirtschaftsministerium (BMEL)]. It reports on welcoming a delegation from the Turkish Ministry of Agriculture for a joint visit to German control posts and states: “The concern of Turkey was *to gain know-how for the construction of comparable facilities* (highlighted by the authors), including in the area of the Bulgarian-Turkish border.”¹² These statements, too, clearly show that there are currently no functioning control posts in Turkey.

This alone should be sufficient to reject approvals according to Art. 14 para 1 (a), (ii) when 24-hour rest periods are required after unloading in Turkey.

In the case of animal transports to Middle Eastern, Maghreb and Central Asian countries, there are also reasonable doubts as to the existence of control posts within the meaning of Art. 3 of Regulation (EC) No. 1255/97 east of the province of Smolensk. This must at least lead to the authority for the approval procedure requiring the submission of further means of substantiation in addition to the exact address of the allegedly scheduled control posts from the organiser (excerpt from Google Maps, photos, videos, records of the navigation system from previous transports that demonstrate an unloading and 24-hour rest at the respective control post). For the organiser,

¹⁰ see Rabitsch, A., Wiener Tierärztliche Monatsschrift [Veterinary Medicine Austria (Vet Med Austria)] 103, 2016, p. 283, 300

¹¹ Bundestagsdrucksache 19 / 727 v. 13. 2. 2018, p. 3

¹² Statement of the BMEL of 28 May 2018 on the topic of “Animal protection must not end at borders”

the procurement of such evidence is reasonable, because he has to get in touch with the control posts planned for the transport anyway before creating his transport planning, must register his transport there and submit the booking confirmation to the authority at the place of departure.

IV. No approval either if information available to the authority at the place of departure indicates that it does not violate the ATR but will most likely infringe another provision of European law?

Example case A:

A transport of cattle, for which the journey interval of 29 hours permitted in accordance with Annex I, Chapter V, point 1.4 (d) is to be used, only plans to use one pair of drivers, although according to Regulation (EC) 561/2006 (“Driving times and rest periods”) two drivers are only allowed to drive together for a maximum of 18 hours at a stretch – 20 hours at the most twice a week – but never longer.

Example case B:

Although a two-storey cattle truck complies with the required interior height on both levels according to Annex I, Chapter II, No. 1.2, the overall height of the vehicle of 4.2m exceeds the maximum permissible vehicle height of 400cm according to the Road Traffic Licensing Regulations (StVZO) (in Austria: StVO, “Road Traffic Regulations”) (and there is no exemption, or the present exemption is not valid in all countries the transport is to pass through on its way to the place of destination).

Example case C:

Although a three-storey transport vehicle loaded with pigs weighing approximately 110 kg complies with the required loading density of not more than 235 kg/m² in all bays according to Annex I, Chapter VII (D), it exceeds the maximum total weight of 40.0 tons permitted by the StVZO.

Example case D:

The route planning for an animal transport vehicle with a gross weight of about 38 tons is based on an average speed of 95 km/h on motorways, although a maximum speed of only 80 km/h is allowed according to the StVO.

Regarding example cases A to D:

The term “realistic” used in Art. 14 para 1 (a), (ii) means that no transport may be authorized which can only be carried out in breach of valid legal provisions. Plans that are clearly based on legal violations must not be tolerated by any authority, because one cannot accept events or conditions that are manifestly unlawful as “realistic” in a constitutional state. The authority that would nevertheless approve such a transport knowing the likely infringement would be guilty of aiding and abetting the expected infringement.

In example case A, either a control post in accordance with Annex I, Chapter V, No. 1.5 must be reached after 18 (or 20) hours where the animals can be unloaded and rested. Or another pair of drivers who previously took their rest period outside the vehicle and have not already consumed the planned driving time through their journey time there must be deployed in order to exploit the maximum allowable transport duration and to comply with the social provisions pursuant to

Regulation (EC) 561/2006¹³. The German Federal Government expressly agrees with this view¹⁴. However, the second driver pair has to join 18 (or 20) hours after departure and replace the first pair, who are not allowed to stay aboard during their rest period. This also applies to animal transports outside the European Union to most countries in the world. A planned violation of the prescribed driving and resting times also indirectly affects animal protection and thus the precautionary principle in Art. 3 sentence 1 ATR, since the fatigue of the drivers which is to be prevented by the social provisions also increases the risk of a less animal-friendly driving style as well as the risk of accidents.

In example case B, the vehicle is too high. On the one hand, this increases the risk of accidents due to an upwards shift of the center of gravity and on the other hand, it leads to foreseeable transport delays in most countries when the vehicle is checked by police and prevented from continuing its journey due to its impermissible height. Therefore, the impermissible height of the vehicle also constitutes a violation of the precautionary principle pursuant to Art. 3 sentence 1 (accident risk) and the acceleration requirement pursuant to Art. 3 sentence 2 (a) (in the case of a temporary prohibition of the onward journey due to a police check)¹⁵.

For the example case C and D, the same applies: If the vehicle weight or speed is too high, there is an increased risk of accidents as well as the risk that the onward journey will be delayed or even prohibited by the police. In both cases, both the precautionary principle, Art. 3 sentence 1 ATR, and the acceleration requirement pursuant to Art. 3 sentence 2 (a) are affected in addition to the provisions of the StVO. Moreover, an excessive speed of 95 km/h is both technically and factually unrealistic¹⁶.

V. No approval either if information available to the authority at the place of departure indicates that the animals will most likely be slaughtered in a cruel way after the transport?

This question will be dealt with in the next issue of the ATD.

See: **Testing the plausibility (Art. 14(1) (a), (ii)) in the framework of official permits of long-distance, border-crossing animal transports**

¹³ see Rabitsch/Wessely, ATD 2012, 99, 108: If viewed differently, one would allege that the legislators are essentially assuming that the Regulations which they have passed will not be observed anyway.

¹⁴ see Bundestagsdrucksache 17/12938, p. 5, 6: As regards the question put by MP Mr Ostendorff and others, whether the German Government agrees that the maximum permissible transport time for cattle, sheep and goats under Regulation (EC) No. 1/2005 (14 hours, at least 1 hour rest, another 14 hours) could not be taken advantage of with two drivers without breaching compliance with Regulation (EC) No. 561/2006, the answer was as follows: "The Federal Government agrees with the opinion". Also in Bundestagsdrucksache 17 / 13006 p. 5, 6: maximum possible transport duration of 24 or 29 hours with only two drivers not exploitable. See also EU-Kommission, Bericht über ein Audit in Deutschland 26.-30. Juni 2017 zur Bewertung des Tierschutzes während des Transports nach Nicht-EU-Staaten, DG Santé 2017-6107 p. 5: Pointers in the "Handbook on Animal Transports" to include the rest periods required for drivers by the social provisions in the plausibility check. "Handbuch Tiertransporte" [Handbook on Animal Transports] as of May 2013, p. 66: To be considered here are the breaks to be complied with pursuant to the social provisions for the drivers.

¹⁵ See Handbook on Animal Transports, as of May 2017 p. 29: "In order to avoid violations of animal protection legislation, it is therefore necessary to check whether the animals are provided with the necessary room height in all loading storeys (without the roof being raised above 4 m). Unless a corresponding road traffic law exemption can be shown, a clearance with an extended roof cannot be considered as an alternative course of action due to lacking permissibility under road traffic laws."

¹⁶ See Handbook on Animal Transports, as of May 2013 p. 66: "Depending on local conditions, a speed of 60 km/h is assumed as the average speed for road transport (for long-haul routes with motorways making up more than 60% of the road kilometres, average speed is assumed to be 80 km/h). To be considered here are the breaks to be complied with pursuant to the social provisions for the drivers." See also Österreichisches Bundesministerium für Gesundheit, Handbuch Tiertransporte – Teil 2 Lange Beförderung (Federal Ministry of health, Handbook Animal Transports – Part 2: long distance transports), as of 16 March 2010, p. 16, 17: "As part of a proper planning, the following points must also be taken into account: the planned route should appear manageable for the total distance based on an average speed of maximum 70 km/h (80 km/h on motorways, 60 km/h on other roads) within the maximum allowed transport duration. It is also explicitly stated here that the time data in TRACES is not realistic and must definitely be corrected by means of a route planner by the official veterinarian handling the approval."

Legal norms

Austrian Motor Vehicles Act [(Österreichisches) Kraftfahrzeuggesetz, KFG] 1967, Federal Law Gazette No. 267/1967, as last amended by Federal Law Gazette I No. 57/2007

German Road Traffic Licensing Regulation (Straßenverkehrs-Zulassungs-Ordnung, StVZO) of 26 April 2012 (Federal Law Gazette I p. 679), as last amended by Art. 1 of the Ordinance of 20 October 2017 (Germany, Federal Law Gazette I page 3723)

German TierSchTrV (Tierschutztransportverordnung): Regulation on the protection of animals during transport and for implementing Council Regulation (EC) No. 1/2005 (Animal Protection Transport Regulation) of 11 February 2009 (Germany; BGBl. I p. 375) last amended by Art. 9 para 14 of the law dated 3 December 2015 (BGBl. I p. 2178).

Austrian TTG (Tiertransportgesetz) 2007: Federal Act on the Transport of Animals and Related Operations (Animal Transport Act 2007 – TTG 2007). Original version: Federal Law Gazette I No. 54/2007).

ATR [(European) Animal Transport Regulation]: Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/632/EEC and 93/119/EC and Regulation (EC) No. 1255/97, Official Journal L 3 of 5 January 2005

Council Regulation (EC) No. 1255/97 of 25 June 1997 concerning the definition of Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC, Official Journal L 174 of 2 July 1997

Regulation (EC) No. 561/2006 (“Drivers’ driving time and rest period Regulation”) of the European Parliament and the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No. 3821/85 and (EC) No. 2135/98 and repealing Council Regulation (EEC) No. 3820/85 (Official Journal L 102 of 11 April 2006)

Abbreviations

Art.	Article
ATR	European Animal Transport Regulation (EC)1 / 2005 (Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations)
Dir.	Directive
EC	European Community
ECJ	European Court of Justice
ef.	Compare, see
e.g.	For Example
EU	European Union
i.e.	this is
[l.c.]	reference as specified
Para	Paragraph
Reg.	Regulation
TierSchTrV	Animal Protection Transport Regulation (Germany)
TTG	Animal Transport Act 2007 (Austria)

Bibliography

Bundestags-Drucksache 17 / 13006 v. 9.4.2013, Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Friedrich Ostendorff u. a. und der Fraktion BÜNDNIS 90 / DIE GRÜNEN, Zusammenhang zwischen den maximal erlaubten Transportzeiten für Tiere sowie den Lenk- und Ruhezeiten für Fahrer

Deutsches Handbuch Tiertransporte, Vollzugshinweise zur Verordnung (EG) Nr. 1/2005 des Rates v. 22. Dezember 2004 über den Schutz von Tieren beim Transport und damit zusammenhängenden Vorgängen ... und zur Tierschutztransportverordnung v. 11.2.2009. Ansprechpartner: Mitglieder der Länderarbeitsgruppe Dr. Marschner, Goller-Englberger, Dr. Marahrens, Dr. Franzky, Eggert-Satzinger, Dr. Maurer, Dr. Knipf, Dr. Herzog. Redaktion: Dr. Ulrike Marschner (Ulrike.Marschner@stmuv.bayern.de). Stand Mai 2017

Deutsches Handbuch Tiertransporte, Vollzugshinweise zur Verordnung (EG) Nr. 1 / 2005 des Rates v. 22. Dezember 2004 über den Schutz von Tieren beim Transport und damit zusammenhängenden Vorgängen ... und zur Tierschutztransportverordnung v. 11.2.2009. Ansprechpartner: Mitglieder der Länderarbeitsgruppe Dr. Gehrisch, Dr. Marschner, Dr. Marahrens, Dr. v. Zakrzewski, Dr. Franzky, Miebach, Eggert, Dr. Maurer, Dr. Nickisch, Dr. Bokeloh, Wiesner, Dr. Eberhardt. Stand Mai 2013

Europäische Kommission, Bericht über ein Audit in Deutschland 26.-30. Juni 2017 zur Bewertung des Tierschutzes während des Transports nach Nicht-EU-Staaten, DG (Santé) 2017-6107

Europäische Kommission, Bericht an das Europäische Parlament und den Rat über die Auswirkungen der Verordnung (EG) Nr. 1 / 2005 über den Schutz von Tieren beim Transport, 10.11.2011, KOM (2011) 700 endgültig

European Commission, Final report of a fact-finding mission carried out in Turkey from 5 September to 8 September 2017 on animal welfare during transport to non-EU countries, DG(SANTE) 2017-6110, S. 9

European Commission, The welfare of animals during transport (details for horses, pigs, sheep and cattle), Report of the Scientific Committee on Animal Health and Animal Welfare, adopted on 11 March 2002

European Food Safety Authority (EFSA), Scientific Opinion Concerning the Welfare of Animals during Transport, EFSA Panel on Animal Health and Welfare (AHAW), 12.1.2011, EFSA Journal 2011; 9(1): 1966

Hirt, Almuth/Maisack, Christoph/Moritz, Johanna, Tierschutzgesetz, Kommentar, 3. Aufl., Verlag Franz Vahlen, München 2016

Rabitsch, Alexander, Befund und Gutachten bei Tiertransporten, Wiener Tierärztliche Monatsschrift (wtm) 103(2016), S. 283-304

Rabitsch, Alexander, Tiertransporte, Anspruch und Wirklichkeit, Veterinärspiegel Verlag in der schaefermueller publishing GmbH, Berlin 2014

Rabitsch, Alexander, und Wessely, Wolfgang, Zur Beachtung der Lenk- und Ruhezeiten der Fahrer im Zusammenhang mit Langstreckentransporten von Tieren, Amtstierärztlicher Dienst und Lebensmittelkontrolle (AtD) 2 / 2012, S. 99-109

Sächsisches Staatsministerium für Soziales und Verbraucherschutz, Erlass v. 30.1.2018, Aktenzeichen 24-9161.42 / 10, zu: 1. Transporte in Drittländer – Notwendigkeit der Führung des Fahrtenbuches bis zum Endbestimmungsdrittland, 2. Kontrollen der zuständigen Behörden während langer Beförderungen – Navigationssystem – Elektronische Datenübermittlung, 3. Tiertransporte bei extremen Temperaturen, 4. Notfallpläne und Rindertransportfahrzeugzulassungen und 5. Verifizierung von Kontrollstellen in Drittländern über BMEL

Wissenschaftliche Dienste des Deutschen Bundestages, Ausarbeitung WD 5 – 3000 – 001 / 17, Regelungen der europäischen Tiertransportverordnung zu langen Tierbeförderungen im Licht des Urteils des Europäischen Gerichtshofs v. 23.4.2015 (C-424 / 13)

Testing the Plausibility (Art. 14(1) (a), (ii)) in the Framework of Official Permits of Long-Distance, Border-Crossing Animal Transports



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Animal Welfare.
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slaughter; slaughter practices; slaughter without anaesthesia; animal mistreatment; aiding and abetting animal abuse; premeditated actions of the assisting persons; approval of transports; issue of prior certificates; compliance with instructions; remonstrations; non-observance of the instructions.

Summary

Numerous reports, mainly through TV, demonstrate the slaughter practices in southern countries, especially in Turkey, in the Middle East, and in the Asian follower states of the former Soviet Union. As a rule, apart from the slaughter without stunning according to religious rites, animals are often target of cruel practices prior to the killing: chaining, fingers in the eyes, repeated cuts of the throat and longer struggles in agony. Therefore, slaughter in these countries is mostly executed by animal abusing practices. Veterinary authorities that are to issue official permits of animal transports according to Art. 14(1) (a) ii) into those countries have to ask the question whether they are about to aid and abet animal abuse – even if the abuse is done far away from issuing the permit. The fact of aiding and abetting animal abuse is also true despite the fact that the veterinary authority does not know where and by whom the animal abuse will happen. And this is true also although in the countries of destination of the animals is no legal system to penalise. The reproach of complicity is already justified, if there is evidence that in the countries of destination slaughter is carried out without stunning. Under this premise, Official Veterinarians are not only entitled to refuse the approval of the journey, but – even more – they are obliged to refuse. This knowledge should be seen by veterinary authorities as justification to remonstrate against orders to issue permits of animal transports in those countries, since according to the judiciary system in Germany and Austria (and in the EU) no civil servant can be forced by order to any noncompliance with the regulations in force.

I. Animal mistreatment practices at their slaughter in many third countries, including Turkey, the Middle East, the Maghreb, and the other Asian states of the old Soviet Union.

The co-author visited four different markets around Rabat, Morocco, with the NGO “Animals’ Angels” (www.animals-angels.de) from April 28 to May 2, 2017, including the Mers el Kheir cattle market with slaughterhouses attached for sheep and cattle. In the cattle slaughterhouse he witnessed one of many slaughters: a Holstein-Friesian black and white bull was transported to the upper hall with the front legs already tied. The existing carcasses, which were skinned, partially skinned, exenterated, wrapped in tape, and hanging on the bands of pipes, were set aside to make room for the slaughter. The edges of the hall floor were covered by a film of blood which deepened to a layer of 8 cm in the centre. Among the people’s shouts the back legs of the bull were bound and then tied to the front legs. So, the animal fell, which led to the blood on the floor being splashed onto several people and animals already slaughtered. Then the executioner jumped on the back of the bull lying on the floor, while other people fixed his legs with rope. The executioner roughly bent the bull’s neck back and began to saw at his throat with a knife. Large blood vessels and respiratory tubes were split. Since the co-author left the premises because he was emotionally overwrought, no statement can be made as to how long it took the animal to die. A comparative picture is available on page 21 of the report “Farming animal protection in Morocco – The urgent need for legislation for the protection of farm animals” in 2014 from Animals’ Angels¹.

¹ https://www.animals-angels.de/fileadmin/user_upload/1_DATEN_AB_2014/2_EINSAETZE/MAROKKO/Animals_Angels_Farm_Animal_Welfare_in_Morocco_2014.pdf

Similar methods have been reported by various animal welfare organizations in the Maghreb, the Middle East and Turkey. Reports and photos all show a similar picture. Thus, for example, journalist Manfred Karremann reports in the “37 degrees” program of ZDF channel² about gruesome sequences of animal slaughter in Egypt. In these sequences, before killing the bull, Achilles tendons are cut and then their eyes are removed. Animals Australia (www.animalsaustralia.org) reports similar cases of Zebu buffalo killings in Egypt³. Lesley Moffat, director of Eyes-on-Animals (www.eyesonanimals.com) reports of similar animal-slaughter conditions that are contrary to animal protection norms in Turkey. These conditions have been improved relatively through enforced training programs and technical changes in a few slaughterhouses⁴. Compassion in World Farming (www.ciwf.org, UK) reports on the fate of European animals, including those in Turkey and Lebanon⁵.

In the latest report, the “Kontraste” show (ARD, 24.05.2018 at 21:45), filming took place in a third-country slaughterhouse whose name was not mentioned: Bovines were killed without stunning; they were tied with ropes and pulled by their tails to the place of the throat slitting; the animals were stabbed several times and cuts similar to those of a saw were applied; the floor was almost entirely covered with blood; the animals screamed, even after the slitting, and their fight with death lasted several minutes⁶.

All these accounts are detailed, supported by images and films, and describe a uniform picture. Taken together, the information indicates that in the case of animals transported to Turkey, the Maghreb, the Middle East, and the Asian successor states of the former Soviet Union, there is a likelihood of them being killed with repeated torment and pain, and that they are subject to unnecessary torment, such that their killing is regularly subject to a criminal offence under Art. 17 No. 2b of the animal welfare law (Germany) and respectively according to Art. 222 para 1 No. 1 of the Criminal Code (Austria).

The Austrian Veterinary Chamber has admitted that these are not isolated cases (www.tieraerztekammer.at). A statement dated 4 January 2018, said: *“Regular reports by numerous NGOs about wild breaches of animal welfare during transport to third countries and at EU borders, especially at the Turkish border, as well as the latest documentary film ‘The Secret of Animal Transports – When the Law Does Not Protect’ by Manfred Karremann are equally shocking and revolting. Many such shipments and the specific practices in many third countries, where for example the animals’ eyes are gouged out without stunning before the slaughter and tendons of the extremities are cut, are clear examples of mistreatment of animals.”*⁷

Similarly, the chairman of the Chamber of Veterinarians from Germany expressed himself at a press conference on 23.11.2017: *“The suffering continues, because this animal journey does not end at the EU’s external border. The transport and killing conditions in the recipient states are far from meeting EU standards. And this is a polite description of the conditions of these animals. ...”* *“Lastly, sustainable measures must be taken to ensure that the animal protection provisions are met. Otherwise, the transport of live animals to third countries such as Turkey, Lebanon or Egypt can no longer be carried out from the EU! ... Is it really necessary to transport live animals thousands of miles, so that after unimaginable torments they will reach the slaughterhouse?”*⁸

2 <https://www.zdf.de/dokumentation/37-grad/37-geheimsache-tiertransporte-100.html>

3 <https://vimeo.com/65498418>

4 <https://www.eyesonanimals.com/de/unsere-erfolge-2/successes-in-2014>; <https://www.eyesonanimals.com/de/inspection-of-tekirdag-slaughterhouse-turkey>

5 <https://youtu.be/m23TrbPZBJA>

6 <http://www.daserste.de/information/politik-weltgeschehen/kontraste/videosextern/index.html> (tormented and jammed together with official approval)

7 The Austrian Veterinary Chamber; “Prevention of animal transport and slaughter in torment”, statement of 4.01.2008, https://www.tieraerztekammer.at/fileadmin/daten/Oeffentlicher_Bereich/Kammer/Positionen/2018/Stellungnahme_Tiertransporte.pdf

8 Bundestierärztekammer (BTK), “Qualvolle Tiertransporte in Drittländer stoppen !” Presseinformation v. 23.11.2017 Nr. 20 / 2017

Moreover, there is evidence that animals are being tormented at the place of destination when unloaded (e.g., according to Manfred Karremann's report, see footnote 3). These practices are considered, according to Art. 2 item j of EU Animal Transport Regulation a component of the transport process and for this reason – if foreseeable – it should have led to the rejection of the authorisation under Art. 14 (1) (a) (ii) EU Animal Transport Regulation.

II. On the issue of Breeding animal exports

By using the argument that it is not about exports for slaughter but for animal breeding, many politicians refuse to undertake responsibility for the situations described above: *“As a rule, in the case of transport of cattle for breeding there is no transport problem. Breeding cattle are particularly valuable animals and for this reason both for the consignor and the consignee, but also for the carrier, it is very important that these animals reach their destination healthy and in good condition.”* This quote from Austria's former Minister of Agriculture⁹ points out that no one can safely say whether animal farming and breeding are taking place in recipient countries. *“It cannot be concluded without difficulty that in the desert of Jordan, in the Kazakhstan steppe or in the Maghreb states the animals can be fed on pastures, they can breed and give the necessary yield. And yet the European Union has been exporting such animals for decades”*¹⁰. Despite the European Court's ruling C-464/13, according to the European statistics on exports from Eurostat (<https://ec.europa.eu/eurostat/de/home>), export figures have increased.

The Austrian Veterinary Chamber states on the question of: *“Bovine for slaughter/for breeding”* the following: *“But the export of bovine animals for farming is a cause for concern: For decades, tens of thousands of cattle have been transported across Europe to the Middle East, Maghreb, Russia, Uzbekistan and Kazakhstan, and Turkmenistan, without this having contributed to a significant increase in the number of animals for milk production. If there is a lack of proper feed, knowledge and procedures and there are no climatic conditions for Holstein breeding, then Europe's actions and trade must be seriously questioned. Furthermore, these animals and their offspring are often slaughtered in conditions contrary to European standards.”*¹¹

In the “Kontraste” show of 24.05.2018¹², for the Association of Veterinarians for Animal Protection (TVT), expert Dr. Michael Marahrens remarks on the stated cause of the transported animals as being about animals for breeding: He asserts that this is label fraud; in the aforementioned countries, he states that they would lack the fodder base for animal husbandry; furthermore, there is no agricultural structure that would allow the animals to grow; bovine animals exported as breeding animals “of course arrive in slaughterhouses”.

This estimate is supported by the number of slaughtered bovine animals exported from Germany: In 2017 Germany exported 70 cattle for slaughter and 79,219 cattle – a thousand more times – for farm breeding. Since in the afore mentioned countries, and especially in Turkey, many bovine animals have been exported for many years for farming, if it were not a scam on the label, it should be possible for them to be able to prove their large cattle populations to Europe. But this is not possible. Moreover, as the Austrian Veterinary Chamber notes, the export of animals for years to Turkey and other states mentioned above “has not led to an increase in the livestock population

⁹ Response of the Federal Minister for Agriculture Josef Pröll to a Parliamentary inquiry (3867/J) of the MP's Mag. Brigid Weinzinger and colleagues concerning export subsidies for breeding cattle, https://www.parlament.gv.at/PAKT/VHG/XXII/AB/AB_03839/fname_060118.pdf

¹⁰ See: Alexander Rabitsch, Tiertransporte – Anspruch und Wirklichkeit (Animal Transport – The Right and the Reality) Veterinärspiegel Verlag (schaefermueller publishing), ISBN: 978-3-86542-065-7, p. 261 ff.

¹¹ Declaration of 4.1.2008 “Preventing painful animal transports and painful slaughtering”

¹² <http://www.daserste.de/information/politik-weltgeschehen/kontraste/videosextern/index.html> (tormented and jammed together with official approval)

for milk production.“ Another indication that animals exported for breeding are often slaughtered immediately after arriving at their destination, are the very high prices paid in Turkey for meat. Yet another clue is the desire of many consumers to buy meat obtained according to regional methods and after slaughtering with halal methods.

A report by the US Department of Agriculture shows clear indications that cattle exported to Turkey for milk production are actually slaughtered immediately after arrival¹³. Proof is the high price of meat and very low milk prices. Also, very high feed prices have played a role, as it is known that German dairy cows in particular consume a lot of feed and pose a challenge for management. According to the report, the dairy cow population in Turkey decreased between 2015 and 2016 – by 16% – despite the continuous exports of bovine animals from Germany.

Even if cattle are used in the first stage for breeding, this only happens to give birth to a single calf, meant to stimulate milk production; the born calf is taken from the mother and then killed.

III. Is the contribution/involvement of German and Austrian veterinarians to the slaughter of animals abroad, who hence commit the offence of ill-treatment of animals, criminally punishable according to Art. 17 No. 2 b of the German animal welfare law, respectively Art. 222, paragraph 1, No. 1 of the Austrian criminal code?

About the participation / contribution of officials to the mistreatment of animals

Authorization under Art. 14 paragraph 1 of the EU Animal Transport Regulation is an important condition for the further fate of animals exported outside of the EU. This applies both to the many practices of animal maltreatment when unloading them, which is a component of the transport process, and to the cruel conditions associated with slaughter, which affect almost all animals. In order to classify the authorization as an abetment, it would be enough for the authorization to be accompanied by the main offender's involvement in the cruel slaughter that takes place in the slaughterhouses in Turkey, Egypt, etc. The effects of this action make it not just a mere promotion of the facts, because such action is the cause for which at the time of slaughter the animal is at the place of killing, under the conditions applicable there, which it must endure, thus granting the approval objectively fulfills the fact of aiding and abetting cruelty to animals. (Germany: Art. 27 of the Criminal Code in conjunction with Art. 17 No. 2b of the Animal Welfare Act; Austria: Art. 12 and Art. 222 para 1 Austrian Criminal Code and Art. 38, paragraph 1, No. 1, in conjunction with Art. 5, paragraph 1, of the Animal Welfare Act)¹⁴.

For the deliberate act of the offender who directly commits the killing, it is sufficient for him to know and accept all the conditions under which he kills the animal and the pain and suffering caused to the animal. The legal assessment of tormenting an animal is not a necessary component of the intention.

Consequently, it is sufficient for the veterinarian concerned to know about the country to which the animals are exported and the aggravating practices to which the animals are subjected. If, however, the veterinarian approves the shipment, then he/she acts intentionally. For the premeditated offence (Art. 27 of the Criminal Code, Art. 12 of the Criminal Code) it is enough to know that once

¹³ Compare: Report of the USDA (= US Department of Agriculture) Foreign Agriculture Service of 15.8.2017, Gain Report Number TR 7033

¹⁴ The difference of opinions in the criminal law regarding the question whether the act of involvement must have caused the offence to be committed, or if it is sufficient that by the actions of the person involved, the final offender was enabled in committing the offence (according to law, compare *Neue Zeitschrift für Strafrecht – NStZ* – 2018, 328), is not relevant: without the approval of the transport, i.e. without certification, the animal would not be in the foreign slaughterhouse at the moment of killing, so it could not even be slaughtered there. The approval of transport is thus the cause of the cruel killing process

they reach destination, the animals are killed in torment without stunning¹⁵. The classification of killing without stunning as a method of ill-treatment is not contradicted by the fact that such slaughter can be occasionally accepted in Germany and Austria under strict conditions, because it cannot be said that these strict conditions would be respected in the corresponding Middle East states, Turkey, Maghreb or in the Asian successor states of the former Soviet Union¹⁶. Moreover, from the pictures and reports about slaughtering practices of the above mentioned states, it can be clearly seen that besides the lack of stunning, other methods are used that amplify the pain and suffering of the animals (see TV report Kontraste: blood flow by the use of several knife stabs, the cutting of animals by sawing movements, the animals being drawn with rope by their tails to be brought to the place of killing, large amounts of blood on the floor, cries of animals during and after stabbing them, drawn out death of many animals).

The argument that the animals transported are not animals intended for slaughter but for breeding does not change the premeditated offence, because on the one hand this is a scam of the label (see item II above), and on the other hand sooner or later, animals intended for breeding are also killed; the chronological distance between the approval of transport, as well as the involvement in the criminal act and the barbarous killing of the animals does not change the fact that the granting of the authorization has provided objective and subjective aid to the commission of the subsequent criminal deed.

The effect of authorization (which is causal) on subsequent slaughter is known to the veterinarian who approves the shipment. It is irrelevant if he/she does not know or cannot know when, how and what people will torment the animal, as the involvement in acts of ill-treatment is not limited to the perpetrator, the place, time and other circumstances of the offence¹⁷. Equally irrelevant is the inner distance to the processes described, because a crime is also committed by the person who does not want the actions supported by it to take place¹⁸. Equally irrelevant is the fact that the external offender and the approving veterinarian are unaware of and probably will never know each other¹⁹. Neither spatial distance nor – in the case of the above estimation, in the case of the declaration, the breeding animals – the chronological distance between the involvement in slaughter and the subsequent actual slaughter relieves a person from the involvement / contribution²⁰.

Involvement / participation as a domestic act

The fact that the animals are abused only abroad does not change the fact that the approval of the transport, which is involved in the act of mistreatment, takes place domestically according to Art. 14 EU Animal Transport Regulation²¹. (Paragraph 2, sentence 2 of the German Criminal Code.)

15 Compare Wolter (ed.) / Hoyer, Systematic commentary on Criminal Code, edition 9 2017, Art. 27, MN 34: The premeditated act of the involved person need not extend to the person who, when and where the act was committed, but only to the final act itself and to the fact that it took place. Compare also the commentary from Munich at StGB Joecks, 3rd edition 2018, Art. 27 MN 96: „He must have heard of the extent of injustice, but it does not need to know the details.“

16 Compare the constitutional federal court judgment of 15.01.2002, 1 BvR 1783/99, juris MN 40, 58: „... by secondary agreements on exceptional authorization to ensure that animals do not suffer during transport, anaesthesia and during the slaughter process. They must be obtained by provisions relating to areas, annexes and other appropriate ancillary means ... by secondary provisions and by monitoring their observance ... it shall be ensured that the animal protection provisions are met as far as possible“.

17 Compare Schoenke / Schroeder / Heine / Weisser, Criminal Code, edition 29, 2014, Art. 27 MN 29: “For accomplices it is enough to perceive the extent of the injustice of the deed – i.e. their contribution to the injustice and the direction of the attack ... The details of the deed must not be known to the accomplice. You do not have to know the person who commits the deed, or when, where, to the detriment of whom and under what unfavourable conditions is the act done“.

18 Compare Schoenke / Schroeder / Heine / Weisser: “the simple act of declaring to the offender that he does not agree with the acts intended and that the accomplice transfers the entire responsibility to the offender does not exclude the accomplice of participation in the premeditated act.“

19 Compare Lackner / Kuehl / . Criminal Code, edition 29 2018, Art. 27 MN 7: “The accomplice does not need to know the person committing the act. Complicity is not necessarily excluded if the accomplice does not wish for of the crime to be carried out“.

20 The fact that the actions of complicity take place long before the act of killing does not relieve the accomplice, compare the civil code, Neue Zeitschrift für Strafrecht.

21 Compare Gribbohm in: Leipzig Commentary on the Criminal Code, Berlin 2007, Art. 9 MN 29: “shall apply if the offender has participated in an act on foreign territory, German law shall apply for participation, even if the offence is not punishable under the law of that country“; Ambos: Munich Commentary on Civil Code Edition 3 of 2017, Art. 9 MN 39

This is a domestic crime, even if the animals are ill-treated abroad (according to Art. 9, paragraph 2, sentence 1 of the German criminal code i.e. Art. 67 para 2 Austrian criminal code), for which punishment is applied under the German/Austrian criminal law.

By Art. 9 paragraph 2, sentence 2 of the German criminal code for domestic complicity to a later offence committed abroad, the consequence of the applicability of criminal law is whether the complicity, but not the offence committed abroad, is subject to German criminal law²². In Austria, the Art. 12 of the Austrian Penal Code applies to the person involved in a criminal offence is subject to punishment even if the direct perpetrator – because he is acting abroad and there is no criminal code – is not punished.

For the prosecution of the complicity to an offence committed abroad the principle of opportunity applies instead of the principle of legality according to Art. 153 c paragraph 1 No. 1 of the Criminal Code (StPO), i.e. the prosecution may abstain from a criminal prosecution, according to their evaluation. But this does not change the classification of such authorization as a criminal contribution to the ill-treatment of animals.

Approving transport or issuing certificates as a neutral activity specific to the profession

In the legal literature, it is currently presumed that in the case of specific professional/neutral actions, complicity to the crimes of another can be considered only if the deeds of the accomplice were intentional or were assumed to be inevitable. If the person considered to be an accomplice considers that he/she is *possibly* helping to contribute to a crime, their behaviour cannot be considered complicity²³.

If this logic is followed, it is questionable whether a transport authorisation to one of the aforementioned countries (Turkey, the Near East, the Maghreb, the southern states of the Soviet Union) and the issue of a certificate for such transport is genuine complicity in the further cruel slaughter of animals in another country, since outwardly the issuing of such authorisations to countries that do not have cruel slaughter methods is part of the normal, daily duties of such a veterinarian.

However, the jurisprudence of the Supreme Court (BGH) also sees complicity in the case of neutral actions, if at the time of the complicity situations exist that indicate it to be very likely that the main crime will occur in another country. Therefore, if such a neutral or action particular to the profession is to be assessed as complicity, it is necessary to find evidence that, at the time of the complicity, the accomplice had indications of a high probability of further criminal behaviour in the third country²⁴. Existing indications that show the accomplice knew that the main offender would very likely commit the criminal act are crucial to this decision²⁵.

22 Compare *Lackner / Kuhl Heger*, Criminal Code, edition 29 2018, Art. 9 MN 3

23 According to *Otto, Harro*, "obstruction of justice" by means of daily behaviour specific to the profession is not regarded as complicity in: *Festschrift für Theodor Lenckner zum 70. Geburtstag*, 1998, 214.

24 Federal Court of Law, sentence of 22.01.2014, 5 StR 468/12: compares Greco, Luis, the short report on punishing professional complicity and neutral complicity in the event of a serious probability In: magazine for commercial and fiscal law (wistra) 2015, 1, 4: "In the constellation of the so-called complicity Federal Court does not want to be content with clear points for promoting a deed; the court has a high degree of probability.

25 Federal Court op. cit MN. 32. See also *Lackner / Kühl a.a.O.*, § 27 MN 2: Aiding and abetting: "when the accomplice only assumes a crime may be committed but knows of the offender's propensity which creates a high risk of crimes being committed." *Munich Commentary on Criminal Code / Joecks*, § 27 MN 62, 64: "If the accomplice only has *dolus eventualis*, it will depend on the level of risk that he/she attributes to crimes being committed. ... The accomplice must regard the further crimes a 'very likely.'" *Schönke / Schröder / Heine / Weißer*, 29. Edition 2014, § 27 MN 10: According to the case law of the Federal Court "the threshold for criminal aiding and abetting shall already be crossed if the accomplice recognises that, based on the tendency to commit such crimes by the ultimate offender, there is a high risk of such a crime being committed." Beck / OK StGB, v. Heintschel-Heinegg / Kudlich, Penal Code, Commentary, C. H. Beck 2nd ed. 2015, § 27 marginal No. 13.2: If the accused acted within the scope of his profession and his behaviour not specifically adapted to the needs of the principal offender, "sufficient findings on the points of view are made and presented that speak in favor of a criminal liability (i.e. in particular for the criminal meaning or the amount of the recognized risk)".

Since veterinarians are very likely to contribute to the slaughter of animals in third-countries by issuing transport authorisations, the points required by the Supreme Court (BGH) certainly exist, such that the issuing of transport approval appears to be neutral professional conduct cannot lead to the exclusion of the act as complicity in mistreatment of animals. It is not only that the risk of animals exported to this third country will be mistreated and tortured for months and then killed in torment is very high, but also the likelihood that they will be tortured according to the local practices of mistreatment (tying extremities, throwing animals down, cutting the neck with several stabs and sawing movements, killing them in sight of still bleeding carcasses, often on a floor drenched with blood, and a long, drawn out death over several minutes). “If, for these reasons, veterinarians refuse to approve the shipment or to issue the certificate, the situation of these animals would improve considerably, because at the time of their slaughter they would not be on the site.²⁶”

IV. Protests and non-compliance with the instructions by officials

The filing of an authorisation under Art. 14 paragraph 1 (a) (ii) EU Animal Transport Regulation as complicity in the maltreatment of animals has less practical significance in criminal law – according to the presentation, Art. 153 c para 1 No. 1 Code of penal procedure in Germany and the fact that, despite the existence of all preconditions for punishment, there are no criminal proceedings, – unlike the civil servant’s laws. According to Art. 36 para 2, sentence 4 of the Civil Servants’ law, they are obliged to follow the instructions of their superiors except when such behaviour is punishable or contrary to legal provisions and the offence or its punishment is recognisable by the civil servant. According to Art. 36 para 2 phrases 1 and 2, they must submit protest to both their immediate superior and to the superior at the next higher level. If the instruction is maintained despite the protests, so-called “remonstration”, it should not be observed by the veterinarian if by his/her actions a breach of criminal law would be committed (Art. 17 No. 2 b Animal Welfare Act) or an administrative offence (in this case § 18 (1) No. 1 Animal Welfare Act) would occur.

In Austria, according to Art. 44 para (1) and (2) of the Law of Officials (BDG), similar provisions apply²⁷: the official may refuse to comply with an instruction if its observance violates a criminal provision, Art. 222 in conjunction with Art. 12 of the Austrian criminal code²⁸.

A significant difference between the authorization procedure under Art. 14 para 1 (a) (ii) EU Animal Transport Regulation and refusal to comply with the instructions under Art. 36 para. 2, sentence 4 of the Law of Officials applies:

In order to refuse the approval of a shipment in accordance with Art. 14 para 1 (a) (ii), it is enough that concrete indications exist, which lead to a serious and realistic (and not merely remote) possibility that the EU animal protection provisions will be violated during transport.²⁹ In this case, the transporting organisation must show a credible compliance with the provision, i.e. the veterinary

²⁶ In the view of Greco, *wistra* 2015, 6.: A neutral, profession-specific act becomes a criminal one if it’s refusal would substantially improve the situation of the legal property that will later be affected by the main crime. This is clearly the case here, because without the authorisation of transport or the issuing or required certificates, the animals later tormented would not even be at the location where they will be cruelly killed. By not performing this act, the veterinarian involved is drastically improving their situation.

²⁷ See *Pleyer / Loibl-van Husen / Horvat / Ritter, Beamten-Dienstrechtsgesetz, Kommentar, Linde 2010, § 44 (2)*: “Instructions of superiors may not be carried out (without discretion!) if their compliance would lead to a criminal action against them.”

²⁸ In contradiction to § 36 Abs. 2 Satz 4 BeamStG – whereby this right and duty is enough to refuse carrying out an instruction which is in contradiction to internal regulations, the prevailing legal opinion in Austria is that only carrying out orders which constitute criminal actions according to § 44 Abs. 2 BDG (actual crimes, not offenses against regulations) are to be understood as relevant. See also *Kucsko-Stadlmayer, Das Disziplinarrecht der Beamten, Springer 4. Aufl. 2010 S. 236.* – The criminally liable result of slaughter without stunning in other countries exists in general and specifically under the above-mentioned circumstances as an infraction of § 222 Abs. 1 Nr. 1 StGB and thus as an infraction of the general criminal code.

²⁹ Compare *Deutscher Bundestag, Wissenschaftliche Dienste, Ausarbeitung zu “Regelungen der europäischen Tiertransportverordnung zu langen Tierbeförderungen im Licht des Urteils des Europäischen Gerichtshofs v. 23. April 2015 (C-424 / 13)” S. 10, 11.*

office must receive proof with evidence (films, certificates, third party assurances) that compliance with the provisions can be expected despite the existence of other indications, or the organiser will need to change transport planning so as to exclude the likelihood of the infringement.

In order to refuse to comply with an order, it is necessary to fear the possibility that the authorization fulfils the conditions of a criminal act of complicity, in this case the act of enabling torturous slaughter of animals.³⁰ This requires the presentation of evidence of increased risk that the animals will be cruelly slaughtered abroad. So, for Art. 36 para 2, sentence 4 and for Art. 44 para 2 BDG a decision depends on whether the cruel nature of animal slaughter in the country to which the animals are exported is likely to constitute a high probability or to occur only occasionally.

As the slaughter without stunning is the order of the day in the countries mentioned (Turkey, the Middle East, the Maghreb, the Central Asian successor states of the former Soviet Union) and the presumption that the strict conditions imposed in Germany and Austria can be met in those cases are illusory, orders to authorise the transport of animals must not be carried out according to Art. 36 para 2, 4, of the law of civil servants in Germany and in Austria according to Art. 44 para 2. The risk of becoming an accomplice to the ill-treatment of animals through the authorisation of transports is very high. If it is necessary to justify this refusal, reference can be made to torturing practices due to the lack of stunning, as well as the other cruel and well documented practices mentioned above, which occur in the course of slaughtering.

The same question is also posed to a veterinarian if he/she has to confirm the absence of epidemics among the stock of animals intended for transport to a country in the aforementioned region. This information is available to him/her and he/she must do the necessary research regarding: Where will the animals go? Is the slaughter done there with stunning? (There are credible reports about other slaughter practices that produce long-suffering or repeated pain (see I and II from the Austrian veterinary chamber.) If they confirm the probability of application of cruel methods in that country, they can also see that the issued certificate is a promotion of ill-treatment and leads to complicity. That is why he/she is also entitled to refuse issuing the certificate, or to protest and in case of protest failure, to refuse to fulfil the order.

It is an open secret that the responsible institutions make use of their right of substitution, that is, they assign the order to other colleagues who are willing to follow through with them.³¹

Legal norms

Deutsches Beamtenstatusgesetz: Beamtenstatusgesetz vom 17. Juni 2008 (BGBl. I S. 1010), zuletzt geändert durch Artikel 2 des Gesetzes vom 8. Juni 2017 (BGBl. I S. 1570)

Österreichisches Beamten-Dienstrechtsgesetz: Bundesgesetz vom 27. Juni 1979 über das Dienstrecht der Beamten (Beamten Dienstrechtsgesetz 1979 – BDG 1979). StF: BGBl. Nr. 333 / 1979

Deutsches Strafgesetzbuch: Strafgesetzbuch in der Fassung der Bekanntmachung vom 13. November 1998 (BGBl. I S. 3322), zuletzt geändert durch Artikel 1 des Gesetzes vom 30. Oktober 2017 (BGBl. I S. 3618)

Österreichisches Strafgesetzbuch: Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch – StGB), StF: BGBl. Nr. 60 / 1974

³⁰ so Wickler, Thüringer Verwaltungsblätter 2016, 29, 36

³¹ See Plog / Wiedow, *Bundesbeamtengesetz, BBG, Bd. 1, Loseblatt Luchterhand, Lfg. Feb. 2013*, § 36 *BeamtStG MN 4*: Exploiting the rights mentioned in Paragraph 2 und 3: "still only rarely used in practice." According to our judgement, one reason for this is the usual practice of substituting a willing civil servant as participant in such cases.

Deutsche Strafprozessordnung: Strafprozessordnung in der Fassung der Bekanntmachung vom 7. April 1987 (BGBl. I S. 1074, 1319), zuletzt geändert durch Artikel 2 des Gesetzes vom 30. Oktober 2017 (BGBl. I S. 3618)

Deutsches Tierschutzgesetz: Tierschutzgesetz in der Fassung der Bekanntmachung vom 18. Mai 2006 (BGBl. I S. 1206, 1313), zuletzt geändert durch Artikel 141 des Gesetzes vom 29. März 2017 (BGBl. I S. 626)

Österreichisches Tierschutzgesetz: Bundesgesetz über den Schutz der Tiere (Tierschutzgesetz – TSchG), StF: BGBl. I Nr. 118 / 2004

ATR: Verordnung (EG) Nr. 1 / 2005 des Rates v. 22. Dezember 2004 über den Schutz von Tieren beim Transport und damit zusammenhängenden Vorgängen sowie zur Änderung der Richtlinien 64 / 632 EWG und 93 / 119 EG und der Verordnung Nr. 1255 / 97 / EG (Tiertransportverordnung), ABl. L 3 vom 5. 1. 2005

Verordnung (EG) Nr. 1255 / 97 des Rates v. 25. Juni 1997 zur Festlegung gemeinschaftlicher Kriterien für Aufenthaltsorte und zur Anpassung des im Anhang der Richtlinie 91 / 628 / EWG vorgesehenen Transportplans, Abl. L 174 vom 2.7.1997

Abbreviations

Art.	Article
ATR	European Animal Transport Regulation (EC)1 / 2005 (Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations)
EU	European Union
ö.	Austrian
TierSchG	Tierschutzgesetz (Deutschland) / Animal Welfare Law in Germany
TSchG	Tierschutzgesetz (Österreich) / Animal Welfare Law in Austria
StGB	Strafgesetzbuch / Criminal Code
StPO	Strafprozessordnung / Criminal Procedure Code
VO	Verordnung / Regulation

Bibliography

BeckOK (Online-Kommentar) StGB, 37. Edition, Stand 1.2.2018

Fürst, Walther, Gesamtkommentar öffentliches Dienstrecht, GKÖD, Erich Schmidt Berlin, Loseblattwerk, Ergänzungslieferung 5 / 00

Greco, Luis, Kurzbericht zu "Strafbarkeit der berufsbedingten bzw. neutralen Beihilfe erst bei hoher Wahrscheinlichkeit der Haupttat?", Zeitschrift für Wirtschafts- und Steuerstrafrecht – wistra – 2015, 1-7

von Hentschel-Heinegg, Bernd (Hrsg.), Strafgesetzbuch, Kommentar, 2. Aufl. 2015, C. H. Beck, München, ISBN: 9783406661181

Hirt, Almuth / Maisack, Christoph / Moritz, Johanna, Tierschutzgesetz, Kommentar, 3. Aufl., Verlag Franz Vahlen, München 2016, ISBN 978-3-8006-3799-7

Kucsko-Stadlmayer, Gabriele, Das Disziplinarrecht der Beamten, Springer Wien / New York, 4. Aufl. 2010, ISBN 978-3-7046-5941-5

Lackner / Kühl, Strafgesetzbuch –StGB – 29. Aufl. 2014, Verlag C. H. Beck, München, ISBN 978-3-406-70029-3

Leipziger Kommentar zum Strafgesetzbuch (StGB), Hrsg.: Laufhütte, Heinrich Wilhelm / Rissing-van Saan, Ruth / Tiedemann, Klaus, 12. Aufl. Bd. 1, de Gruyter Berlin 2007, ISBN 978-3-89949-231-6

Münchener Kommentar zum Strafgesetzbuch – StGB, Gesamtwerk in 8 Bänden, Hrsg.: Loecks, Wolfgang / Miebach, Klaus, C. H. Beck, München, 3. Aufl. 2017, ISBN 978-3-406-68550-7

Otto, Harro, "Vorgeleistete Strafvereitelung" durch berufstypische und alltägliche Verhaltensweisen als Beihilfe. In: Festschrift für Theodor Lenckner zum 70. Geburtstag, S. 193-225, C. H. Beck, München, 1998, ISBN: 9783406438424

Pleyer, Anita / Loibl-van Husen, Susanna / Horvat, Stanislav / Ritter, Stefan, Beamten-Dienstrechtsgesetz, Kommentar, Linde Verlag Wien 2010, ISBN: 978-3-7073-1344-4

Plog, Ernst / Wiedow, Alexander, Kommentar zum Bundesbeamtengesetz – BBG – Luchterhand, Loseblattwerk mit Aktualisierungen, Ergänzungslieferung Feb. 2013, ISBN 978-3-472-30020-5

Rabitsch, Alexander, Befund und Gutachten bei Tiertransporten, Wiener Tierärztliche Monatsschrift (wtm) 103(2016), S. 283-304

Rabitsch, Alexander, Tiertransporte, Anspruch und Wirklichkeit, Veterinärspiegel Verlag in der schaefermueller publishing GmbH, Berlin 2014, ISBN 978-3-86542-065-7

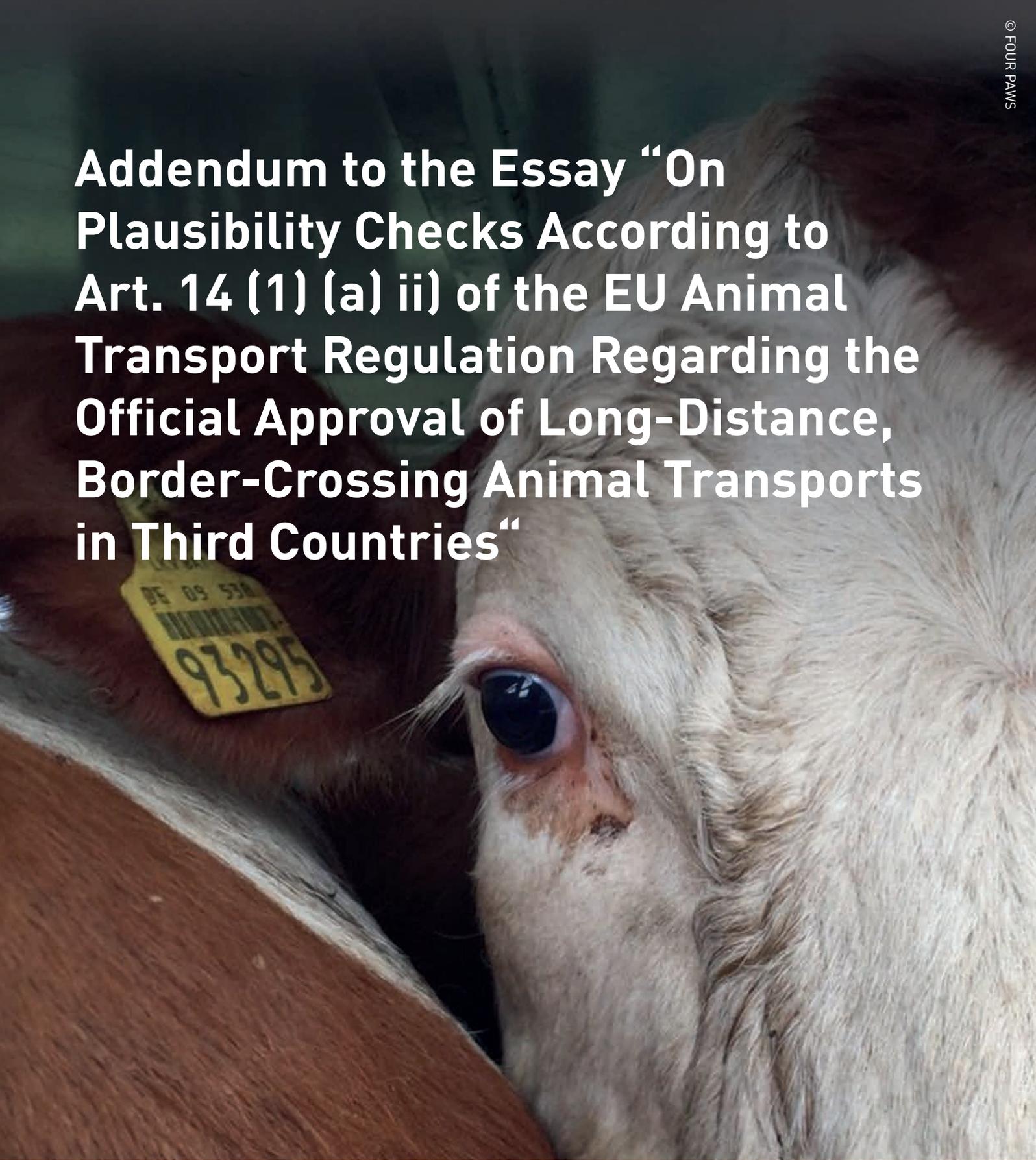
Schönke / Schröder, Strafgesetzbuch – StGB – Kommentar, 29. Aufl. 2014, Verlag C. H. Beck, München, ISBN 978-3-406-65226-4

Wickler, Widerstand von Staatsdienern gegen Rechtsbruch in Verwaltung und Justiz. In: Thüringer Verwaltungsblätter 2 / 2016, 29-38

Wissenschaftliche Dienste des Deutschen Bundestages, Ausarbeitung WD 5 – 3000 – 001 / 17 zu "Regelungen der europäischen Tiertransportverordnung zu langen Tierbeförderungen im Licht des Urteils des Europäischen Gerichtshofs v. 23. 4. 2015 (C-424 / 13)"

Wolter, Jürgen (Hrsg.), Systematischer Kommentar zum Strafgesetzbuch, Gesamtwerk in 6 Bänden, Carl Heymanns, 9. Aufl. 2017, ISBN 978-3-452-28307-8

Addendum to the Essay “On Plausibility Checks According to Art. 14 (1) (a) ii) of the EU Animal Transport Regulation Regarding the Official Approval of Long-Distance, Border-Crossing Animal Transports in Third Countries”



Originally published as “Ergänzung zum Aufsatz “Zur Plausibilitätsprüfung nach Artikel 14 (1) (a) ii) anlässlich der Genehmigung langer grenzüberschreitender Transporte in Drittstaaten” in: Amtstierärztlicher Dienst und Lebensmittelkontrolle, issue no. 26 – 1/2019, p. 16-17

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In the above-quoted essay which was published in: *Amtstierärztlicher Dienst und Lebensmittelkontrolle*, 25 Jahrgang – 4 / 2018, pp. 209 to 215, the following conclusions were drawn by the authors Christoph Maisack and Alexander Rabitsch:

1. The approval according to Art. 14 para 1 ATR European Animal Transport Regulation (EC)1 / 2005 (Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations) constitutes an indispensable condition for the further fate of the exported animals beyond the EU's external borders. This applies both to the multiple practices of cruelty to animals during unloading as part of the approved transport as well as the agonizing circumstances that in all probability accompany the subsequent slaughter and affect almost all animals.
2. The approval according to Art. 14 para 1 ATR goes beyond a mere promotion of an act in its effects, because it presents itself as an indispensable cause for the fact that the animal is at the place of slaughter at the time of slaughter at all and has to endure the prevailing conditions there. The granting of the approval thus objectively meets the requirements for aiding and abetting animal cruelty.

In the following, the acts of animal cruelty in the countries of destination of the transports are illustrated using selected pictures.

The scenes shown in the photographs are normal cases rather than exceptions.

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The so-called “accomplice intent” depends on whether there is a high probability for the commission of the acts of animal cruelty and whether these are known to the veterinarian giving approval. When considering the question: “Can official veterinarians be regarded as obligated to grant approvals of transport in spite of this high probability being known to them?”, it should also be borne in mind that the official veterinarian holds a position of guarantor of the well-being of the animals under their competence and is therefore “put on duty” to protect them.

Image 1: A bull with tied-up front legs hobbles into the slaughter room and is made to fall by tying its hind legs together. A butcher squatting or kneeling on the animal's shoulders cuts through the animal's neck with several slashing movements.
Mers el Kheir, Morocco, 2014, detto 2017



Image 2: In trip-floor boxes, bulls for slaughter are made to fall by tilting the stand area oblique. The hind feet can now be gripped, the animals can now be pulled up by means of chains attached to the hind extremities. Bolu Kuruçay, Turkey 2014

The problems of the animals in the trip-floor box are shown most clearly in moving pictures, e.g. in the following videos (last accessed 4 March 2019):
<https://www.youtube.com/watch?v=3FgTOFs4ND0>,
<https://www.youtube.com/watch?v=2QjEJ8mK3oY>,
<https://www.youtube.com/watch?v=-sexXw-gWw8>.



Image 3: The animals lying on their shoulders with one raised hindleg then have their throat cut transversely (here, the carcasses are fully pulled up only after bleeding out). Baskent Et, Sincan, Turkey, 2014



Image 4: Here, the bulls are being completely pulled up on a hind extremity without anaesthesia. After long minutes of hanging in full consciousness, the animals have their throat cut transversely. Screenshot from a video. Aygüler Dericilik, Kazan, Turkey, 2014

On the Interpretation of the Terms “Journey“ within the Meaning of Art. 2 (j) and “Journey Time“ within the Meaning of Annex I Chapter V No. 1.2 to 1.9 of Regulation 1/2005 on the Protection of Animals during Transport

Originally published as “Zur Auslegung der Begriffe » Beförderung « iSv Art. 2 (j) bzw » Beförderungsdauer « iSv Anhang I Kapitel V Nr 1.2 bis 1.9 der EU-Tiertransportverordnung (EG) Nr 1 / 2005“ in: TiRuP – Tierschutz in Recht und Praxis, DOI: 10.25598 / tirup / 2019-4.

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Key words

ECJ jurisdiction; long-distance transport; live animal transports; animal transports; journey times; unloading times; loading times; Animal Transport Regulation.

Summary

In the case of animal transports under the European Livestock Transport Regulation (EC) No. 1/2005, the loading and unloading times of the animals must be included in the journey time just as they had to be included in the transport duration under the former Directive 91/628/EEC (as amended by Directive 95/29/EC).

It is impossible that the change of terminology from “transport” (in the previous Directive) to “journey” (in the present Regulation) might have the result that the periods of time after which the animals must be provided with rests or rest periods with unloading, have been extended by non-inclusion of loading times compared with the previous legal situation under the Directive,

since it is an essential purpose of the Regulation, as set out in Recital 6 thereof, to adopt “stricter rules” (than under the Directive valid up to that point) for the protection of animals, and especially since

the teleological interpretation of the law, i.e. an interpretation oriented towards the purpose of the EU legislature, is the most important means of interpretation according to the settled case-law of the European Court of Justice.

Any other interpretation would lead to the Livestock Transport Regulation (EC) No. 1/2005 having led to a weakening of the previously existing level of animal protection contrary to its explicit objective.

I. Overview

The regulations on animal transport – in the German language version – concerning the feeding and watering intervals as well as the journey time and the rest periods have undergone a change in the course of the transition from the former EC Animal Transport Directive (Directive 91/628/EEC¹, as amended by Directive 95/29/EC²) to the EU Livestock Transport Regulation 1/2005³ in force since 5 January 2007.

Whereas Section 48 No. 4 and No. 5 of the Annex to the EC Animal Transport Directive required resting times for watering, feeding and rest periods with unloading at authorized locations after a certain transport period, the terms “transport” and “duration of transport” have now been replaced by the terms “journey” and “journey time” in Annex I, Chapter V, Nos. 1.4 and 1.5 of the EU Livestock Transport Regulation.

1 Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC, Official Journal L 1991/340, 17.

2 Council Directive 95/29/EC of 29 June 1995 amending Directive 91/628/EEC concerning the protection of animals during transport, Official Journal L 1995/148, 52.

3 Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No. 1255/97, Official Journal L 2005/3, 1.

This change – as well as the different definition of the terms “journey” and “transport” in Art. 2 (j) and (w) of the EU Livestock Transport Regulation – has partly been taken as a reason in politics and legal literature to calculate the time period after which the transported animals had to be granted a break for watering and, if necessary, feeding or a rest period with unloading, to be longer than before: While the term “duration of transport” in the EC Animal Transport Directive was to be interpreted as meaning that it includes⁴ the loading and unloading of animals according to the case-law of the European Court of Justice, this was supposed to no longer be applicable to the now used term “journey time” in the EU Livestock Transport Regulation according to the above-mentioned opinion: A journey – according to, for example, the Head of the group “Veterinary Medicine and Veterinary Matters, Food Safety” (Chief Veterinary Officer – CVO) in the Austrian Federal Ministry of Labor, Social Affairs, Health and Consumer Protection (Ministry of Social Affairs, BMASGK) in an email of 29 March 2019 – begins only when the transport vehicle starts to move, and ends when it stops again at the place of destination;⁵ the loading and unloading times supposedly are not part of the journey time, the contrary ECJ ruling could no longer be “invoked” since the entry into force of the EU Livestock Transport Regulation and thus had lost its validity. This view is also considered reasonable in a note from the Berlin Senate Department for Justice, Consumer Protection and Anti-discrimination of 29 January 2019 (see SenJustVA V A VET 4 (913) 3244).

In the case of a transport of cattle where the loading has already taken one and a half hours at the place of departure, for example, the above-mentioned legal view would therefore mean that the at least one-hour rest period required under Annex I, Chapter V, point 1.4 (d) of the EU Livestock Transport Regulation would be granted only fifteen and a half hours after the start of loading (namely 14 hours after departure).

Furthermore, this legal view would not even preclude a loading already on the day prior to departure.

What argues against this legal view is, first of all, that the legal definition of »transport« in Art. 2 (w) of the EU Livestock Transport Regulation still includes the operations of loading and unloading the animals. According to this definition, a transport begins with the loading of the first animal at the place of departure and ends with the unloading of the last animal at the place of destination. What argues further is that the legal definition of “journey” in Art. 2 (j) refers to the journey as “the entire transport operation from the place of departure to the place of destination”. The legal definition of “journey” therefore explicitly includes the term “transport”. It seems hardly comprehensible that a “transport operation”, which the legal definition speaks of, should nevertheless be seen as something fundamentally different than a “transport”, because even if the proponents of that view should argue that a “process” is something that necessarily involves a movement, there is nothing to suggest that the movements of the animals associated with the loading and unloading would not be enough and that – as the authors referred to may argue – it would absolutely have to be a movement of the transport vehicle.

Should the term “journey” be unclear where the inclusion of the loading and unloading of the animals is concerned, the systematic relationship with other legislation, the various language versions and, in particular, the regulatory purpose pursued by the adoption of the EU Livestock Transport Regulation (“teleological interpretation”)⁶ should be used for its interpretation – as always with EU law.

⁴ ECJ 23 November 2006, C-300/05.

⁵ Excerpt from the reply letter from *U. Herzog to T. Waitz*, MEP, from 29 March 2019: “The moment a vehicle with the first animal starts to move, the transport time begins. It ends when the means of transport stops again at the place of destination.”

⁶ See, for example *Thiel/Block*, Anmerkung zu EuGH C-416/16, Zeitschrift für europäisches Sozial- und Arbeitsrecht (ZESAR) 2018, 230, 231.

As far as the systematic connection between Art. 2 (j) and Annex I Chapter V Nos 1.1 to 1.9 to other legal provisions in the EU Livestock Transport Regulation is concerned, it is striking that the arguments used by the ECJ to justify its decision of 23 November 2006, C-300/05 apply to today's EU Livestock Transport Regulation as much as to the then applicable EC Animal Transport Directive. Both sets of rules share the same objective of ensuring adequate protection for the animals concerned and restricting the long-distance transport of animals as much as possible. Likewise, the EU Livestock Transport Regulation just like the prior EC Animal Transport Directive, does not contain any restrictions on the duration of loading and unloading operations so that – if these are not included in the periods of time after which the animals are to be granted a rest or rest period – they would not be considered at all despite the burdens undoubtedly associated with them for the animals.

When viewing other language versions, it is noticeable that while the rules governing the periods during which the animals are allowed to take a break or rest period have changed in the course of the transition from the EC Animal Transport Directive to the EU Livestock Transport Regulation – in such a way that the words “Beförderung” [journey] and “Beförderungsdauer” [journey time] have now replaced the terms “Transport” [transport] and “Transportdauer” [transport duration] previously used in the Directive – no similar change can be found in the English, French, and Italian language versions. The English language version of Annex I, Chapter V, Nos. 1.4 and 1.5 of the EU Livestock Transport Regulation uses exactly the same terms of “journey time” and “hours of travel” as section 48, nos. 4 and 5 of the Annex to the EC Animal Transport Directive.

The same is true of the French and Italian versions. There is nothing to suggest that a terminological change that has only taken place in the German and not in all other language versions of EU law could lead to the EU Livestock Transport Regulation being interpreted in a fundamentally different way than the previous EC Animal Transport Directive and the ECJ rulings which were issued under the former EC Transport Directive and therefore could no longer be “invoked” – as the representative of the Austrian Ministry of Social Affairs believes. In addition, point 1.4 of Annex I, Chapter V, of the French language version of the EU Livestock Transport Regulation, just as the earlier Directive, expressly states that the resting periods to be granted in the case of calf and cattle transports are to be granted after nine or 14 Hours of “transport” ((a): “après neuf heures de transport”) and (d): “après quatorze heures de transport”) – i.e. the current French language version explicitly refers to the definition of transport in Art. 2 (w) of the EU Livestock Transport Regulation. If the legal view of those who think that loading and unloading times should not be included in the journey time were correct, a different, less animal-friendly standard would have to be established in the German-speaking regions than in the French ones for the calculation of the period in which the animals are to be granted breaks or rest periods during long journeys – a result that simply cannot be.

However, the decisive factor as to how the concepts of “journey” and “journey time” in Art. 2 (j) and in Annex I Chapter V No. 1.4 and 1.5 of the EU Livestock Transport Regulation must ultimately be interpreted is the objective the EU legislature pursued with the EU Livestock Transport Regulation. The latter is clearly expressed in Recital 6 of that Regulation: According to this, the transition from the EC Animal Transport Directive to the EU Livestock Transport Regulation was about: “... putting in place *more stringent requirements* [emphasis added by the authors] so as to prevent pain and suffering in order to safeguard the welfare and health of animals during and after transport”. An interpretation that does not consider loading and unloading times as part of “journey” and the “journey time”, but instead does not intend to let the transport begin until the transport vehicle starts to move after the completion of the loading at the place of departure (and would already let it end when the vehicle stops at the place of destination) would be diametrically opposed to this objective. In the case decided by the European Court of Justice on 23 November 2006, C-300/05,

the transport company had granted the transported cattle the rest period that becomes mandatory after 14 hours only 15 hours after the beginning of the loading. Since the loading of the cattle had already taken one and a half hours, the transport up to this break had only taken 13 hours and 30 minutes in their opinion and thus had been in accordance with the law. The ECJ rejected this reasoning and ensured that the transport company had to return the export refund because of the delayed resting period. In the opinion of those who want to only have the travel times taken into account in the journey time, the argument of the transport company that was rejected by the ECJ as having negative effects on animal welfare would now be permissible. This would mean that the transition from the EC Animal Transport Directive to the EU Livestock Transport Regulation would have significantly reduced the animal protection standards that existed under the Directive – an outcome that so clearly contradicts the contrary objective of the EU legislature expressed in recital 6 and thus the imperative of a teleological interpretation of the law that this interpretation (as well as the view that ECJ judgment C-300/05 on the EU Livestock Transport Regulation no longer applies) can only be rejected as unequivocally wrong.

II. Detailed description

A. Problem

The German language version of the EC Animal Transport Directive was phrased somewhat differently than that of the current EU Livestock Transport Regulation:

In Section 48 No. 4 and 5 of the Annex to the EC Animal Transport Directive, the terms “transport” and “duration of transport” were used to define the rest periods to be adhered to during an animal transport.

Section 48 No. 4 (d): »All other animals of the species referred to in point 1 [note of the authors: including adult cattle] must, after a duration of transport of 14 hours, be given a rest period of at least one hour sufficient for them in particular to be watered and if necessary fed. After this rest period, the transport can be continued for another 14 hours.”

Section 48 No. 5: “After the duration of transport laid down, animals must be unloaded, fed and watered and be rested for at least 24 hours.”

In Annex I, Chapter V, No. 1.4 and 1.5 of the EU Livestock Transport Regulation, the words “journey” and “journey time” are now used instead of “transport” and “duration of transport”.

Chapter V No. 1.4 (d): “All other animals of the species referred to in point 1.1 (note of the authors: including adult cattle) must, after a journey time of 14 hours, be given a rest period of at least one hour sufficient for them in particular to be given liquid and if necessary fed. After this rest period, they may be transported for a further 14 hours.”

Chapter V No. 1.5: “After the journey time laid down, animals must be unloaded, fed and watered and be rested for at least 24 hours.”

It is partly concluded from this change – the substitution of the words “transport” and “transport duration” by “journey” and “journey time” – that the loading times (i.e. the time for loading the animals at the place of departure and unloading them at a control post or at the place of destination) should no longer be included in the calculation of the period after which animals must be allowed to take a break for watering and, where appropriate, feeding or resting with unloading.

B. Different interpretation of the terms “journey” and “journey time”

1. According to a representative of the Austrian Federal Ministry of Labor, Social Affairs, Health and Consumer Protection (BMASGK) (reply letter dated 29 March 2019) the term “journey” should not include the loading and unloading:

“... that journey always refers to the movement/shipment of the animal in the means of transport. The moment a vehicle with the first animal starts to move, the journey time begins. It ends when the means of transport stops again at the place of destination.”

The correspondence between *T. Waitz* (MEP Die Grünen AT) and the Austrian CVO also quotes a Salzburg official veterinarian who said that following a decree of the competent Ministry the duration of transport for long-distance transports only begins with the departure of the vehicle.

German authorities partly express similar views.⁷

2. In contrast, the EU Commission sees it differently (Letter of 9 January 2008 to the German Federal Ministry of Food and Agriculture, SANCO D2 LPA/dj D(2007)420763):

“The Commission advocates ... an interpretation of the Regulation to take into account the time taken to load the animals at the place of departure when calculating the journey time. It is the Commission’s view that the Court’s interpretation in its judgment of 23 November 2006 concerning the provisions of Directive 91/628/EEC can be applied to the new legal situation of Regulation (EC) No. 1/2005.”

Likewise the letter from the EU Commission dated 9 August 2007 to Mrs. Lesley Moffat, Animals’ Angels eV, Freiburg (SANCO D2 DS/dj D(2007)420506):

“... the Commission shares the views that time spent for loading and unloading should be included as to establish the maximum journey times as referred to in point 1.2, 1.4 and 1.5 of Chapter V of Annex to Regulation (EC) No. 1/2005 on the protection of animals during transport.”

3. The view of the German Federal Government in its answer of 9 April 2013 in answer to a small request of delegates and the parliamentary group BÜNDNIS 90/DIE GRÜNE (Bundestagsdrucksache 17/13006, 2) partly differs from that of Austria and Berlin, similarly to the EU Commission, in that the loading and unloading times of the animals must be taken into account when calculating the periods after which animals must be allowed to take a break or rest period.

“It follows from Art. 2 (j) and m of Regulation (EC) No. 1/2005 that the total journey time covers the period from the beginning of loading of the first animal at the place of departure until the unloading of the last animal at the place of destination. A note to this effect was included in the Implementation Guidelines (Handbook on Animal Transports) for the uniform implementation and enforcement of animal protection legislation with regard to transports. The implementation guidelines of the Federal States also refer to a letter from the European Commission dated 9 January 2008 confirming this interpretation. The Federal Government shares this view. There are therefore no different legal interpretations.”

⁷ See statement *M. Krist*, Berlin Senate Department for Justice, Consumer Protection and Anti-discrimination of 29 January 2019, (913) 3244: The view that a journey goes “from the departure of the vehicle to its arrival at the place of destination” is considered reasonable.

4. The commentary literature shares the view of the EU Commission and the German Federal Government (*Hirt/Maisack/Moritz*, *Tierschutzgesetz* 3. Auflage, Vahlen [2016], EU Livestock Transport Regulation Art. 2 point 5):

“Transportation within the meaning of Art. 2 (j) covers the entire transport operation, including the loading of the animals at the place of departure and unloading at the place of destination (see AG Uelzen, Verdict dated 25 November 2013, 204 OWi 3105 Js 3887/13 (63/13): »... wherein the loading and unloading times are included in the journey time according to Art. 2 (w)”). The loading of the means of transport or container with animals at the place of departure as well as the unloading of the animals at the place of destination must hence be taken into account in the permissible maximum journey time (e.g. according to Annex I, Chapter V No. 1.2, 1.4 and 1.5). The total journey time therefore covers the period from the beginning of loading of the first animal at the place of departure until the unloading of the last animal at the place of destination ...”

5. Moreover, the legal opinion expressed by the CVO in the Austrian Ministry of Social Affairs and described under 1. is diametrically opposed to the consensus document „Network paper on checks before the transport of live animals for export in road transport“ that was co-authored by Austria in coordination with all other Member States, with its Annex 2 (page 13) clearly stating that the loading and unloading times of the animals are to be included in the calculation of the estimated total journey time, after the expiry of which a break or a rest period with unloading is to be granted:

Annex 2 Template for a proper plan for the transport of adult cattle					
2. ESTIMATED TOTAL JOURNEY TIME (hours/days) (= sum of transport and rest periods)					
3.1 PLACE OF DEPARTURE (city and country)			4.1 PLACE OF DESTINATION (city and country)		
3.2 Date	3.3 Time (loading of the FIRST animal)		4.2 Date	4.3 Time (unloading of the LAST animal)	
5.1 Animal species	5.2 Number of animals		5.3 Number(s) of the veterinary certificate(s)		
5. Total weight of the consignment in kg (estimate)			5.5 Total expected area required for the consignment (in m ²)		
6. LIST OF PLANNED PLACES OF REST, RELOADING, AND DEPARTURE					
6.1 Names of the places where the animals are to rest or be reloaded (including places of departure)	6.2 Arrival		6.3 Duration (in hours)	6.4 Name and approval number of the carrier (unless it is the organiser)	6.5 Identification
	Date	Time			
[Place of rest]	≤ 14 hours after time in box 3.3		≥ 1 hour		
[Inspection post]	≤ 14+1+14 hours after time in box 3.3		≥ 24 hours		
[Place of departure]			≥ 1 hour		
[Inspection post in third country]			≥ 1 hour (≥ 6 hours for Turkey)		
[Place of rest in third country]	≤ 14 hours after the start of reloading at the inspection post				
[Place of destination] (place specified in box 4.1)	Estimated time of arrival (before time in box 4.3)				

Figure 1: from “Network paper on checks prior to the transport of live animals for export in road transport” (highlights by the second author).

6. The legal opinion expressed by the CVO in the Austrian Ministry of Social Affairs and described under 1 has already found its way into the “Österreichische Handbuch Tiertransporte inkl. Erleichterungen für landwirtschaftliche Transporte Stand 2018” [Austrian Handbook on Animal Transports incl. Facilitations for Agricultural Transports, 2018]. On page 50, e.g., it reads: “The journey ends on arrival at the place of destination ...”. This opinion, recently adopted by Austria, is new and unexpected, but above all without any change in the underlying legal bases.

The reasons why Austria arrived at this change of the legal opinion adopted since at least 2009 and arrived at in a working group involving representatives of the transport industry, the Federal Ministry

of Health, the Federal Ministry of Agriculture, Forestry, Environment and Water Management and representatives of the State Veterinary Directorates, do not become apparent. This former handbook written in cooperation with the second author emphasizes: “If animals are loaded for transport, this loading time is part of the transport operation and counts towards the journey time. The ‘clock’ thus begins ‘ticking’ when the first animal is loaded on the vehicle.” and “The transport ends on arrival at the place of destination, with the time required for unloading being included in the journey time.”

7. The legal opinion expressed by the CVO in the Austrian Ministry of Social Affairs and described under 1. contradicts the German Handbook on Animal Transports, as of December 2018, which states on page 66: “The maximum permissible journey time begins with the loading at the first assembly centre”.

8. The legal opinion expressed by the CVO in the Austrian Ministry of Social Affairs and described under 1. is also not in accordance with the teaching content approved by the responsible Federal Ministry and presented by the second author as part of the official veterinary training (Physikat) and stands in contradiction to the prevailing doctrine.

9. The legal opinion expressed by the CVO in the Austrian Ministry of Social Affairs and described under 1. allows the transport of unweaned calves from the assembly centre Bergheim near Salzburg to the place of destination Vic, Catalonia, Spain, which would not be possible according to the previous Austrian legal interpretation.

C. Loading and unloading times are to be included in the journey time

The terms “journey” and “journey time” in Chapter V of the Annex to the EU Livestock Transport Regulation (in particular in points 1.2, 1.3, 1.4 and 1.5) must be interpreted as including the loading times of the animals (i.e. the loading at the place of departure and the unloading at a control post or at the place of destination). This is already supported by the wording of the legal definition of “journey” in Art. 2 (j) (see below under 1). This is further supported by the systematic relationship with other parts of the EU Livestock Transport Regulation and the consideration of the different language versions (see below under 2 and 3). Above all, however, the teleologically oriented interpretation (i.e. an interpretation oriented towards the purpose of the EU Livestock Transport Regulation) precludes interpreting the terms “journey” and “journey time” as meaning that the level of animal protection is weakened in a lasting manner compared with the earlier EC Animal Transport Directive (see below under 4).

1. The wording of the legal definition

The very wording of the rules in force today – Art. 2 (j) and (w) as well as Annex I, Chapter V, Nos 1.4 and 1.5 of the European Livestock Transport Regulation – suggests that the terms “journey” and “journey time”, as well as the terms “transport” and “duration of transport” include loading and unloading times at control posts and the place of destination.

1.1 In Art. 2 (j), “journey” is defined as “the entire transport operation from the place of departure to the place of destination, including any unloading, accommodation and loading occurring at intermediate points in the journey”. According to Art. 2 (w), “transport” includes the “loading, unloading, transfer and rest, until the unloading of the animals at the place of destination is completed”.

The legal definition of “journey” therefore explicitly includes the term “transport”. This already makes it difficult to understand why “journey” should be seen as a “less” (i.e. a “minus”)

compared to “transport”. Admittedly, it could be deduced from the additional term “operation” (i.e. “activity”, “process”) that a movement is meant. However, this need not necessarily be a movement of the transport vehicle. Rather, a transport associated with movement also obtains when animals are driven onto a transport vehicle at the place of departure and when they are driven off it again at the place of destination. It is therefore not imperative in any way that a “transport operation” must only be viewed as a transport vehicle in motion.

1.2 The interplay of the two legal definitions of “journey” and “transport” in Art. 2 (j) and (w) makes it clear that the definition of “journey” includes the definition of “transport”: Since the definition of “transport” in Art. 2 (w) already includes the loading at the place of departure and the unloading at the place of destination, the EU legislature considered it sufficient to clarify in the definition of “journey” in Art. 2 (j) that the unloading, accommodation and loading occurring at intermediate points (English: »intermediate points«, French: »points intermédiaires«) should be part of the “journey” – in addition to the loading already contained in the term transport at the place of departure and the unloading at the place of destination.

1.3. According to the settled case-law of the ECJ, the various language versions of a provision must be taken into account when interpreting EU law, and in case of differences, the general scheme and purpose of the provision is decisive.⁸

Whereas the German language version in Annex I, Chapter V, No. 1.4 and 1.5 of the EU Livestock Transport Regulation only uses the terms “Beförderung” [journey] and “Beförderungsdauer” [journey time] instead of the terms “Transport” [transport] and “Transportdauer” [duration of transport] used in the EC Animal Transport Directive, the French language version of the Regulation continues to use the term “transport”:

According to Chapter V 1.4 (a), unweaned calves, lambs, kids and piglets must be watered for one hour and fed if necessary “après neuf heures de transport”.

According to Chapter V No. 1.4 (d), adult cattle, sheep and goats must be given at least a one hour long rest period with watering and, if necessary, feeding “après quatorze heures de transport”.

Since “transport” in the French language version undoubtedly refers to the concept of transport defined in Art. 2 (w) of the Regulation, which includes loading at the place of departure and unloading at control posts and the place of destination, a different European Union law would apply in France and in Germany/Austria if the interpretation according to which “journey” should only cover the time between departure and arrival of the transport vehicle should prevail in German-speaking countries: In German-speaking countries, bovine animals which have been loaded at the place of departure for one and a half hours would only have to be granted the one-hour rest period laid down in Annex I, Chapter V, point 1.4 (d) 15 ½ hours after the start of loading (= 14 hours after the departure); In French-speaking countries, on the other hand, 14 hours after the start of loading (“après quatorze heures de transport”) and thus 12 ½ hours after the departure. That would be an impossible result.

At the very least, the wording already shows that the terms “journey” and “journey time” can also be interpreted as including the periods of loading and unloading in addition to the time between departure and arrival (i.e. the pure travel time). Which of the interpretations that are conceivable as far as the wording is concerned is the correct one must therefore be decided pursuant to the

⁸ ECJ 23 November 2006, C-300/05 point 16; 14 May 2019, C-391/16 point 88.

systematic relationship with other parts of the EU Livestock Transport Regulation, taking into account the different language versions and the regulatory purpose of the Regulation – as is always the case when interpreting the legislation of European Union law.

2. The systematic relationship with other parts of the EU Livestock Transport Regulation

By judgment of 23 November 2006, C-300/05 regarding the EC Animal Transport Directive 91/628/EEC, which was still in force at the time, the European Court of Justice ruled that the term “transport” in Section 48, No. 4 (d) of Annex must be interpreted as including the loading and unloading of the animals.

The claim regarding the current EU Livestock Transport Regulation that “journey” in the sense of the definition in Art. 2 (j) must be interpreted differently, namely more narrowly, is being argued on the basis that the current definition of “journey” was not included in the EC Animal Transport Directive.⁹ However, the Directive contained a definition for the term “Verbringung” [transfer] in Art. 2 (g) which closely followed the definition now used for “journey”: “transfer: transport from place of departure to place of destination”.

Meanwhile a detailed examination is required as to whether the ECJ judgment of 23 November 2006, C-300/05 effectively “can not [no longer] be invoked” as stated by the CVO of Austria, in other words whether it has lost its validity because of the subsequent transition from the Directive to the Regulation.

2.1. The ECJ had to decide on the following facts: An animal transport company (Zuchtvieh-Kontor GmbH, ZVK) had transported 28 live cattle to Egypt and received an export refund. The main customs office Hamburg-Jonas had claimed back this export refund because the transport plan of ZVK revealed that the transport was not interrupted 14, but only 15 hours after its beginning for the resting period prescribed in section 48 No. 4 (d) of the Annex to the EC Animal Transport Directive. ZVK had objected to this that the loading of the cattle at the place of departure had taken one and a half hours and therefore the contested transport lasted only 13 hours and 30 minutes from the start of the journey to the resting period.

The main customs office on the other hand had argued that the transport also included the loading and unloading times and that for that reason its duration until the granted resting period was longer than the maximum allowed 14 hours.

2.2. The arguments used by the ECJ to justify its legal interpretation apply to today’s EU Livestock Transport Regulation as well as to the Directive in force prior to that:

- According to the ECJ, one of the aims of the Directive, as per the words of the second recital in the preamble, is to ensure a satisfactory level of protection for the animals concerned. (ECJ C-300/05 point 19). This is also the aim of the EU Livestock Transport Regulation currently in force (see sixth Recital thereof): “The Council invited the Commission ... to submit proposals for ... improving the protection and welfare of animals as well as preventing the occurrence and spread of infectious animal diseases, and putting in place more stringent requirements so as to prevent pain and suffering in order to safeguard the welfare and health of animals during and after transport”).

⁹ See statement dated 29 January 2019, Berlin Senate Department for Justice, Consumer Protection and Anti-discrimination, (913) 3244.

- According to the eighth Recital, another objective of the Directive is to restrict the long-distance transport of animals as much as possible (ECJ C-300/05 No. 19). This is also the objective of the EU Livestock Transport Regulation (see fifth Recital thereof: “For reasons of animal welfare the transport of animals over long journeys, including animals for slaughter, should be limited as far as possible.”)
- The ECJ further justified its decision by stating that the EC Animal Transport Directive does not contain any restrictions on the time of loading and unloading of the animals as such, so that – if section 48 No. 4 (d) of the Annex were to be interpreted as meaning that this time was not included in the duration of the transport – the duration of the loading and unloading operations would not be considered at all, “which would deprive this provision of its practical effectiveness” (ECJ C-300/05 point 20). Exactly the same situation obtains according to the EU Livestock Transport Regulation now in force: It too contains no restrictions on the time of loading and unloading the animals. If Annex I, Chapter V, point 1.4 (d) were interpreted as meaning that the loading and unloading times are not part of the journey time, the duration of the loading and unloading operations would be completely disregarded too, which, in view of the strains for the animals undoubtedly connected with these activities, would in any event deprive it of part of its practical effectiveness.

The following interim result can therefore be stated: The reasons which led the ECJ in its judgment C-300/05 to include the loading in the period of time after which the animals transported had to be rested or granted a rest period apply to the EU Livestock Transport Regulation to the same extent to as to the EC Animal Transport Directive in force at the time. The systematic argument used by the European Court of Justice that – because there are no limits for loading and unloading times – these operations, which undoubtedly strain the animals, would be completely disregarded if these times were not included in the “journey time” and that this would be a detrimental result for the animal protection objective on which the Directive and the Regulation are equally based.

This makes the line of reasoning which goes so far as to say that the ECJ ruling “can not [no longer] be invoked” (as stated by Austria’s CVO) due to the change from the EC Animal Transport Directive 91/628 / EEC to the EU Livestock Transport Regulation 1/2005 very questionable.

3. The different language versions

According to the settled case-law of the ECJ, provisions of EU law must be interpreted “taking into account versions in the other languages in case of doubt”¹⁰. It is particularly noticeable here that while the wording of the provisions on the periods after which animals must be provided with breaks or rest periods has been changed in the German language version during the transition from the EC Animal Transport Directive 91/628/EEC to the EU Livestock Transport Regulation 1/2005, it did not, however, undergo such change in other language versions:

- German language version: In section 48 No. 4 and 5 of the Annex to the EC Animal Transport Directive for this period, the terms “Transportdauer” [duration of transport] (No. 4 (a) and (d) as well as 5) or “Transport” [transport] (No. 4 (b)) are used. The terms “Beförderungsdauer” [journey time] (No. 1.4 (a) and (d) as well as No. 1.5) and “Beförderung” [journey] (No. 1.4 (b) replace these terms in the Annex chapter V No. 1.4 and 1.5 of the EU Livestock Transport Regulation.

¹⁰ ECJ 23 November 2006, C-300/05 point 16.

- In the English version, on the other hand, there has been no such change in terminology in the course of the transition from the Directive to the Regulation: In section 48 No. 4 and 5 of the Annex to the Directive for this period, the terms “hours of travel” (No. 4 (a) and (d)) and “journey time” (No. 4 first sentence and No. 5) as well as “journey” (No. 4 (b)) are used. The choice of terms has remained exactly the same in Annex I Chapter V No. 1.4 and 1.5 of the EU Livestock Transport Regulation: “hours of travel” (No. 1.4 (a) and (d)), “journey time” (No. 1.4 first sentence and No. 1.5) as well as “journey” (No. 1.4 (b)).
- The same can be found in the French language version: In Section 48 No. 4 and 5 of the Annex to the Directive, the terms »heures de transport« (No. 4 (a) and (d) and »durée de voyage« (No. 4, first sentence and No. 5) and »voyage« (No. 4 (b)) are used for the period after which a break or resting period must be granted. The choice of terms has remained exactly the same in Annex I Chapter V No. 1.4 and 1.5 of the EU Livestock Transport Regulation: “heures de transport” (No. 1.4 (a) and (d)), “durée de voyage” (No. 1.4 first sentence and No. 1.5) and “voyage” (No. 1.4 (b)).
- In the Italian language version, the change from “duration of transport” to “journey time” and from “transport” to “journey”, which is characteristic of the German language version, did not take place either: In Section 48 No. 4 and 5 of the Annex to the Directive, the terms »ore di viaggio« (No. 4 (a) and (d) and »durate di viaggio« (No. 4, first sentence) and “periodo di viaggio” (No. 5) as well as “viaggio” (No. 4 (b)) are used for the period after which a break or rest period must be granted. The choice of terms has remained exactly the same in Annex I Chapter V No. 1.4 and 1.5 of the EU Livestock Transport Regulation: “ore di viaggio” (No. 1.4 (a) and (d)), “durate di viaggio” (No. 1.4 first sentence), “periodo di viaggio” (No. 1.5) and “viaggio” (No. 1.4 (b)).

Since as explained above the change from “transport” or “duration of transport” in the Directive to “journey” or “journey time” in the Regulation only took place in the German and not also in the English, French and Italian versions, it should therefore be out of the question to use this terminological change that has apparently only taken place for the German language version as a basis for the argument whereby the ECJ ruling of 2006 “could not [no longer] be invoked” and thus lost its validity since the entry into force of the EU Livestock Transport Regulation. At the same time, it appears completely out of the question to support an interpretation of EU law for German-speaking countries for which no basis exists in the English, French and Italian-speaking countries.

4. The teleological interpretation

Ultimately, however, the decisive factor in the interpretation of a legal provision which – as set out in 1. above – permits different interpretations based on its wording, is the purpose pursued by the legislator with the respective provision (see ECJ C-372/88 pt. 19; C-174/05 pt. 20); C-300/05 MN 16; this interpretation of the law is called “teleological interpretation”).

The essential purpose of the EU Livestock Transport Regulation, as set out in Recital 6, is: “... putting in place **more stringent requirements** [Emphasis added by the authors] so as to prevent pain and suffering in order to safeguard the welfare and health of animals during and after transport”.

The transition from the EC Animal Transport Directive 91/628/EEC to the EU Livestock Transport Regulation 1/2005 should therefore, according to the will of the EU legislator, not lead to a weakening of the animal welfare level during animal transports, but on the contrary increase it.

An interpretation according to which “journey” and “journey time” would not include the loading of animals would, however, weaken the protection afforded previously by the EC Animal Transport Directive to animals during transport in diametrical opposition to this objective.

This becomes particularly evident in the case that was the subject of the ECJ ruling of 23 November 2006, C-300/05:

Since the loading of the 28 cattle at the place of departure had already taken one and a half hours, the transport company ZVK GmbH was obliged to give the cattle a one-hour break for watering and, if necessary, feeding after no later than twelve and a half hours of mere driving time (and thus after 14 hours of transport) according to Section 48 No. 4 (d) of the Annex to the EC Animal Transport Directive.

Should one agree with the legal opinion of those who do not want to have the transport start until the departure of the transport vehicle and do not want to include the loading time in the journey time, the company would be entitled to only grant the cattle (as they actually did) a rest period for drinking and, if necessary, feeding after 15 ½ hours of transport (i.e. after one and a half hours loading time + subsequent 14 hours driving time) according to Annex I Chapter V No. 1.4 (d) of the EU Livestock Transport Regulation. Something that was illegal according to the EC Animal Transport Directive would then qualify as lawful under the EU Livestock Transport Regulation – although the essential regulatory purpose of the latter is to introduce “stricter rules” for the protection of animals compared to the Directive.

An interpretation of the concepts of “journey” and “journey time”, which only takes into account the pure driving time would therefore lead to a significant weakening of the protection of animals being transported compared to the previous legal situation – contrary to the central purpose of the EU Livestock Transport Regulation, as clearly stated in Recital 6. The EU Livestock Transport Regulation would then not have introduced “stricter provisions” but less stringent, weaker ones in comparison to the previously existing EC Animal Transport Directive.

Such a result is evidently incompatible with the principle of the teleological interpretation of the law whereby the content of a legislative provision must be guided, first and foremost, by the regulatory purpose pursued by the legislature.

Legal norms

Regulation (EC) 1/2005 (European Livestock Transport Regulation)

Directive 91/628/EC as amended by Directive 95/29/EC (EC Animal Transport Directive).

Bibliography

Antwortschreiben des U. Herzog an T. Waitz vom 29. 3. 2019, 16: 46 Uhr, betreffend »Auslegung VO (EG) 1/2005« Schreiben M. Krist, Berliner Senatsverwaltung für Justiz, Verbraucherschutz und Antidiskriminierung v 29.1.2019, (913) 3244

BMASGK (Hrsg), Handbücher Tiertransporte (Stand 2018), <<https://www.tierschutzkonform.at/downloads/>> (letzter Zugriff: 14. 5. 2019)

BMG (Hrsg), Handbuch Tiertransporte inkl. Erleichterungen für landwirtschaftliche Transporte (Stand 2009), nicht mehr online verfügbar, beim Zweitautor erhältlich

BMG (Hrsg), Handbuch Tiertransporte inkl. Erleichterungen für landwirtschaftliche Transporte (Stand 2010), <https://www.salzburg.gv.at/agrarwald_/Documents/tt_handbuch_kurzstrecke.pdf> (letzter Zugriff: 14. 5. 2019)

Gayer/Rabitsch/Eberhardt, Tiertransporte: Rechtliche Grundlagen, Transportpraxis, mit Prüfungswissen Befähigungsnachweis Tiertransport (2016)

Länderarbeitsgemeinschaft Verbraucherschutz, AG Tierschutz (Hrsg), Handbuch Tiertransporte – Vollzugshinweise zur Verordnung (EG) Nr. 1/2005 des Rates vom 22. Dezember 2004 über den Schutz von Tieren beim Transport und damit zusammenhängenden Vor- gängen ... und zur Tierschutztransportverordnung vom 11. 2. 2009 (Stand Dezember 2018), <https://www.openagrar.de/receive/openagrar_mods_00046352> (letzter Zugriff: 14. 5. 2019)

Rabitsch/Wessely, Zur Beachtung der Lenk- und Ruhezeiten der Fahrer im Zusammenhang mit Langstreckentransporten von Tieren, Amtstierärztlicher Dienst und Lebensmittelkontrolle 2012/2, 99–109

Wessely/Rabitsch, Konsequenzen aus dem Urteil des Europäischen Gerichtshofes zu Ruhezeiten bei Tiertransporten (Sache C-469/14), Amtstierärztlicher Dienst und Lebensmittelkontrolle 2017/2, 109–112

Annex: Commission answer on the interpretation of the definition of the terms „transport“ and “journey”

Ref. Ares(2020)3995555 - 29/07/2020



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY
Directorate G – Crisis management in food, animals and plants
Director

Brussels,
SANTE G2/YSL/sc (2020)2868303

Subject: Interpretation of the definitions of the terms "transport" and "journey"

Dear Ms Sieber,

Thank you for the letter of 4 May 2020 concerning the interpretation of the definitions of the terms ‘transport’ and ‘journey’ according to Council Regulation (EC) No 1/2005 on the protection of animals during transport¹.

You consider that the meanings of “journey” and “transport” are different. You are of the opinion that the term “journey” only covers the time when the means of transport is moving and consequently the journey time should be calculated accordingly, loading and unloading times being excluded. You also mention that this a problem of terminology is due to the TRACES system, which in its German version indicates in Box I.29 “*estimated transport time*” instead of “*estimated journey time*”.

Article 2 of the Regulation provides that (underline added):

(j) ‘journey’ means the entire transport operation from the place of departure to the place of destination, including any unloading, accommodation and loading occurring at intermediate points in the journey.

(w) ‘transport’ means the movement of animals effected by one or more means of transport and the related operations, including loading, unloading, transfer and rest, until the unloading of the animals at the place of destination is completed;

The definition of the journey refers to an “*entire transport operation*” and the definition of “*transport*” includes any loading or unloading of animals.

Therefore, it does not appear that there is a substantial difference of meaning between “*journey*” and “*transport*”, the journey being only a countable term for a transport operation.

This is also reflected by the fact that the Regulation does not use the term “*transport time*”, but only uses the term “*journey time*”, in addition to the terms “*travel time*” and “*travelling time*”.

¹ Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ L 3, 5.1.2005, p. 1).

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Figure 2: Answer of the European Commission to a Questionnaire drafted by some Member states, part 1.

Furthermore, the Court of Justice of the European Union in its judgment of 23 November 2006 in case C-300/05 KVZ Zuchtvieh-Kontor² established that according to Council Directive 91/628 on the protection of animals during transport³ the ‘travel’ within the meaning of point 48(4)(d) of the Annex to this Directive included the time spent for loading and unloading the animals.

Given that the wording and objective of Regulation 1/2005, which repealed Directive 91/628/EEC, and given the judgement of the Court in case KVZ, the notion of ‘transport’ in chapter V, points 1.2 to 1.4 of Annex I to that Regulation is to be interpreted in a way that it includes the time spent for loading and unloading of the animals.

As a result, according to the Commission services the journey time should always be counted from the time the first animal is loaded into the means of transport at the place of departure until the last animal is unloaded at the place of destination.

Concerning your comments on TRACES, please note that the name of box I.29 in TRACES comes from the name of that box as set out in the Annex to Commission Regulation (EC) No 599/2004⁴ referring to the template of the intra-Community certificate and the guidance on how to complete that certificate. After verification, it appears that the German linguistic versions for that box in the template and in the guidance are different but both do use the term “Transportdauer” while according to Council Directive 91/628/EEC, applicable at that time, the term to be used for that box should have rather included “Verbringung” as defined in point (g) of Article 2(2) thereof. Given that Commission Regulation (EC) No 599/2004 will be repealed as of 21 April 2021, the EU linguistic versions of the corresponding box in the new template and guidance will be aligned to the terminology of Regulation (EU) No 1/2005 in the new legal act and in TRACES accordingly.

Please note that this letter represents the views of the services of the Commission and has been prepared in order to assist you, based on the information that you provided to the Commission services. It does not commit the European Commission. Only the Court of Justice of the European Union is entitled to interpret Union law with final binding authority.

Yours sincerely,

Bernard Van Goethem

² European Court of Justice, judgment of 23 November 2006 in case C-300/05, *Hauptzollamt Hamburg-Jonas v ZVK Zuchtvieh-Kontor GmbH*, ECLI:EU:C:2006:735.

³ Council Directive of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (*OJ L 340, 11.12.1991, p. 17*).

⁴ Commission Regulation (EC) No 599/2004 of 30 March 2004 concerning the adoption of a harmonised model certificate and inspection report linked to intra-Community trade in animals and products of animal origin (*OJ L 94, 31.3.2004, p. 44*).

Figure 3: Answer of the European Commission to a Questionnaire drafted by some Member states, part 2.

Transports of Cattle and Sheep in Animal Welfare High-Risk Countries Continue



Originally published as "Transporte von Rindern und Schafen in Tierschutz-Hochrisikostaaen gehen weiter" in: Amtstierärztlicher Dienst und Lebensmittelkontrolle, issue no. 27 – 1/2020, p. 37-46

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Translated by *Connect Translations Austria GmbH*

Animal Welfare.
Worldwide.



Key words

animal welfare high-risk countries; slaughter; animal abuse; complicity to animal abuse; eyewitness reports; death throes of animals in religious slaughter procedures.

Summary

The authors reported in “Amtstierärztlicher Dienst und Lebensmittelkunde“ (ATD), 4/2018, that there are animal welfare high-risk countries with a high probability that animals transported there run a high risk to be slaughtered under conditions that violate basic animal welfare demands. This means that persons (both official veterinarians and transport companies) responsible for animal transports to those countries are guilty of complicity to animal abuse.

These statements have resulted in partly intense reactions (cf. ATD 2/2019): the theoretical possibility that animals transported to those countries may be subject of animal abuse would not be sufficient to blame veterinarians and transport companies of deliberate complicity to animal abuse.

Supported by a multitude of eyewitness reports, it is eventually confirmed that in countries such as Turkey, Lebanon, Jordan, Egypt, and Morocco, the slaughter conditions for the animals are cruel not only in single incidents, but even regularly; and the animals suffer repeatedly beyond non-correct slaughter procedures without anaesthesia from practices such as cutting tendons and poking into the eyes.

It is also reported that the animals already suffer during transport due to a lack of appropriate control posts for unloading and sufficiently feeding and watering them in compliance with Regulation (EC) No. 1255/97. This means that transports on routes with missing control posts should not be permitted on the grounds that these transports already violate Regulation (EC) 1/2005.

The authors argue that there are only few official veterinary offices left in Germany that issue permissions for animal transports into animal welfare high-risk countries. However, since there are assembly centres supervised by those few permitting official veterinary offices, many animal transports into animal welfare high-risk countries still take place from Germany.

Introduction

Large numbers of animals, especially cattle, continue to be transported from the European Union, including Germany and Austria, to countries outside Europe. Many of these countries must be seen as animal welfare high-risk countries, mainly because of the circumstances under which animals are slaughtered there. Cows exported as pregnant heifers are also slaughtered in many places after the first calving at the end of the lactation period. The animal welfare high-risk countries include in particular Algeria, Azerbaijan, Egypt, Iran, Iraq, Jordan, Kazakhstan, Kyrgyzstan, Lebanon, Libya, Morocco, Syria, Tajikistan, Tunisia, Turkey, Turkmenistan, Uzbekistan and Yemen. For this reason, among others, some German states (Hessen, Bavaria, Schleswig-Holstein) have issued decrees in 2019 in which they point out the risk of significant violations of animal welfare regulations on the transport routes to these countries. These decrees stipulate that transports are only to be approved if, after thorough examination, all requirements which must be complied with

according to Regulation (EC) No. 1/2005 on the protection of animals during transport and related processes as well as for the amendment of Directives 64/432/EEC and 93/119/EC and Council Regulation (EC) No. 1255/97 (hereinafter: EU Animal Transport Regulation) have been met to the full confidence of the handling authority (including: Verification of a sufficient number of control posts along the entire transport route; control of temperatures; emergency plans, full access to electronic data; consistent review of the logbooks after transportation; ensured control options during transport).

However, since the transporter can decide for themselves from which assembly centre they want to start long-distance transport in accordance with Art. 2 (r), (ii) EU Animal Transport Regulation, they also have the option of choosing the veterinary office responsible for the approval of transport. Since the issuance of these decrees, they have therefore preferred to go to assembly centres in other federal states (including Lower Saxony and Brandenburg, particularly Teltow-Fläming there), because they have reason to hope for a less stringent examination of the approval requirements by the authorities responsible there. The fact that the person subject to the law can thus himself choose the authority responsible for him and chooses among several the one who is likely to scrutinize his application the least must be regarded as a fundamental violation of the rule of law and equality before the law. This should not exist in a constitutional state and is also not compatible with the meaning and purpose of Art. 14 in conjunction with Art. 2 (r) of the EU Animal Transport Regulation. The procedure nevertheless corresponds to daily practice and means that the above-mentioned decrees largely fail to achieve their goal of preventing illegal animal transport.

I. Reactions to the treatise by Maisack/Rabitsch in ATD 4/2018¹

In a series of three articles in “*Amtstierärztlicher Dienst und Lebensmittelkunde*” (see list of references), the authors dealt with animal transport, including long-distance transport of cattle to the animal welfare high-risk countries mentioned above. They described the conditions under which slaughter usually takes place in these countries and advanced the argument that anyone involved in such a transport provides complicity to animal abuse – be it as a handling veterinarian, as a carrier or other participant in the implementation of the transport. This complicity is punishable under § 17 No. 2 b of the German Animal Welfare Act (hereinafter: German Animal Welfare Act) in conjunction with § 27 of the German Criminal Code (hereinafter: German Criminal Code) (or in Austria under § 222 para 1 number 1, 2nd case in conjunction with § 12, 3rd case of the Austrian Criminal Code).²

This has led to in part violent backlashes. In ATD 2/2019, *Scheuerl* and *Glock* (Lawyers in the law firm Graf v. Westphalen, Hamburg, whose services are often retained by animal transport companies) raised the accusation that the authors had only described only one grossly cruel animal slaughter of a single bovine animal in Morocco and otherwise only referred to reports from individual animal rights groups. According to them, it is by no means certain that animal torture methods of slaughter are always and without exception used in the countries mentioned; rather, the conditions described by the authors are individual cases that are by no means representative. If an official veterinarian handles such a transport, it is a “typical or neutral act relating to their

¹ see list of references

² for the legal situation in Austria see OGH dated 6 September 2016, 13 Os 105/ 15p (13 Os 106/15k); 13 Os 5/17k: “A domestic act is also committed by anyone who contributes to an act subject to punishment that is carried out abroad (§ 67 para 2 of the German Criminal Code). This alone justifies domestic jurisdiction and the applicability of Austrian criminal law (§ 62 of the Austrian Criminal Code). Based on this, the contributing offender acting domestically is responsible for his act even if the act of the immediate offender committed abroad is not punishable under the law of the state concerned. It is sufficient for the immediate perpetrator to carry out an execution act in accordance with the Austrian criminal law.” Regarding the same legal situation in this respect in Germany in accordance with Section 9 para 2 sentence 2 of the German Criminal Code, cf. *Maisack/Rabitsch ATD 4/2018*, 209, 213.

profession” on their part which in principle cannot be regarded as complicity to something criminal, “*unless the risk of punishable behaviour by the person supported and recognized by them was so high that they could be seen to support an offender who was clearly inclined to commit an offense*”³.

Complicity to animal abuse is therefore also considered possible by these authors if they ought to have become aware of the “*criminal connotation of their act*” in view of the high likelihood of cruel animal slaughter at the place of destination. *Scheuerl* and *Glock*, claim, however, that such a high risk does not exist⁴.

A treatise by Prof. Dr. *Alois Birklbauer* in the *TiRuP* 2019 magazine goes in the same direction. While it states that “*a criminal liability for participation in cruelty to animals abroad for the approval of animal transport in Austria for a cruel slaughter abroad might indeed be discussed*”, the point of view that the approval of an animal transport is a “*legally neutral professional activity*” and that there is no predictability of a consequent, cruel slaughter as a result of the approval, results, however, in no contributory complicity to animal abuse being assumed within the meaning of § 222 para 1 No. 1 in conjunction with § 12, 3rd Austrian Criminal Code⁵.

Here, then, a large number of eyewitness reports from a wide variety of sources is therefore to be used to prove that it is not only seriously possible, but rather highly probable that cattle and sheep which are transported to one of the animal welfare high-risk countries mentioned above are to be slaughtered there under cruel animal welfare conditions (see below II).

It is subsequently shown that there are no control posts in Turkey, the Middle East and northern Africa or Russia – at least, east and south of the Samarsky Oblast – that even approximate or are equivalent to the requirements of Regulation (EC) No. 1255/97 and where the animals can be unloaded, fed and watered after the maximum permitted transportation times (adult cattle and sheep after 29 hours) have elapsed and can rest for 24 hours (the control posts located in the Oblast and to the west of it usually do not meet these requirements, either). That’s why transports there may not be cleared in accordance with Art. 14 para 1 (a), (ii) of the EU Animal Transport Regulation – even regardless of the conditions under which the animals are slaughtered at the place of destination (see below III).

Other aspects that may conflict with the handling of animal transports to the animal welfare high-risk countries mentioned are also briefly addressed (below IV; in more detail *Maisack/Rabitsch AtD 3/2018, 148–155*). Finally, the prohibition of abuse of rights is further discussed, also in connection with the assertion of a claim to a preliminary animal disease health certificate for such a transport (below V).

II. Cruel animal slaughter methods in animal welfare high-risk countries

In the countries mentioned, it is virtually certain that cattle or sheep that are transported there for breeding, production or slaughtering will sooner or later be slaughtered under cruel circumstances (religious slaughter).

3 Federal Court, Verdict dated 19 December 2017 – 1 StR 56/17, *Neue Zeitschrift für Strafrecht* 2018, 328. The Federal Court thereafter continues as follows: “The decisive factor <with regards to a liability in terms of complicity> is whether there is evidence, as far as the accomplice is concerned, that made it seem at least very likely that the intention behind the actions of the main perpetrators aided by them were to commit crimes.”

4 *Scheuerl/Glock*, “Tiertransporte in Drittstaaten – zur (fehlenden) Strafbarkeit von Amtsveterinären”, *ATD* 2/2019, 69-74

5 *Birklbauer*, “Die Genehmigung von Tiertransporten ins Ausland als Tierquälerei – Umfang und Grenzen einer möglichen Strafbarkeit”, Magazine *TiRuP (Tierschutz in Recht und Praxis)* 2019/A 47-71

By now, there are very numerous reports from different sources that such animals – even if they were declared as “breeding animals” for transport⁶ – were slaughtered relatively shortly after their arrival using methods that clearly met the requirements for criminal offenses of § 17 No. 2a and 2b of the Animal Protection Act (TierSchG) in Germany, and the offense of § 222 para 1 No. 1 Criminal Code (StGB) in Austria.

Between 2016 and 2018, members of the non-governmental organization “Animals International”⁷ visited slaughterhouses in Egypt, Jordan, Lebanon, Morocco, and Turkey in various teams. All of the slaughters they observed were carried out as slaughter without stunning. In almost all slaughters, multiple throat cuts could be seen. Other actions leading to considerable pain in animals that were observed are:

- Severing the tendons on the front and rear legs (slaughterhouses in Giza and Cairo, Egypt)
- Piercing the eyes and partly the ears with pointed objects (slaughterhouses in Giza and Cairo, Egypt; butcher’s shop in Miniyeh, Lebanon)
- Reaching into the animals’ eye sockets (butcher’s shop in Mahmra and slaughterhouse in Tripoli, each in Lebanon)
- Using hooks in the nose area to force the animals to move forward (slaughterhouses in Giza and Cairo, Egypt)
- Hitting with poles/sticks (slaughterhouses in Giza and Cairo, Egypt)
- Tugging the tail (Giza and Cairo, Egypt; butcher’s shop in Mahmra, Lebanon)
- Animals were knocked down (Giza and Cairo, Egypt; Abu Sayyah market in Russeifa, Jordan; Skhirate Temara market in Mers El Kheir, Morocco)
- Animals were hung on one leg, mostly on a rear extremity, and pulled up and then, hanging upside down, sometimes also slaughtered while half lying (butcher shop in Mahmra, Lebanon, slaughterhouse in Beddaoui, Lebanon; slaughterhouse in Haret El Qumara, Lebanon; slaughterhouse in Sidon, Lebanon; slaughterhouse in Tripoli, Lebanon; Skhirate Temara market in Mers El Kheir, Morocco; three slaughterhouses in Kirsehir, Turkey)
- Animals were kicked and pulled on legs and horns (Abu Sayyah market, Russeifa, Jordan; Irbid market, Bani Obeid, Jordan; Mafraq slaughterhouse in North West Badiyah, Jordan; butcher shop in Miniyeh, Lebanon, butcher shop in Beddaoui, Lebanon; butcher shop in Mahmra, Lebanon).
- Animals were pulled with ropes attached to the head (Giza and Cairo, Egypt; Mafraq slaughterhouse in North West Badiyah, Jordan)
- Animals had a rope tied around their lower jaws to pull their head back (butcher shop in Miniyeh, Lebanon)
- Animals were grabbed and pulled on the nose or other particularly sensitive parts of the body (butcher shop in Mahmra, Lebanon).

Between 2014 and 2019, members of the non-governmental organization “Eyes on Animals”⁸ visited slaughterhouses in Turkey. The so-called trip floor box was used in 14 of the 16 facilities (Tekirdag, Hayrabol, Nazar, Corlu, Yalova, Edemen, Tuzla, Bolu, Ankara, Gönen, Konya, Kazan, Bursa, and Hadimköy). This is a separating box made of metal: The ground is suddenly tilted away from under the hooves of cattle standing in them; as a result, they fall and their limbs slide over the sloping surface through a gap in the side wall of the box; one of the limbs protruding from the box is then shackled to pull it up; the animal is thereafter pulled up and, once only the shoulder area still lies on the floor or it even hangs upside down, its throat is cut.

6 Declaring cattle and sheep transports to the countries mentioned as exports of animals for breeding is a case of “false labelling”, as fittingly described by *Marahrens* on the ZDF broadcast “Kontraste” on 24 May 2018. The cattle exported as alleged breeding animals “of course end up in the slaughterhouse”. This is due, among other things, to the lack of a feed base, the lack of agricultural structures, the too high outside temperatures and the lack of veterinary care, but also to the sometimes very high meat prices (more on this *Maisack/Rabitsch ATD 4/2018, 209, 211*).

7 “Animals International” (www.animalsinternational.org) is the global arm of Australia’s leading animal protection organization “Animals Australia” (www.animalsaustralia.org). Director: *Glenys Oogjes*

8 “Eyes on Animals” is an international animal welfare organization based in Amsterdam (NL) (www.eyesonanimals.com, Director: Lesley Moffat)

No.	Country	City	GPS	Name/designation	Animal species
1	Egypt	Giza	29°58'39.50"N 31°12'21.55"E	Al Moneib slaughterhouse	Cattle
2	Egypt	Cairo	29°50'20.43"N 31°20'27.14"E	Helwan slaughterhouse	Cattle
3	Egypt	Shobra Shehab	30°17'3.45"N 31° 7'11.61"E	Al Watania slaughterhouse	Cattle
4	Jordan	Russeifa	32°00'28.4"N 36°02'22.2"E	Abu Sayyah Market	Sheep
5	Jordan	Bani Obeid	32°30'46.9"N 35°57'02.4"E	Irbid Market	Sheep
6	Jordan	North West Badiah	32°17'28.88"N 36°13'33.57"E	Mafraq slaughterhouse	Cattle
7	Jordan	North West Badiah	32°17'28.88"N 36°13'33.57"E	Mafraq slaughterhouse	Sheep
8	Lebanon	Mahmra	in the vicinity of 34°30'38.2"N 35°57'38.8"E	Butcher's shop	Cattle
9	Lebanon	Beddaoui	in the vicinity of 34°27'11.9"N 35°51'43.1"E	Al Beddaoui slaughterhouse	Cattle

Tables 1 provides an overview of the events observed in the individual countries

Handling of animals before slaughter	Slaughter method	Inspection
<ul style="list-style-type: none"> Animals are beaten with rods/sticks Tendons on the front and rear legs are severed Sharp objects are used to prick the eyes and ears of the animals Animals are pulled on ropes attached to the head Use of hooks – in the nasal area – to force the animals to move forward Animals are pulled by the tail The animals are brought down with blows. Several workers fixate the animals by sitting on them or pressing them to the ground with hands and feet 	unanaesthetised, throat cut, knife applied several times	2017
<ul style="list-style-type: none"> Animals are beaten with rods/sticks Tendons on the front and rear legs are severed Sharp objects are used to prick the eyes and ears of the animals Animals are pulled on ropes attached to the head Use of hooks – in the nasal area – to force the animals to move forward Animals are pulled by the tail The animals are brought down with blows. Several workers fixate the animals by sitting on them or pressing them to the ground with hands and feet 	unanaesthetised, throat cut, knife applied several times	2017
<p>Improper use of the slaughter drum: Animals lie on their side, the fixture in which the head of the animal is supposed to lie with the neck facing upwards is instead used to prevent the incorrectly positioned animal from moving</p>	unanaesthetised, throat cut, knife applied several times	2016
<ul style="list-style-type: none"> Animals are kicked, pulled by the legs Animals are thrown on the ground, turned on their backs to cut their throats 	unanaesthetised, throat cut, knife applied several times	2017, 2018
<ul style="list-style-type: none"> Animals are pulled by their horns and legs 	no footage of slaughter	2018
<ul style="list-style-type: none"> Partial use of slaughter box and slaughter stun gun However, not all animals are stunned properly and some are conscious during the throat cut Animals are dragged into the slaughterhouse by ropes tied around their heads The rope is also used to fixate/extend the neck in order to cut the animal's throat while standing Animals fall onto the floor covered with blood (high risk of slipping) 	stunned in some cases; however, often unstunned, throat cut, knife applied several times	2018
<ul style="list-style-type: none"> Animals are dragged by legs and horns Animals are grabbed by the legs and laid on their back Animals are slaughtered next to each other and one after the other 	unanaesthetised, throat cut, knife applied several times	2019
<p>Animal hoisted up on a hind leg to bring it down – hip remains on the floor</p>	not stunned, throat cut	2017
<ul style="list-style-type: none"> Incorrect or unprofessional use of the trip floor box in some cases: Animals stand up again after opening of the floor box and are pulled up with a rope attached to the hind leg to bring the animal down again Shoulder remains on the ground 	unanaesthetised, throat cut, knife applied several times	2017

No.	Country	City	GPS	Name/designation	Animal species
10	Lebanon	Miniyeh	in the vicinity of 34°29'31.1"N 35°56'49.9"E	Butcher's shop	Cattle
11	Lebanon	Beddaoui	in the vicinity of 34°27'18.4"N 35°51'51.9"E	Butcher's shop	Cattle
12	Lebanon	Mahmra	34°30'30.7"N 35°58'00.7"E	Butcher's shop	Cattle
13	Lebanon	Mahmra	34°30'34.4"N 35°58'04.0"E	Butcher's shop	Cattle
14	Lebanon	Haret El Oumaraa	33°49'8.03"N 35°30'5.85"E	Rassem Livestock slaughterhouse	Cattle
15	Lebanon	Sidon	33°32'16.05"N 35°22'04.26"E	Saida slaughterhouse	Cattle
16	Lebanon	Tripoli	34°26'46.6"N 35°50'54.1"E	Tripoli slaughterhouse	Cattle
17	Morocco	Mers El Kheir	33°51'29.0"N 6°55'56.9"W	Skhirate Temara Market	Cattle
18	Turkey	Kırşehir	39°21'03.2"N 34°10'20.7"E	Istanbul Et slaughterhouse	Cattle
19	Turkey	Kırşehir	39°05'50.9"N 34°11'16.8"E	Kirsehir slaughterhouse	Cattle
20	Turkey	Kırşehir	39°04'57.8"N 34°11'03.7"E	Kismet slaughterhouse	Cattle

Handling of animals before slaughter	Slaughter method	Inspection
<ul style="list-style-type: none"> Sharp objects are used to prick the animal's eyes Standing animals are pulled from the trailer bed by a rear leg Ropes on the front and rear legs fixate the animals lying on the side or on their backs In addition, a rope is tied around the lower jaw to pull the head back 	unanaesthetised, throat cut, knife applied several times	2017
<ul style="list-style-type: none"> Standing animals are pulled by one hind leg from the trailer bed The animals are restrained with ropes on the front and hind legs, on their side or lying on their back 	not stunned, throat cut	2017
<ul style="list-style-type: none"> Standing animals are pulled by one hind leg from trailer beds Ropes on the front and hind legs are used to fixate the animals lying on their sides or back Workers grip animals in the eye sockets to move or fixate them 	unanaesthetised, throat cut, knife applied several times	2017
<ul style="list-style-type: none"> Workers grab and pull animals by the nose using their hands Standing animals are pulled by one hind leg from trailer beds Ropes on the front and hind legs are used to fixate the animals lying on their sides or back 	unanaesthetised, throat cut, knife applied several times	2017
<ul style="list-style-type: none"> Incorrect use of the trip floor box in some cases: Animals stand up again after opening of floor box and are pulled up with a rope attached to the hind leg to bring the animal down again If that isn't possible, a worker grabs the animal by the head to bring it down Shoulder of the animal remains on the ground 	unanaesthetised, throat cut, knife applied several times	2018
<ul style="list-style-type: none"> Standing animal is pulled up by one hind leg to bring it down Shoulder remains on the ground The head is fixated with a U-shaped fork Immediately after the throat cut, one leg of the animal is pulled up completely until it no longer touches the ground 	unanaesthetised, throat cut, knife applied several times	2016
<ul style="list-style-type: none"> Use of a trip floor box After this, animals are pulled up by one hind leg Shoulder remains on the ground Workers grip animals in the eye sockets to move or fixate them 	unanaesthetised, throat cut, knife applied several times	2016
<ul style="list-style-type: none"> A rope attached to the hind leg is pulled up to bring the cow out of balance A worker grabs the animal by the head and pushes it to bring it to the ground – lying on its side Workers fixate the animal by standing on top of it (neck and head area) 	unanaesthetised, throat cut, knife applied several times	2017
<ul style="list-style-type: none"> Improper use of a slaughter drum: Animal lies sideways, head is not fixated Drum is opened immediately after throat cutting Animals remain stuck with their front legs After that, the animals still alive are pulled up completely (freely suspended) on one leg 	unanaesthetised, throat cut, knife applied several times	2016
<ul style="list-style-type: none"> Use of a trip-floor box Animals are pulled up completely (freely hanging) on one leg with a metal chain 	unanaesthetised, throat cut, knife applied several times	2016
<ul style="list-style-type: none"> Use of a trip floor box Animals are pulled up completely (freely hanging) on one leg with a metal chain only then, the throat is cut 	unanaesthetised, throat cut, knife applied several times	2016

No.	City	Name	Technology	Raising	Note	Inspection of the slaughter process
1	Tekirdağ		Trip floor box	fully hoisted		not permitted, 2019
2	Hayrabol		Trip floor box	fully hoisted	hanging freely for several minutes	2019
3	Nazar		Trip floor box	shoulder kept on floor		2019
4	Corlu	Corlu Belediye	Trip floor box	without stunning: fully hoisted	Stunning equipment in use in some cases	2019
5	Yalova	Yalova Belediye	Trip floor box	fully hoisted		2019
6	Edemen	Edemen Et	Trip floor box	shoulder kept on floor	injured animals: fully hoisted when unloaded from trucks	2019
7	Tuzla	Elif	Trip floor box	shoulder kept on floor	injured animals: fully hoisted when unloaded from trucks	2016
8	Bolu	Kurucay	Trip floor box	fully hoisted		2016
9	Ankara	Başkent	Trip floor box	shoulder sometimes kept on floor	injured animals: fully hoisted when unloaded from trucks	2016
10	Gönen	Gönen	Trip floor box	fully hoisted		2016
11	Konya	Torku	Rotating box	-		2016
12	Konya	Cihangir	Trip floor box	shoulder kept on floor		not permitted, 2016
13	Kazan	Aygüler	Trip floor box	fully hoisted	hanging freely for several minutes	2014
14	Bursa	Yılkey	Trip floor box	shoulder kept on floor	injured animals: fully hoisted when unloaded from trucks	2014
15	Bursa	Çimet	no restraint box	fully hoisted		2014
16	Hadımköy	Hadımköy	Trip floor box	shoulder kept on floor	injured animals: fully hoisted when unloaded from trucks	2014

Table 2 provides an overview of the events observed in the individual countries



Figure 1 shows the geographical distribution of the slaughterhouses in Egypt, Jordan and Lebanon.



Figure 2 shows the geographical distribution of the slaughterhouses in Turkey.

Reports from animal protection and animal rights organizations about such practices they observe must not – as *Scheuerl* and *Glock* apparently want to do – be dismissed from the start as unbelievable due to being supposed to be partisan. Rather, there are general criteria of credibility that are to be attached to every report and which – the more of which are fulfilled – lend credibility to a report (see the list of these criteria in: *Maisack/Rabitsch AtD 3/2018, 148, 152*). Since the reports from “Animals International” and “Eyes on Animals” largely meet these credibility criteria, they are also used by the EU Commission as a basis for the formation of its opinions⁹.

The following is reported in the ZDF programme “37 Grad – Geheimsache Tiertransporte – wenn Gesetze nicht schützen” [“37 degrees – animal transport secrets – when laws do not protect”] broadcast on 21 November 2017 about “Animals International” visiting a slaughterhouse near Cairo: “*In summer 2017, employees of the organization “Animals International” inspect slaughterhouses in Egypt. Hundreds of sheep and cattle are delivered here every day to the slaughterhouse area near Cairo. Strange methods come to light in all of the companies examined: For example, cattle get their leg tendons cut through here before they are driven into the slaughterhouse. Consequently, of course: The animals can no longer walk, but have to ... In addition, the investigative recordings – most of which are unfit to be shown to a larger public – show another common practice: Almost all animals have their eyes gouged out ... Sometimes it takes up to half an hour for an animal to be finally dead, and these are not isolated cases ... (Engl. Original sound Gabriel Paun, “Animals International”, translated:) ‘This is no exception, we are talking about a phenomenon, it does not matter whether it is a state-operated slaughterhouse or whether this happens in the street.’*”

The reports from “Animals International” about the conditions in slaughterhouses in Lebanon are also confirmed, among others, in the programme “Unser Land” broadcast on Bavarian Radio on 16 February 2018. Original sound: “*Especially in the Middle East – like here in Lebanon – the animals are often cruelly mistreated ... images that also leave farmers and cattle traders appalled*” (among other things, the following were filmed: Beating cattle with sticks; tugging and pulling cattle down to the ground with ropes; shackling of cattle on a leg and then pulling them up; preparatory actions for the halal cuts, scenes which were then only shown by way of the blood lakes forming under the heads of the animals for reasons of consideration for sensitive spectators).

A large number of film recordings of animal welfare violations in the slaughterhouses of the countries mentioned can be seen on the website of the Hessian animal welfare officer in the Hessian Ministry of the Environment in Wiesbaden¹⁰.

2018, Slaughterhouse in Beirut, Lebanon:

A bull is chained to one rear leg and one front leg, its head is pushed back; then the neck is cut open with several incisions at clear intervals; the animal then still moves around for minutes and screams loudly.

Several sheep are carried into the slaughter room, some of them with their legs tied together, they get pressed to the ground and killed with several cuts to the neck, some also sawing cuts. Several cut open sheep lie on top of each other in doing so; minutes of fidgeting of the animals after the cuts can be observed.

⁹ Cf. EU Commission, Report to the European Parliament and the Council on the effects of Regulation (EC) No. 1/2005 on the protection of animals during transport, dated 10 November 2011, KOM (2011) 700 final, 2.6: Reference to reports from “Eyes on Animals” and other non-governmental organizations with regards to serious shortcomings in the enforcement of the provisions

¹⁰ <https://tierschutz.hessen.de/nutztiere/30-jahre-tiertransporte/schlachtung-in-drittlaendern>

A cattle hangs upside down on one leg with its neck already cut open wide; however, it still makes gurgling cries for a long time.

Again and again one can see cattle that are shackled and pulled up, hanging upside down, with their necks already open, sometimes screaming loudly and wriggling violently.

2017, slaughterhouse near Cairo, Egypt:

Workers handle a lying cattle that is apparently no longer capable of walking with violent blows of a stick and kicks on the head; later, after having been pulled into the slaughter room, the animal is killed while lying down with several neck cuts, one after the other, some of them sawing cuts; after the cuts, movements of the legs and gurgling sounds can still be observed for minutes.

A cow tied to the head and still lying on the transport vehicle is stabbed repeatedly in the eye with a knife.

Cattle that are unable to walk are pulled to the slaughter room for slaughtering without stunning, although other animals that have already been slaughtered are already rolling on the ground there in large blood lakes and screaming loudly.

In the case of a white cow, which is shackled at the hind leg, it can be seen that the neck has already been cut open completely; nevertheless movements of the head, tongue and legs can be seen for minutes and gurgling noises can be heard.

2017, slaughterhouse in Beirut, Lebanon:

A cow is shackled on the rear leg and pulled down from the loading area of the transport vehicle by its tail. Then a rope is wrapped around its lower jaw and its head is pushed back. The front of the neck is completely opened up using several sawing cuts cross the throat. Nevertheless, violent movements can be seen for quite some time and gurgling sounds can be heard.

Another cattle still on the transport vehicle is stabbed in the eye several times before it is hung up on its right hind and foreleg and slaughtered with several cuts in succession.

2017, slaughterhouse in Turkey:

Cattle are hung upside down in large numbers one after the other and then slaughtered in full consciousness by crosswise incisions of the throat hanging side by side, each with several repeated neck cuts. Here, too, one can observe movements lasting for minutes and hear sounds as well.

The following can be seen in other films on this website: A bull with broken hind legs is forced to walk; the bull has bloody smeared eyes and is pulled to the place of its slaughter by the nose ring and while in a lying position. An already slaughtered cattle with the front of the neck wide open attempting to get up. Excessive beating of animals for slaughter. Cutting out the eyes. Cutting open of the skin of an animal that is still alive. Minutes-long death throes of already cut open animals. Animals are shackled by a hind leg and pulled up to be slaughtered hanging upside down. Animals are roped up on the lower jaw. Slaughter without stunning takes place by means of a one-sided oblique cut, i.e. only one side of the neck of the animal was opened.

In a film report by television journalist *Manfred Karremann* (ZDF, programme “37 Grad”) on 18 February 2020, similar treatments to those already seen in 2017 in the Cairo slaughterhouse were observed in Turkey and Lebanon: In a slaughterhouse, about two hours from Istanbul, a cattle was filmed as it was shackled by a hind leg and pulled up, and as it had to suffer death throes that lasted for several minutes after several ritual neck cuts had been made. A few minutes after the start of filming, the film recordings had to be stopped under pressure from the screaming slaughterhouse staff. In another Turkish slaughterhouse, it was shown how a cow that was unable to walk was pulled from the truck to the slaughtering site while lying on the floor, and then also hung up by a hind leg and slaughtered. A slaughterhouse in Lebanon was filmed as well, where a cattle was also shackled on one leg and pulled up and then slaughtered with several sawing cuts. The “usual grip into the eyes”, in the words of one person speaking, had taken place just before that.

Based on such reports, also the European Parliament assumes that the animals transported from the EU to certain third countries are mostly slaughtered there “with extreme and long-term suffering and regular violations of international OIE standards for animal welfare”¹¹.

The Austrian Chamber of Veterinarians express themselves similarly (cf. *Maisack/Rabitsch ATD 4/2018, 210*: “... special practices in many third countries, where, for example, the animals have their eyes gouged out before the slaughter without anaesthesia and the tendons of the extremities are severed”), as does the President of the German Chamber of Veterinarians (cf. *Maisack/Rabitsch ATD 4/2018, 211*: “... to transport live animals across thousands of kilometers so that they can finally be slaughtered at their destination after sometimes unimaginable tortures”).

It is therefore by no means the case that only a few animals are slaughtered in the countries mentioned – as *Scheuerl* and *Glock* and probably also *Birklbauer* think. Rather, it is virtually certain that each cow and each sheep transported there from the EU or other countries will sooner or later be slaughtered with the infliction of considerable and prolonged or repeated pain or suffering. Any official veterinarian who transports animals there can easily find out about the slaughter conditions in the countries mentioned and embrace this information. It is part of the “full personal responsibility” the official bears for the legality of all their official acts (cf. e.g. § 63 para 1 Federal Officials Act and the corresponding provisions of the State Officials Act), that they conscientiously investigate indications supporting that certain official acts may lead to results contrary to animal welfare, that they completely clear up any relevant suspicion and that if such suspicion is confirmed, they change their official conduct accordingly. The same applies to veterinarians who are employed in the civil service.

In addition to the eyewitness and film reports mentioned, the following other aspects also suggest that the animals are not only inflicted occasional, but regular (see above European Parliament: “regularly”), repeated or prolonged considerable pain and suffering as far as the slaughter carried out without anaesthesia in the countries mentioned is concerned:

1. The requirements that must be met to prevent pain and suffering when an exemption for religious slaughter is granted in Germany pursuant to Section 4a para 2 No. 2 German Animal Welfare Law, include (based on Federal Constitutional Court, ruling dated 15 January 2002, BVerfGE 104, 337): Use of fixation devices, with which both an immobilization without unnecessary disturbance as well as a safe cut and rapid bleeding is guaranteed; complete

¹¹ Resolution on the implementation of Council Regulation (EC) No. 1/2005 on the protection of animals during transport within and outside the EU (2018/2110/INI) No. 82: “... expresses its concern at the persistent reports of animal transport and welfare problems in certain third countries; notes that slaughter in certain third countries to which the EU sends animals entails extreme and prolonged suffering and regularly breaches the international standards on welfare as laid down by the OIE ...”

removal of all blood from the floor and from the slaughtering facility before the next animal is led into the slaughter room; provision of functional, ready-to-use stunning devices; prohibition of any manipulation of the animal until the bleeding has been fully completed; permanent presence of a veterinarian with the authority and obligation to intervene immediately if necessary. In Austria, a penetrative stunning must be carried out immediately after the shechita/halal/sikh throat cut has been administered, and the latter may only be carried out in approved slaughterhouses and under constant veterinary supervision. The reports mentioned above show with startling clarity that there can be no question of compliance with these restrictions in countries where slaughter without stunning is the standard form of slaughter.

2. In addition, long-term, significant pain is highly probable in adult cattle that are slaughtered without stunning, also because the so-called vertebral arteries that run in the spine, i.e. on the back of the neck, still maintain the blood supply of the brain for some time after the slaughterer's cuts. The animal thus remains conscious for some time even after the severing of the trachea and esophagus. The minutes of attempted running movements after the slaughterer's cuts as well as the screams and attempts to stand up, which can be seen in the films mentioned above, prove this very clearly. For this reason alone, considerable and prolonged pain and suffering can be assumed with virtual certainty not only during the neck cuts, but also for a long time afterwards¹².
3. In addition, at least adult cattle, which are animals that can normally defend themselves powerfully due to their body size, weight and hooves, can only be taken to the site of their slaughter without stunning and slaughtered without anaesthesia through measures of severe violence which, in our view, must be regarded as cruelty to animals (historically, the introduction of compulsory stunning was introduced in German slaughterhouses for occupational safety reasons). Such measures include: Beatings with sticks and kicks to the head; cutting tendons; grabbing into the eyes; gouging out the eyes; pulling and tugging on highly sensitive parts of the body; twisting of the tail; binding the front and rear limbs together, then throwing them down and bringing them down; pulling up on individual limbs; multiple bleeding cuts, some of which are also sawing cuts.

All this evidence leaves no doubt at all that anyone involved in handling an animal transport to one of the countries mentioned – be it as an official veterinarian, be it as an organiser or as a freight carrier – knows that the risk that the transported animals will later be slaughtered using animal torture measures is so high, that they “are involved in the support of offenders who are clearly inclined to act”¹³ and thus commits a deliberate complicity to this animal abuse by helping make the transport to these slaughters possible in the first place.

III. Missing control posts meeting or corresponding to the requirements of Regulation (EC) No. 1255/97

The organiser of an animal transport must prove to the official veterinarian the existence, the official approval, and the proper equipment of the control post at which they want to unload, feed, water, and rest the animals. The transport must not be cleared without this proof. This is already

¹² Cf. Lorz/Metzger, *Tierschutzgesetz* 7th Edition 2019, § 17 recital 52: *The worse the pain and suffering, the shorter the time period is required to meet the “longer lasting” characteristic*. Also Pfohl in: Lagodny/Miebach, *Münchener Kommentar zum Strafgesetzbuch* Bd. 6 (Nebenstrafrecht I), 2nd ed., Munich 2013, § 17 TierSchG MN 80; Hirt/Maisack/Moritz, *Tierschutzgesetz* 3rd ed. 2016, § 17 MN 92; Bünnigmann, *Natur und Recht* 2014, 176, 177

¹³ Cf. Federal court Verdict dated 19 December 2017, 1 StR 56/17, NStZ (Neue Zeitschrift für Strafrecht) 2018, 328

shown by the wording of Art. 14 para 1 (a), (ii) of the EU Animal Transport Regulation: Accordingly, if the information in the journey log submitted by the organiser is realistic and must lead to the conclusion that the transport complies with the provisions of this Regulation, it means that it is up to the organizer to provide full evidence to the official veterinarian responsible for handling that the individual control post exist, where they are exactly, that they are approved by the country in which they are located, and that they fully meet the requirements of Council Regulation (EC) No. 1255/97 applicable to such stations (including those in third countries). The transport must not be cleared in case of any doubt. This can also be seen from Annex II Section 1 Nos. 7 and 8 of the EU Animal Transport Regulation: Accordingly, if the organiser thereafter declares by his/her signature in section 1 of the journey log that he/she has “taken appropriate measures to ensure the well-being of the animals in accordance with the EU Animal Transport Regulation of the Council during the entire journey time”, this means that he/she “guarantees” compliance with all provisions of this regulation, including Annex I, Chapter V, on all transport sections with their signature. They thus guarantee, for example, that, when transporting adult cattle, the animals arrive at an “control post within the meaning of Regulation (EC) No. 1255/97” (Art. 2 (h) of the EU Animal Transport Regulation), i.e. a control post, at the latest 29 hours after the start of loading, that they are unloaded, fed and watered, and that they can then rest there for at least 24 hours. Any doubts about the correctness of this guarantee declaration will be borne by them and will prevent the transport from being cleared as long as it cannot be completely remedied. This is also the view of the German government (cf. BMEL, “Tierschutz darf nicht an Grenzen enden” [“Animal welfare must not end at borders”] dated 28 May 2018: “It must be ensured that the animals are adequately cared for according to our animal welfare standards during the transport and that breaks are observed”).

The organiser must provide the following evidence:

1. The specification of the geographic data and exact address of the individual control posts.
2. A certificate issued in an EU language by the authority responsible for the control post that unloading and adequate (corresponding to the requirements of Regulation EC No. 1255/97) care of the transported animals is permitted and possible there.
3. Proof of reservation (i.e. a declaration by the owner of the control post that the station is reserved for the intended number of animals at the time of arrival specified in the transport planning).

If the certificate from the competent authority does not document compliance with the requirements of Regulation (EC) No. 1255/97 or does so only incompletely, the transport cannot be processed.

These requirements are essentially (cf. Handbuch Tiertransporte 2019, Appendix E or F1): the presence of suitable facilities for loading and unloading with non-slip floors, low gradients, no larger gaps/steps and side guard rails; the proper housing of the animals in covered, laterally closed stables with sufficient space and adequate lighting; watering, feeding and care; enclosure with monitorable entrances and exits; hospital stable, identified; disinfection devices; suitable bedding for the respective animal species; clean drinking water and adequate feed; if necessary, milking device available; emergency killing equipment available; cleaning and disinfection plan; animal control at least every 12 hours.

The fact that these requirements also apply to control posts in third countries results from Art. 2 (h) and Art. 36 of the EU Animal Transport Regulation as well as from the verdict of the European

Court of Justice (ECJ), C-424/13, according to which European animal welfare regulations must also be complied with on transport stages that are in third countries.¹⁴

Turkey has no control posts that meet the requirements of Regulation (EC) No. 1255/97 or are equivalent to them (see *Maisack/Rabitsch ATD 3/2018*, 148, 153: BMEL statement that Turkey is still in the process of gaining the necessary know-how for the construction of control posts). According to credible reports from non-governmental organizations, animals are not unloaded at control posts after crossing the Turkish border in order to be fed, watered and rested, but instead reloaded onto other trucks and immediately transported further inland.

In the countries of the Middle East and the Maghreb, there are certainly no control posts – at least none that even approximate or correspond to the requirements of Regulation (EC) No. 1255/97. On the way to Uzbekistan and Kazakhstan, there are definitely no control posts at all east of the Samarsky region; the control posts to the west do not meet the requirements of Regulation (EC) No. 1255/97.

Among other things, the following was reported in the TV broadcast “Report Mainz” on 29 May 2019 concerning the transport route to Uzbekistan: Members of the “Animals Angels” organization followed a transport of 30 pregnant cows to Uzbekistan. The animals were transported for 118 hours, i.e. for about five days, without unloading, feeding or resting in between. In addition, inside the vehicle, their bodies were partially covered in snow, at outside temperatures of -7°C . Following this, the official veterinarian of Rendsburg-Eckernförde decided to stop handling animal transports to Uzbekistan – which, however, has no effect on the animals, since the carriers have since taken to assembly centres in Lower Saxony (including Emsland, Aurich) and Brandenburg (including Teltow-Fläming and Oberspreewald-Lausitz), where their transports are apparently cleared without hesitation by the veterinary offices there (see above: situation contrary to the rule of law whereby the carriers themselves can choose the authorities responsible for them).

In an advertising film by the Central Working Group of Cattle Breeders in Austria¹⁵, it is claimed that a transport of cattle from Austria to Azerbaijan was carried out in accordance with the EU Animal Transport Regulation. In stark contrast with this, however, the route between the supposedly used control posts Sosnovka in Oblast (administrative district) Smolensk and Grozny in the autonomous republic of Chechnya – both Russia – can only be covered in considerably more than the permissible 29-hour journey time (up to more than 50 hours) with heavy trucks. According to experts, it is also not possible in Sosnovka to provide suitable accommodation that corresponds to or is equivalent to the requirements of Regulation (EC) No. 1255/97¹⁶ and the alleged control post in Grozny has no state approval.

IV. Additional aspects that may conflict with the handling of animal transports to the animal welfare high-risk countries mentioned above.

Reference is made to the detailed explanations in *Maisack/Rabitsch ATD 3/2018 pp. 150-154*.

¹⁴ ECJ, Verdict dated 23 April 2015, C-424/13 recital 56: “... that, in order for transport ... to be authorised ..., the organiser of the journey must submit a journey log which ... indicates that the provisions of that regulation will be complied with, including for the stages of the journey which are to take place in the territory of third countries.” According to Art. 2 (h) and Art. 36 of the EU Animal Transport Regulation, the provisions of Regulation (EC) No. 1255/97 belong to the “Provisions of this Regulation” as well.

¹⁵ www.zar.at, <https://www.youtube.com/watch?v=Ez8Z-f9yO3g&feature=youtu.be> (last access: 22 February 2020, 3.05 pm)

¹⁶ cf. *Martin/Fuchs/Hellerich/Herfen*, Inspection according to Regulation (EC) 1/2005 of unloading and sustenance stations in the Russian Federation which are specified in transport plans for long-distance transports, 9–14 August 2019, pp. 6–8. <https://tierschutz.hessen.de/nutztiere/qual-ohne-ende>

The following should also be emphasized:

In any case, transports that include ship passages must not be handled if ports in Croatia or Slovenia are to be used as loading ports.¹⁷ There may also be concerns about shipping ports in Spain.¹⁸ A clearance is also not possible if there is no guarantee that only ships approved by the EU will be used and that a person designated as responsible will keep a copy of the journey log throughout the entire ship's transport and fill it out both on time and completely. Cf. the above mentioned "Report Mainz" concerning this: in Rasa, Croatia: Loading cattle onto an unauthorized transport ship.

In addition, the verdict of the ECJ dated 19 October 2017, C-383/16 must also be observed. Accordingly, a copy of the journey log must be continued to be kept for animal transports to third countries as soon as they leave the EU. "To continue to keep" means not only to carry the object itself along, but also to fill it in so that the veterinarian at the first place of destination in the final third country of destination as well as the veterinarian at the place of loading after the return can check whether the provisions of the EU Animal Transport Regulation with regard to the journey log have also been observed outside the EU.

It should be noted here that the landing port – for example in Beirut – is never a place of destination in this sense, but only a place of transfer within the meaning of Art. 2 (t) of the EU Animal Transport Regulation. Considering dozens of truck deliveries and a corresponding number of journey logs in the European port of loading; and considering the regrouping of the animals both when loading onto the ship and when loading onto trucks in the port of landing; and given the dozens of places of destination in the country of destination to which mixed groups of animals or individual animals are now being delivered, the correct keeping of an animal-specific journey log – in the sense of prompt, correct and complete filling – through to the place of destination in the final third country of destination seems impossible. The mixing rate would literally mean that each individual animal would have to be accompanied by its own journey log. It is therefore highly unlikely that the journey log will be continued in the course of a transport by ship in the sense of the ECJ judgment. This is another reason why animal transport across the Mediterranean that is compatible with the EU Animal Transport Regulation is impossible.

A further prerequisite for transport handling in accordance with Art. 14 para 1 (a), (ii) is that the organiser communicates a password or an access code to the handling veterinary office, with which the latter can also access the records that the navigation system installed in the transport vehicle transmits to a server at intervals of no more than 15 minutes¹⁹.

V. Assertion of a claim for transport approval according to Art. 14 EU Animal Transport Regulation and for the issuance of a preliminary certificate according to §§ 8, 12 of the Internal Market Animal Disease Protection Ordinance can violate the prohibition of abuse of rights.

According to the case-law of the European Court of Justice, no one may rely on the validity and application of European law if in exercising the right they pursue a goal which would contradict the

¹⁷ cf. FVO report concerning an AUDIT in Slovenia dated 16–20 April 2018, DG Santé 2018-6449 p. 13; FVO report concerning an AUDIT in Croatia dated 26–28 September 2018, DG Santé 2018-6447 p. 9

¹⁸ cf. FVO report concerning an AUDIT in Spain dated 26 September – 1 October 2018, DG Santé 2018-6446 p. 11

¹⁹ cf. Rhineland-Palatinate Ministry of the Environment, Energy, Food and Forests dated 14 July 2017, ref. 104-85 640-0/2017-5#1: "In the case of the plausibility checks, it is therefore necessary to clarify with the organiser already during the controls for the handling of long transports how the competent authority is to obtain access to the electronic data ... If the organiser does not grant this access, the corresponding transport cannot be processed."

purpose of an EU law provision, i.e. whose achievement would result in it being an incompatible contradiction to that provision.²⁰

This prohibition of abuse of rights represents a general legal principle of Union law.²¹

In addition to Art. 13 TFEU, Art. 12 sentence 2 of Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing (hereinafter: EU Slaughter Regulation) is particularly important as an EU legal provision in this context. According to Art. 12 sentence 2 EU-Slaughter Regulation for the import of meat from a third country, “a certificate is required as accompanying document which proves that regulations have been complied with which are at least equivalent to those of chapters II and III of this Regulation”. Chapter II includes, among other things, the general requirement in Art. 3 para 1 EU Slaughter Regulation: “Animals shall be spared any avoidable pain, distress or suffering during their killing and related operations.”

It follows from Art. 12 sentence 2 of the EU Slaughter Regulation that the EU legislature aims to prevent the subsequent indirect promotion of slaughter in third countries in which avoidable pain or suffering has been caused to animals by importing the meat so produced into the EU.

From this follows in the way of the “argumentum a maiore ad minus”: If the EU legislature already wants to prevent animal cruelty slaughter already carried out in third countries from being encouraged and rewarded ex post indirectly by importing and marketing the meat so produced to the EU, then it certainly wants to prevent such slaughter ex ante from being made possible directly by the fact that animals bred and reared in the EU are transported to the respective third countries for the purpose of such slaughter. If the legislature wants to prevent an undesirable event that has already taken place from being rewarded ex post, then it is even more important to prevent such an event from being made possible ex ante causally.

Consequently, taking into account the legal aim which is expressed in Art. 12 sentence 2 EU-Slaughter Regulation, anyone who asserts a claim to have cattle or sheep transported to a animal welfare high-risk country in which the animals are highly likely to be slaughtered while inflicting avoidable pain or suffering violates the general legal principle of the prohibition of abuse.

The same applies if someone makes a claim for the issuance of a preliminary animal health certificate with which such a transport should subsequently be made possible. Here too, the exercise of the rights under Sections 8 and 12 of the Internal Market Animal Disease Protection Ordinance pursues a goal that is incompatible with Art. 12 sentence 2 of the EU Slaughter Regulation. Unfortunately, the numerous courts which made the issuance of such preliminary certificates solely dependent on the existence of animal disease law requirements and thereby completely ignored the objectives in contradiction to the Cruelty to Animals Act that were ultimately pursued with the intended preliminary certificate, ignored this aspect.²²

A violation of the prohibition of abuse of rights also results from Art. 13 TFEU. The EU goal of animal protection which is anchored there contains, among other things, an optimization requirement. Accordingly, the consequences that each legal act – i.e. here when handling an

20 cf. ECJ Verdict dated 21 February 2006, C-255/02; ECJ Verdict dated 26 February 2019, C-116/16. Cf. also *Bülte*, On the punishability of veterinarians due to complicity to animal abuse by participating in animal transports to animal welfare high-risk countries by issuing stamps in accordance with Art. 14 para 1 Regulation (EU) No. 1/2005 and issuing preliminary certificates according to §§ 8, 12 Internal Market Animal Disease Protection Ordinance [BmTierSSchV], p. 10–22. <https://osf.io/preprints/lawarxiv/haekq>

21 cf. ECJ Verdict dated 22 November 2017, C 251/16

22 cf.: VG Schleswig, decree dated 27 February 2019, 1 B 16/19; VG Gießen, decree dated 12 March 2019, 4 L 1064/19.GI; VG Neustadt a. d. Weinstraße, decree dated 19 March 2019, 5 L 294/19.NW; VG Koblenz, decree dated 19 March 2019, 1 L 2841/19.KO; VG Darmstadt, decree dated 11 March 2019, 4 L 4461/19.DA; VG Kassel, decree dated 22 March 2019, 5 L 693/19.KS

animal transport and issuing a preliminary certificate as a prerequisite for this – is likely to have for animal welfare issues must be determined for each legal act (in terms of type, extent, probability, as well as the number of animals affected and their level of development); a balance must then be struck between the public interest in avoiding these consequences and the public interest in the implementation of the legal act (regardless). A jurisdiction that forces the disregarding of such consequences from the outset (for example by not allowing aspects other than animal disease law to be taken into account when deciding whether to issue a preliminary certificate, even if there are tangible indications of serious animal welfare consequences of the desired certificate) violates the optimization requirement of Art. 13 TFEU and the prohibition of misuse of rights.

Legal norms

- 1974 Österreichisches Strafgesetzbuch (StGB) v. 23. Jänner 1974 (BGBl. Nr. 60/1974), letzte Änderung BGBl. I Nr. 111/2019
- 1997 Verordnung (EG) Nr. 1255/97 des Rates v. 25. Juni 1997 zur Festlegung gemeinschaftlicher Kriterien für Aufenthaltsorte und zur Anpassung des im Anhang der Richtlinie 91/628/EWG vorgesehenen Transportplans, ABl. Nr. L 174 S. 1
- 1998 Deutsches Strafgesetzbuch (StGB) in der Fassung der Bekanntmachung v. 13. November 1998 (BGBl. I S. 3322), zuletzt geändert durch Artikel 62 des Gesetzes v. 20. November 2019 (BGBl. I S. 1626)
- 2004 Österreichisches Bundesgesetz über den Schutz der Tiere (Tierschutzgesetz – TSchG), StF BGBl. I Nr. 18/2004, letzte Änderung BGBl. I Nr. 86/2018
- 2004 Verordnung (EG) Nr. 1/2005 des Rates v. 22. Dezember 2004 über den Schutz von Tieren beim Transport und damit zusammenhängenden Vorgängen sowie zur Änderung der Richtlinien 64/432/EWG und 93/119/EG und der Verordnung Nr. 1255/97/EG (ABl. EU Nr. L 3 S. 1, berichtigt 2006 Nr. L 113 S. 26)
- 2005 Verordnung über das innergemeinschaftliche Verbringen sowie die Einfuhr und Durchfuhr von Tieren und Waren (Binnenmarkt-Tierseuchenschutzverordnung – BmTierSSchV), neugefasst durch Bekanntmachung v. 6. April 2005 (BGBl. I S. 997), zuletzt geändert durch Artikel 139 des Gesetzes v. 29. März 2017, BGBl. I S. 626
- 2009 Bundesbeamtenengesetz v. 5. Februar 2009 (BGBl. I S. 160), zuletzt geändert durch Artikel 11 des Gesetzes v. 20. November 2019 (BGBl. I S. 1626)
- 2006 Deutsches Tierschutzgesetz (TierSchG) in der Fassung der Bekanntmachung v. 18. Mai 2006 (BGBl. I S. 1206, 1317), zuletzt geändert durch Artikel 101 des Gesetzes v. 20. November 2019 (BGBl. I S. 1626, 1686))
- 2009 Verordnung (EG) Nr. 1099/2009 des Rates v. 24. September 2009 über den Schutz von Tieren zum Zeitpunkt der Tötung, ABl. Nr. L 303 S. 1, berichtigt 2014 Nr. L 326 S. 6
- 2009 Vertrag über die Arbeitsweise der Europäischen Union (AEUV), Fassung aufgrund des am 1.12.2009 in Kraft getretenen Vertrages von Lissabon (konsolidierte Fassung bekanntgemacht im ABl. EG Nr. C 115 vom 9.5.2008, S. 47)

Abbreviations

Abs.	Absatz / paragraph
Art.	Artikel / article
EG	Europäische Gemeinschaft / EC European Community
EU	Europäische Union / EU European Union
EuGH	Europäischer Gerichtshof / ECJ European Court of Justice
EU-TiertransportVO	VO(EG)Nr.1/2005 / Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations
EWG	Europäische Wirtschaftsgemeinschaft / EEC European Economic Community
Nr.	Nummer / Number
StGB	Strafgesetzbuch / Penal Code
TierSchG	Tierschutzgesetz (Deutschland) / Animal Welfare Law (Germany)
TSchG	Tierschutzgesetz (Österreich) / Animal Welfare Law (Austria)
u. a.	unter anderem / amongst others
VO	Verordnung / Regulation

Bibliography

Birklbauer, A.: Die Genehmigung von Tiertransporten ins Ausland als Tierquälerei – Umfang und Grenzen einer möglichen Strafbarkeit, Tierschutz in Recht und Praxis (TiRuP) 2019, 47-71

Bülte, J.: Zur Strafbarkeit von Tierärzten wegen Beihilfe zur Tierquälerei durch Mitwirkung an Tiertransporten in tierschutzrechtliche Hochrisikostaat durch Erteilung von Stempeln nach Art. 14 Abs. 1 VO (EU) Nr. 1/2005 und Erteilung von Vorlaufattesten nach §§ 8, 12 Binnenmarkt-Tierseuchenschutzverordnung (BmTierSSchV), <https://osf.io/preprints/lawarxiv/haekq>

Bünnigmann, K.: Zur Zulässigkeit von Lebendhälterung beim Angeln: “Habe da einen dicken Fisch an der Angel – sodann im Setzkescher“, Natur und Recht (NuR) 2014, 176-180

Europäische Kommission, Bericht an das Europäische Parlament und den Rat über die Auswirkungen der Verordnung (EG) Nr. 1/2005 über den Schutz von Tieren beim Transport, 10. 11. 2011, KOM (2011) 700 endgültig

Europäische Kommission, Generaldirektion für Gesundheit und Lebensmittelsicherheit, Final Report of an AUDIT carried out in Spain from 26 September 2018 to 1 October 2018 in order to evaluate animal welfare during transport to non-EU countries, DG (Santé) 2018-6446

Europäische Kommission, Generaldirektion für Gesundheit und Lebensmittelsicherheit, Final Report of an AUDIT carried out in Croatia from 26 September 2018 to 28 September 2018 in order to evaluate animal welfare during transport to non-EU countries, DG (Santé) 2018-6447

Europäische Kommission, Generaldirektion für Gesundheit und Lebensmittelsicherheit, Final Report of an AUDIT carried out in Slovenia from 16 April 2018 to 20 April 2018 in order to evaluate animal welfare during transport to non-EU countries, DG (Santé) 2018-6449

Europäisches Parlament, Entschließung vom 14. Februar 2019 zur Durchführung der Verordnung (EG) Nr. 1/2005 des Rates über den Schutz von Tieren beim Transport inner- und außerhalb der EU (2018/2110 (INI))

Hirt, A., Maisack, C., Moritz, J.: Tierschutzgesetz, Kommentar 3. Auflage, München 2016

Lagodny, O., Miebach, K.: Münchener Kommentar zum Strafgesetzbuch Bd. 6 (Nebenstrafrecht I), 2. Auflage, München 2013

Lorz, A., Metzger, E.: Tierschutzgesetz, Kommentar 7. Auflage, München 2019

Maisack, C., Rabitsch, A.: Genehmigung langer grenzüberschreitender Transporte – Plausibilitätsprüfung nach Art. 14 Abs. 1 Tiertransportverordnung, Amtstierärztlicher Dienst und Lebensmittelkontrolle (ATD) 3/2018, 148-155

Maisack, C., Rabitsch, A.: Zur Plausibilitätsprüfung nach Artikel 14 (1) (a) ii) anlässlich der Genehmigung langer grenzüberschreitender Transporte in Drittstaaten, Amtstierärztlicher Dienst und Lebensmittelkontrolle (ATD) 4/2018, 209-215

Martin, M., Fuchs, G., Hellerich, B., Herfen, K.: Besichtigung von Entlade- und Versorgungsstationen gemäß der VO (EG) 1/2005 in der Russischen Föderation, die in Transportplänen zu Langstreckentransporten angegeben werden (9. bis 14. August 2019) <https://tierschutz.hessen.de/nutztiere/qual-ohne-ende>

Scheuerl, W., Glock, S.: Tiertransporte in Drittstaaten – zur (fehlenden) Strafbarkeit von Amtsveterinären (Erwiderung auf den Artikel von Maisack/Rabitsch, ATD, 2019, 209), Amtstierärztlicher Dienst und Lebensmittelkontrolle (AtD) 2/2019, 69-74

Current Problems with the Handling / Authorization of Long Cross-Border Animal Transports in the Light of ECJ Rulings C-424/13 and C-383/16



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Key words

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Summary

The organiser of a journey for horses, cattle, pigs, sheep or goats of more than eight hours, which is destined for a place of destination outside a member state or the territories of the European Union, must submit a realistic journey log for authorization to the competent authority of the place of departure which inter alia, indicates that the provisions of the Regulation (EC) No. 1/2005 will be complied with, including for the stages of the journey taking place outside the EU. This essay describes the preconditions for premisses in third countries for fulfilling the requirements for » control posts « acc. to Art. 2 (h), as well as the requirements to » places of destination « acc. to Art. 2 (s) leg. cit.

Introduction

In accordance with Art. 14 (1) of Regulation (EC) No. 1/2005¹ [EU-TiertransportVO] [Council Regulation on the protection of animals during transport etc.], animal transports that take longer than eight hours and cross a national border require clearance/approval by the veterinary office responsible for the place of departure. One of the conditions that must be met is that the journey log submitted by the organiser of the transport must indicate that all the provisions of the EU Animal Transport Regulation are complied with during the entire transport. These rules include that – if the transport will have lasted a certain number of hours (for adult bovine animals a maximum of 29 hours) – the animals must arrive at an approved control post, must be unloaded, fed and watered and rest for 24 hours (Annex I, Chapter V No. 1.4 and 1.5 EU Animal Transport Regulation). Since the information circulating on the existence and condition of such control posts in certain third countries can vary widely, checks on compliance with this requirement can sometimes pose particular problems in actual practice. Difficulties are also encountered in assessing whether the destination of the animal transport stated in the journey log can be regarded as a “place of destination” within the meaning of Art. 2 (s) EU Animal Transport Regulation.

I. The burden of proof that all regulations have been observed lies with the organiser of the animal transport

By his signature in section 1 (“Planning”) of the journey log, the organiser declares that he has “made suitable arrangements to safeguard the welfare of the animals throughout the journey in accordance with the provisions of Council Regulation (EC) No. 1/2005” (Annex II, Section 1, box No. 7). “Safeguard” means “guaranteeing”, “warranting”, “proving”. The interpretation of Art. 14 (1) (a), (ii) in conjunction with this declaration thus shows that the authority must refuse to stamp the logbook pursuant to Art. 14 (1) (c) (or in the case of Art. 14 (2) the authorisation of the animal transport),

¹ Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations, Official Journal EU No. L 3 p. 1, corrected 2006, No. L 113 p. 26; hereinafter EU Animal Transport Regulation

if, on the basis of concrete evidence, there is a serious and realistic (and not merely remote) possibility that individual provisions of the EU Animal Transport Regulation may be violated during transport; in this case, the organiser must “*verifiably prove*”² that, contrary to these indications, it can be expected that all the provisions of the EU Animal Transport Regulation (including the Appendices and the General Conditions of Art. 3) will be complied with during the entire transport and, in particular, that the needs of the animals during the transport will be met in accordance with Art. 3 (a), 2. half sentence.

In its decision of 5 June 2020³, the Administrative Court (Verwaltungsgericht, VG) Münster refused to order a veterinary office to handle a transport of 150 pregnant cattle to Uzbekistan by way of a temporary injunction since, according to the information available, it seemed possible that a control post indicated by the organiser in the “Planning” section of the journey log was available and ready for use while the possibility also existed that this was not the case. In this case, compliance with Annex I Chapter V No. 1.4 (d) and 1.5 to the EU Animal Transport Regulation was not ensured. It did not necessarily follow from the evidence submitted by the organiser of the transport that the planned control post was actually available free of defects and ready for use in compliance with the relevant substantive legal provisions. It must therefore “necessarily follow” from the evidence submitted by the organiser, i.e. it must show with a high degree of certainty, that all provisions of the EU Animal Transport Regulation – here Annex I Chapter V No. 1.4 (d), No. 1.5 – are complied with during the entire transport.

Almost nine years ago, the Administrative Court of Augsburg had already made a similar decision⁴: The veterinary office had rightly refused to clear the transport and to stamp the journey log, since the organiser was not in a position to “*verifiably prove*” that the provisions of the EU Animal Transport Regulation (here: Art. 3 in conjunction with Annex I Chapter V No. 1.4 (d), No. 1.5) were complied with during the entire transport. In order for a long cross-border transport to be able to be handled, the journey log submitted must contain realistic information “*to ensure compliance with those provisions throughout the journey*”.

In its Judgment dated 23 April 2015⁵, the European Court of Justice (ECJ) ruled that whenever the journey log submitted by the organiser does not indicate that all the provisions of the EU Animal Transport Regulation are complied with at all stages of the journey, the veterinary office may require that the planning of the journey be changed “*to ensure compliance with those provisions throughout the journey*”. In order for the veterinary office to handle a transport, compliance with all provisions of the EU Animal Transport Regulation must be “*ensured*”, i.e. there must be no remaining doubts.

It is therefore not like an official veterinarian stated in the television programme “Kontraste” broadcast on 24 May 2018 at 9:45 pm: She was of the opinion that she could not refuse to clear an animal transport as long as she could not prove to the organiser that a control post planned by him did not exist or did not meet the requirements applicable to such control posts in accordance with Regulation (EC) No. 1255/97⁶. In fact, it is the exact opposite: The organiser must prove compliance with a provision rather than the authority having to prove non-compliance with a provision. If there is any doubt, the transport must not be handled or approved (see above: Compliance must be “*ensured*”, “*it must necessarily follow*”, “*verifiably proven*”, i.e. “*guaranteed*”).

2 Administrative Court (VG) Augsburg, decision of 28 November 2011, Au 2 E 11.1679

3 Administrative Court (VG) Münster, decision of 5 June 2020, 9 L 446/20

4 Administrative Court (VG) Augsburg, decision of 28 November 2011, Au 2 E 11.1679

5 ECJ Judgment v. 23 April 2015, C-424/13, juris rec. 56

6 Council Regulation (EC) No. 1255/97 of 25 June 1997 concerning Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC, Official Journal No. L 1997, 174/1, amended by Art. 36 of the EU Animal Transport Regulation

However, for a refusal of the stamp or approval, there is an additional requirement, i.e. that the respective danger cannot be excluded with sufficient certainty by means of orders pursuant to Art. 14 (1) (b), either because such orders do not appear to be suitable from the outset to prevent the possible infringement with sufficient certainty, or because they will not be complied with by the organiser.

II. Validity of the EU Animal Transport Regulation also in Third Countries

Since the organiser's guarantee covers the entire time period "*throughout the journey*" (see Annex II, Section 1, box 7 of the EU Animal Transport Regulation), in the case of transport to a third country, it also covers that part of the journey between leaving the territory of the European Community and unloading the last animal at its place of destination in the third country. Pursuant to Art. 14 (1) (a), (ii), "the journey" – hence the whole of it – must comply with the provisions of the Regulation; "transport" is defined in Art. 2 (j) as the entire transport operation from the beginning of loading of the first animal at the place of departure until the unloading of the last animal at the place of destination, even if the latter is no longer within the territory of the Community. See ECJ, judgment of 23 April 2015⁷: "*Art. 14 (1) must be interpreted as meaning that, in order for transport involving a long journey for animals concerned which commences on the territory of the European Union and continues outside that territory to be authorised by the competent authority of the place of departure, the organiser of the journey must submit a journey log which, in the light of the arrangements for the journey as planned, is realistic and indicates that the provisions of that regulation will be complied with, including for the stages of the journey which are to take place in the territory of third countries, that authority being empowered, should that not be the case, to require changes to those arrangements to ensure compliance with those provisions throughout the journey.*" The information provided by the organiser in the "Planning" section of the journey log and the documents and other evidence submitted by the organiser must therefore "*ensure*" – i.e. allow the conclusion to be drawn without any remaining doubt – that all the provisions of the Regulation are complied with on all sections of the journey, even if they take place in third countries outside the EU. If this is not the case, the authority may require "*changes to those arrangements to ensure compliance with those provisions throughout the journey*".

The ECJ only allows deviations from individual technical provisions of the Regulation if two conditions are cumulatively fulfilled: 1. The law or administrative practice of a third country through which the transport will transit must "*verifiably and definitely preclude full compliance with the technical rules of that regulation*". 2. Taking into account in particular the equipment of the means of transport and the intended planning of the transport, it must be possible to conclude "*that the planned transport will safeguard the welfare of the animals at a level equivalent to those technical rules*"⁸. The organiser must therefore prove two things if he cannot prove compliance with a technical rule: That the law or administrative practice of a third country through which the transport will transit must "*verifiably and definitely preclude*" full compliance with the technical rules of that regulation, and that, despite non-compliance with this rule, the level of animal welfare will not be reduced, i.e. that the animals will in no way be worse off as a result of non-compliance with this rule than if it were fully complied with. This is not the case, for example, where non-compliance with a technical rule leads to a greater reduction in one of the species' welfare needs of the animals transported than would be the case if the rule were to be complied with, or where non-compliance with the rule leads to a risk to animal welfare that would be avoided if the rule were to be complied with.

⁷ C-424/13, juris rec. 56

⁸ ECJ I.c., juris rec. 54

In particular, it must therefore be proven in the approval procedure that the rules on feeding and watering the animals and on the maximum permitted journey times and necessary rest periods (Annex I Chapter V No. 1.4 and 1.5 of the EU Animal Transport Regulation) are also complied with on sections of the journey outside the EU.

Three and four years before the ECJ, the Augsburg Administrative Court had already expressed its views on the unrestricted validity of the Regulation also for sections of the journey taking place in third countries⁹: *“For transports that start and end within the EU ... the provisions of the Regulation apply not only up to the point at which the external border of the EU is exited, but for the entire transport route ... It can be deduced from recital 5 that long journeys of animals should be kept to a minimum for animal welfare reasons. It is thus clear to the court that the aim of the regulation was to ensure the highest possible level of animal welfare during the transport of animals. This can only be achieved in a sensible way if the requirements of the Regulation continue to apply throughout the entire journey”*. Also Administrative Court (VG) Augsburg decision of 28 November 2011¹⁰: *“The requirements regulated in Art. 14 (1) (a), (ii) and the respondent’s associated obligations to carry out checks also apply to the transport route between the point of departure from the EU judicial area and the third country place of destination in Uzbekistan.”*

For more recent decisions see Administrative Court (VG) Münster decision of 5 June 2020¹¹: *“In its Art. 14, the Regulation does not subject the transport of animals from the territory of the Community to third countries to a special approval rule that differs from that applicable to transports within the Community.”* The Administrative Court (VG) Osnabrück says the following about the required personnel and material equipment of control posts in third countries¹²: *“However, the requirements of Regulation (EC) No. 1/2005 must also be met in the Russian Federation (see ECJ judgment dated 23 April 2015, C-424/13, juris rec. 56) and, since the compliance with rest periods requires control posts, these must meet the requirements of Regulation (EC) No. 1255/97 (Art. 1 (2) of Regulation [EC] No. 1255/97; see also the Decree of the Ministry of Food, Agriculture and Consumer Protection of Lower Saxony of 26 September 2019).”*

Thus, if, there is not only a remote but a serious and realistic possibility that an infringement of the regulation will occur in the third country in the course of a transport (whether in a port of transfer, at another place of transfer, during the journey or during unloading at the place of destination), and if this possibility cannot be excluded with sufficient certainty by an order to change the transport arrangements pursuant to Art. 14 (1) (b), the clearance of that transport operation must be refused [see Administrative Court [VG] Augsburg¹³: *“The authority to carry out checks <pursuant to Art. 14 (1)> concerns the transport, i.e. the entire transport operation from the place of departure to the place of destination, including the transport as defined in Art. 2 (w). Thus it also covers – if the place of destination is outside the EU as in this case – the conveyance and transport on the territory of the third country ... No restrictions on the scope of the check with regard to the territory of third countries can be found in the provisions of the Regulation”*].

⁹ Judgment of 24 July 2012, Au 1 K 12.151, juris rec. 56, 57

¹⁰ Au 2 E 11.1679

¹¹ 9 L 446/20

¹² Decision of 9 June 2020, 6 B 44/20

¹³ Decision of 28 November 2011, Au 2 E 11.1679, juris rec. 21

III. On the subject of the checking of control posts by the competent authority in the authorisation procedure according to Art. 14 (1) EU Animal Transport Regulation

Since the provisions of the Regulation also apply to transport sections outside the EU¹⁴ – i.e. also Annex I, Chapter V No. 1.4 and 1.5 – the organiser of a transport operation must prove that the following requirements have been met for the control posts (inside or outside the EU) specified by him in the “Planning” section of the journey log:

1.

The control post (or, as the terminology of the EU Animal Transport Regulation has it: Control post, s. Art. 2 (h)) must have been **approved** and given an approval number by an authority competent to do so under the law of the country in which it is located¹⁵.

With regard to Russia, views differ. A letter dated 7 April 2020 from the Moscow-based Federal Service for Veterinary and Phytosanitary Supervision to the German Federal Ministry of Food and Agriculture (BMEL) indicated that regional departments of that service (inter alia, in the Samara, Rostov, Volgograd and Astrakhan Regions, and in the Republics of Tatarstan and Kalmykia) had looked into the question of such control posts and found that at present, there were stables only in the Samara Region, which were being repaired but whose use was not possible before the repair and the veterinary and hygiene inspections were completed; that, however, the establishment of posts for watering, feeding and resting animals during the customs clearance procedure did not fall within the competence of the service but was the responsibility of “*the competent federal authorities of the executive authorities*”. It could be deduced from this that the approval of such points – except in the immediate vicinity of the border during customs clearance – is the responsibility of the Federal Service. These statements coincide with information the four German official veterinarians, who travelled to different regions in Russia in search of control posts between 6 and 11 August 2019, received from a veterinary official in Samara: Until 31 December 2019, the competence to approve such points had been vested in the regional authorities, whereas from 1 January 2020 on it was transferred to the “*Moscow Headquarters*”. – Two later letters of the Federal Service dated 8 May 2020 and 14 May 2020 contradict this, although only apparently: In its letter of 8 May 2020, the Federal Service informs that there is now a control post in the village of Sjuski, Krasninskiy District, Smolensk Region; at the same time, the Federal Service reiterates that, in accordance with the Law on the State Border of the Russian Federation, the establishment of such points in connection with customs clearance, i.e. in the vicinity of the border, does not fall within the competence of the Service (but, as already communicated on 7 April 2020, within the competence of other federal executive authorities). Pursuant to the Law of the Russian Federation on Veterinary Matters, according to which the prevention and control of animal diseases is the responsibility of “*subjects of the Russian Federation*”, it is considered “*appropriate*” to “*deal with the question of the establishment/usage/existence of adequate control posts jointly with the bodies of local self-government of the subjects of the Russian Federation*”. Such a cooperation which is considered useful is not in contradiction with the assumption that the Federal Service is responsible for the accreditation of these bodies, especially since, as

¹⁴ ECJ Judgment dated 23 April 2015, C-424/13, juris rec. 56

¹⁵ cf. Administrative Court (VG) Osnabrück decision dated 9 June 2020, 6 B 44/20: “*The requirements for the control posts [...] are laid down in Regulation (EC) No. 1255/97 [...] [see also Art. 36 of Regulation (EC) No. 1/2005]. Pursuant to the first sentence of Art. 3 (1) of Regulation (EC) No. 1255/97, an approval by the competent authority is required; in this case the control post is issued an approval number.*”

stated in the letter of 7 April 2020, the Federal Service has regionally dispersed services that can perform this task for the headquarters in Moscow. – By letter of 14 May 2020, the Federal Service then informed the German BMEL that two facilities were now operating in the Samara region in the field of temporary care of imported cattle whose premises met the veterinary-sanitary requirements and were ready to receive animals. If, as some transport companies claim, it were the regional authorities of the oblasts rather than the central authorities in Moscow that were responsible for approving such control posts in Russia, the Federal Service would have referred to the competence of these regional authorities and left it up to the BMEL to direct its inquiries to them for the sake of competence, instead of commenting in a total of three letters to the BMEL on the existence and equipment of these points. Moreover, it can be seen from the letter of 8 May 2020 that the establishment and use of such points cannot be achieved without the Federal Service, even if local government bodies participate. Consequently, it is also assumed in the Netherlands that the decision on the approval of control posts in Russia is a matter for the Moscow-based authorities of the Russian Federation and does not fall within the competence of oblasts or other bodies at the state or regional level (in this sense also Administrative Court [VG] Osnabrück¹⁶: in Russia “*competence of the ‘federal authorities of the executive branch’*, see information of 7 April 2020 and 8 May 2020”).

In addition, reference is again to be made to the allocation of the burden of proof pursuant to Art. 14 (1) (a), (ii) (see above I): Transporters or organisers in possession of a certificate of approval issued by a regional authority must prove their competence; as long as they are unable to do so, the Federal Service for Veterinary and Phytosanitary Supervision of the Russian Federation in Moscow shall be considered competent.

2.

The approval must be in one of the **official languages of the EU** (or at least be available in an officially certified translation into one of these languages); because the approval by a competent authority vis-à-vis an authority established in the EU is only “*verifiably proven*” (Administrative Court [VG] Augsburg, l.c.) if it can be presented in one of the official languages of the EU.

3.

The approval must show that the control post is equipped in terms of material and personnel in such a way that it meets all the requirements of **Regulation (EC) No. 1255/97** for such points (see Administrative Court [VG] Osnabrück decision dated 9 June 2020¹⁷: “*However, the requirements of Regulation (EC) No. 1/2005 must also be met in the Russian Federation ... and, since the compliance with rest periods requires control posts, they must meet the requirements of Regulation (EC) No. 1255/97 [see Art. 1 [2] of Regulation [EC] No. 1255/97; see also the Decree of the Ministry of Food, Agriculture and Consumer Protection of Lower Saxony of 26 September 2019].*” Since the concept of control post has been defined in Art. 2 (h) of the EU Animal Transport Regulation with explicit reference to Regulation (EC) No. 1255/97 and since amendments to this Regulation have been brought about by Art. 36 of the EU Animal Transport Regulation, the requirements of this Regulation must be regarded as part of the EU Animal Transport Regulation.

In the event that some of these requirements are not (or cannot be) complied with in third countries, the ECJ states¹⁸: deviations from individual technical regulations are only possible

¹⁶ Decision of 9 June 2020, 6 B 44/20

¹⁷ 6 B 44/20

¹⁸ Judgment dated 23 April 2015, C-424/13, juris rec. 54

if “the planning of the transport, in particular taking into account the equipment of the means of transport and the expected planning of the transport, leads to the conclusion that the intended transport will ensure the welfare of the animals to the same extent as the technical regulations in question” and if “the law or administrative practice” of the third country in question “in a verifiable and definitive manner” precludes compliance with the regulation. The latter is not the case in the vast majority of third countries, particularly not in Russia.

It is important to distinguish between veterinary provisions on the one hand, and animal welfare requirements on the other hand, such as those arising from Regulation (EC) No. 1255/97. See Administrative Court (VG) Osnabrück l.c.: “Those letters <submitted by the applicant in support of his alleged claim to be entitled to clearance of a transport of bovine animals to Uzbekistan> which contradict the information provided by the <Federal Service> to the Federal Republic of Germany, confirm exclusively and expressly that the national veterinary provisions are complied with. However, the requirements of Regulation (EC) No. 1/2005 must also be met in the Russian Federation (see ECJ judgment of 23 April 2015, C-242/13, juris rec. 56) and, since the compliance with rest periods requires control posts, they must meet the requirements of Regulation (EC) No. 1255/97”. The fact that the letter from the Federal Service of 14 May 2020 to the German BMEL states that the premises of two facilities in the Samara Region “meet the veterinary-sanitary requirements of the Russian Federation” is therefore not sufficient, since it does not say anything about compliance with the animal welfare requirements laid down in Regulation (EC) No. 1255/97 or with provisions which are at least equivalent to them.

This is also the view of the European Parliament in its Resolution of 14 February 2019 (2018/2110<INI>), Recommendation No. 73¹⁹: The European Parliament “stresses that when animals are required to be unloaded for a 24-hour rest period in third countries, the organiser must identify a place for rest with facilities equivalent to those of an EU control post; calls on the competent authorities to regularly inspect these facilities and **not to approve journey logs if the proposed place for rest has not been confirmed to have EU-equivalent facilities**” (emphasis added by the author).

The requirements which a control post must meet in accordance with Regulation (EC) No. 1255/97 are essentially: It must be approved by the competent authority of the country in whose territory it is situated and have been given an approval number; it must meet the requirements of Annex I to this Regulation; it must also be under the control of an official veterinarian and be subject to regular inspections (Art. 3 (1), (2) and (3); cf. also Administrative Court [VG] Osnabrück²⁰: “It cannot be established with the necessary certainty in the present interim relief proceedings that there are sufficient control posts in the Russian Federation with the approval required under Regulation (EC) No. 1255/97 for the long journey planned by the applicant”). Control posts must only be used for housing, feeding, watering, resting, caring for and transporting animals during animal transport; by way of derogation, they may also serve as assembly points within the meaning of Art. 2 (b) of the EU Animal Transport Regulation, provided that during their use as control posts, they are reserved exclusively for this purpose; under no circumstances may they be used for the purchase or sale of animals (Art. 4). They must have trained staff (Art. 5 (f)). Before the animals leave the control post, an official veterinarian or a veterinarian approved for that purpose by the competent authority must confirm that they are fit to continue their journey (Art. 6).

19 https://www.europarl.europa.eu/doceo/document/TA-8-2019-0132_DE.pdf; European Parliament 2014–2019; P8_TA(2019)0132; Protection of animals during transport within and outside the EU. European Parliament resolution of 14 February 2019 on the implementation of Council Regulation (EC) No. 1/2005 on the protection of animals during transport within and outside the EU (2018/2110(INI)).

20 Decision of 9 June 2020, 6 B 44/20

From Annex I to Regulation (EC) 1255/97: The control post – in today’s terminology: the control post – must have suitable equipment and facilities available for the purpose of loading and unloading animals from the means of transport, with non-slip floor covering and, if necessary, be provided with lateral protection. Bridges, ramps and gangways must be fitted with sides, railings or some other means of protection. Passageways must have floor coverings which minimise the risk of slipping and be so constructed as to minimise the risk of injury to animals. Care must be taken to ensure that no appreciable gap or step is allowed between the vehicle floor and the ramp or the ramp and the floor of the unloading area. Ramp systems must not have an incline of more than 20°. All ground coverings must be non-slip, smooth and injury-proof. All facilities for housing animals must be covered and closed at the sides to protect the animals from adverse weather conditions. Taking holding capacity into account, they must have adequate ventilation and drainage. The available room must have sufficient space for all animals to lie down at the same time and make their way easily to their drinking and feeding points. There must be adequate supplies of bedding material according to the needs of each species or category of animal accommodated. The animals must not come into contact with sharp or dangerous objects or damaged surfaces where they could be injured. Control posts must have suitable facilities for the separate accommodation of animals which are diseased, injured or in need of individual attention. It must be ensured that every animal accommodated at the control post is provided with at least sufficient clean water and sufficient and appropriate feed to satisfy its bodily needs during its stay and for the expected duration of its journey to the next feeding point. Control posts may not receive animals with special feeding needs, such as young calves needing liquid feed, unless they are properly equipped and staffed to satisfy the special needs of these animals. The record of person running a control post must contain i.a. the following: date and time of completion of unloading and commencement of reloading of each consignment; animal health certificate number(s) relating to each consignment; any necessary remarks concerning the health or welfare condition of the animals and especially the particulars and number of animals which are discovered to be seriously injured at the point of unloading or during their stay, or are considered to be unfit for further travel; the names and addresses of the transporter and drivers and the registration numbers of the vehicles.

Further requirements for control posts are described by the EU Commission in its “Guide to Good Practices for the Transport of Cattle”²¹ as so-called good practices in No. 6.2: *“Temperature and ventilation in control posts and assembly centres should be maintained within a temperature range called the thermo-neutral zone (calves before weaning: +5°C to +25°C; cattle up to 400kg 0°C to +25°C; but lactating cows according to No. 4.3 of the guide +5°C to +15°C, heat stress occurs at temperatures above 21°C). Building insulation is required to keep the animal accommodations frost-free (particularly in fully slatted floored houses). The control post must have adequate mechanical or natural ventilation to provide fresh air and keep the effective environmental temperature within the comfort zone of the animals. To keep the inside temperature above the indicated minimum, additional heating must be applied if necessary, especially for younger animals; if the temperature is higher than the indicated maximum, additional cooling measures have to be taken: more floor space per animal, additional fans for ventilation (and when necessary water spraying). Minimum space allowances at control posts: Small calves weighing 50kg: 0.4m² per animal; medium sized calves weighing 110kg: 0.7m² per animal; heavy calves weighing 200kg: 1.1m² per animal; medium sized cattle weighing 325kg: 1.5m² per animal; heavy cattle weighing 550kg: 2.2m² per animal; very heavy cattle weighing more than 700 kg: 3.0m² per animal.”* The following are mentioned in point 6.3 as good practices for feeding and watering: *“Feed shall be stored in a (closed)*

²¹ EU Commission, Guide to Good Practices for the Transport of Cattle, DG for Health and Food Safety, August 2018: The requirements specified as “good practices” reflect the minimum legal standard.

clean, dry and labelled (visually identifiable) facility. The feeding equipment shall be constructed and installed so that food contamination and competition among animals are minimised. If animals are fed restricted, all animals in the pen must be able to eat at the same time. Minimum feeder space per animal: Calves after weaning: 0.34 m (calves before weaning: individual feeding (1 meal 2l per animal)); cattle ≤400 kg: 0.5 m; Cattle >400kg: 0.65 m; Cows: 0.7 m. Minimum feed quantity per animal: Calves before weaning 2l milk replacer every 12h; cattle ≤400 kg: 7 kg hay; Cattle >400kg: 15 kg hay“

4.

The approval must have been **officially published** by the authorities of the respective country, stating the approval number, and must be publicly available. It is not sufficient if it is only made available to individual transport operators or individual countries, as its existence and usability cannot be considered as “*verifiably proven*” in this case.

5.

The owner of the control post must have agreed to an **audit** of his establishment by EU officials and must have assured that these persons will be allowed access for this purpose at all times. Only then can the request of the European Parliament in No. 73 of its resolution of 14 February 2019, “*to inspect these installations regularly*”, be complied with. The control posts located within the EU are subject to this check, and “*Art. 14 does not subject the transport of animals from the territory of the Community to third countries to a special approval rule that differs from that applicable to animal transport within the Community*”. [Administrative Court [VG] Münster²² with reference to the ECJ, Judgment C-424/13].

6.

All transport operators in all EU Member States must be **able to reserve** the control post for a planned transport, as is the case for control posts within the EU.

7.

The organiser must **prove** that he has **booked** the control post for his transport and for the intended rest period (see EU Commission, Guide to Good Practice for the Transport of Cattle, No. 2.2.1: “*For journeys where animals should be unloaded at a control post, the competent authority demands proof of a reservation and proof of acceptance of the animals at a control post en route which is mentioned in section 1 of the journey log. ... of the journey log. This procedure is a part of the plausibility checks carried out before long journeys, just like exceedances or shortfalls of thermal limits.*”; see also European Parliament Resolution of 14 February 2019 (2018/2110(INI)) Number 74: The European Parliament “*calls on the Member States to ensure that transport plans include proof of a reservation at a control post which includes feed, water and fresh animal bedding*”.

All these seven points have **to be met cumulatively** because, according to Art. 14 (1) (a), (ii) of the EU Animal Transport Regulation, it is up to the organiser to convince the handling authority that it can be expected that all the provisions of the Regulation will be complied with on all stages of transport within and outside the European Union. The check on compliance with Annex I Chapter V

²² EU Commission, Guide to Good Practices for the Transport of Cattle, DG for Health and Food Safety, August 2018: The requirements specified as “good practices” reflect the minimum legal standard.

No. 1.4 and 1.5 of the Regulation also includes an assessment of whether, based on the transport planning, in particular taking into account the expected road and weather conditions and including realistic waiting times at borders, it can be expected that (in the case of transport of adult cattle) no later than 29 hours after leaving the place of departure or the last control post, a control post meeting these seven requirements will be reached.

IV. Requirements for the place of destination within the meaning of Annex II, Section 1, box 4.1 and Section 3 EU Animal Transport Regulation

Pursuant to Art. 2 (s) EU Animal Transport Regulation, only the place where the animals are unloaded from the means of transport and either accommodated for at least 48 hours before (possible) further transport (i) or slaughtered (ii) is to be regarded as the place of destination of an animal transport. In contrast, a place where these conditions are not met – whether the transport vehicle stops there but the animals are not unloaded, or whether the animals are unloaded but then are transported further without having been accommodated for at least 48 hours – is not a place of destination but only a place of rest or transfer within the meaning of Art. 2 (t).

According to Art. 14 (1) (a), (ii) of the EU Animal Transport Regulation, a transport operation can only be approved if the place indicated as the place of destination in the “Planning” section of the journey log

- a) is specified with a verifiable address (arg. ex Annex II Section 3 Box 1.) and
- b) the animals either remain there permanently or are accommodated for at least 48 hours before further transport or are slaughtered.

In quite a few journey logbooks, however, field 4.1 of Section 1 instead lists places as an alleged place of destination from which the animals are transferred immediately or in any case after less than 48 hours to other means of transport (usually trucks) and transported further.

Examples of this are: the port of “Beirut” as the place of destination, although the animals are transferred and transported to other parts of the city or to the surrounding area shortly after arrival; the port of “Aqaba” as the place of destination, although the animals are transferred to Jordanian trucks and transported to the surrounding area; the “port of Algiers” is indicated as the place of destination, although the animals are transferred there and transported to the surrounding area of Algeria; Kapıkule or Lüleburgaz are indicated as the place of destination, although these are border posts where the animals are transferred to Turkish trucks and transported on to Anatolia.

Sometimes the registered office of the recipient or the capital of the country of destination are mentioned as destinations, even though there are no suitable facilities there in which the animals can be accommodated and rested for at least 48 hours prior to any further transport, as required in Art. 2 (s).

In these cases, the transport must not be approved from the outset because the information on the place of destination in the “Planning” section is incorrect and the journey log is therefore not realistic within the meaning of Art. 14 (1) (a), (ii).

Furthermore, if such a transport is nevertheless approved and cleared, a number of other infringements occur, because

- the transporters who transport the animals from the wrongly stated place of destination into the interior of the country are thus taking part in a uniform long transport operation that has started within the EU and should therefore have a transporter authorisation within the meaning of Art. 10 or 11 of the EU Animal Transport Regulation, which is of course usually not the case,
- the trucks used for onward transport must comply with the conditions set out in Annex I Chapter II and are also part of a uniform long journey. Hence, in the case of journeys lasting more than 8 hours, they must be approved for this purpose in accordance with Art. 18 and equipped in accordance with Annex I Chapter VI of the EU Animal Transport Regulation, which is also lacking;
- the drivers used are also part of a uniform transport operation and would therefore have to hold a certificate of competence in accordance with Art. 17 (2) of the EU Animal Transport Regulation, and
- since the onward transport from the port, the border crossing or the company headquarters is a continuation of a long and cross-border transport operation which began in the EU, a copy of the journey log would also have to be kept up to the actual place of destination (see ECJ judgment of 19 October 2017²³: In the case of long, cross-border journeys, a copy of the journey log must be kept after leaving the territory of the Union and correctly filled in up to the place of the first unloading – that is to say, until the actual place of destination within the meaning of Art. 2 (s); in practice, this does not happen because, in particular when fattening and slaughtering animals are loaded on board ships, they are often distributed among different trucks and mixed with other animals at the port of loading and then at the port of landing before being transported onward. A large number of copies of the journey log would therefore have to be made. However, at the actual place of destination, it would hardly be possible to use a copy of the journey log to determine which animal sent from an EU place of departure arrived at that place, when and in what condition.

It is therefore perfectly clear that journey logs which state a port, a border town, a company headquarters or any other place from which, in the sense of a serious and realistic possibility, onward transport contrary to Art. 2 (s) can be expected, cannot be approved (just like journey logs without any specific address information), and that such transports must not be cleared – which nevertheless not rarely happens in practice.

Epicrisis

It is an imperative of the present and the immediate future that the circumstances surrounding the movement of animals for slaughter, production and breeding to non-European third countries be subjected to meticulous evaluation (assessment and review). Despite the court decisions issued and described above, the number of animals, especially cattle, exported from the EU to distant third countries is steadily increasing (see Meschik *et al.*, 2020²⁴). These increases in exports occur even though – as explained above – due to the circumstances described, a good part and possibly also a large proportion of exports to third countries is not fit to be approved and are therefore being handled illegally and contrary to Art. 14 (1) EU Animal Transport Regulation.

²³ ECJ C-383/16, juris rec. 48, 49

²⁴ Meschik, T., Senft, B., Rabitsch, A., Troxler, J., Baumgartner, J. (2020): *Rinderexporte aus der Europäischen Union in Drittstaaten – Daten und Herausforderungen*. [Cattle exports from the European Union to third countries – data and challenges.] *Wien Tierärztl Monat – Vet Med Austria* 107, 15–280

In addition to the fact of such unlawful transport authorisations, the fate of the animals, in particular their necessarily cruel slaughter conditions in many third countries (cf. Maisack u. Rabitsch, 2018²⁵, 2019²⁶, 2020²⁷), should lead veterinary authorities to refrain from authorising and clearing such transports.

Summary

ECJ, C-424/13:

The approval of control bodies in third countries must

- be in accordance with the law of the respective country,
- be published in an official language of the EU,
- confirm compliance with the provisions of Regulation (EC) No. 1255/97,
- be publicly accessible,
- allow checks by EU bodies,
- allow all transporters/organisers to make reservations,
- have a booking and reservation system.

ECJ, C-383/16:

The EU animal transport legislation applies in full up to the first place of unloading (i.e. place of destination, not place of transfer) in the third country.

Legal norms

1997 Council Regulation (EC) No. 1255/97 of 25 June 1997 concerning Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC, Official Journal No. L 1997, 174/1, amended by Art. 36 of the EU Animal Transport Regulation

2005 Council Regulation (EC) No. 1/2005 of the European Council, dated 22 December 2004, on the protection of animals during transport and related operations and amending Directives 64/632/EEC and 93/119/EC and Regulation (EC) No. 1255/97 (Animal Transport Regulation; ATR).

25 Maisack, C., Rabitsch, A. (2018): Zur Plausibilitätsprüfung nach Artikel 14 (1) (a), (ii) anlässlich der Genehmigung langer grenzüberschreitender Transporte in Drittstaaten [On plausibility checks according to Art. 14 (1) (a), (ii) regarding the official approval of long-distance, border-crossing animal transports in third countries], *Amtstierärztlicher Dienst und Lebensmittelkontrolle* [Official Veterinary Service and Foodstuffs Control] 25, 209–215

26 Maisack, C., Rabitsch, A. (2019): Ergänzung zum Aufsatz "Zur Plausibilitätsprüfung nach Artikel 14 (1) (a), (ii) anlässlich der Genehmigung langergrenzüberschreitender Transporte in Drittstaaten" [Addendum to the Essay "On plausibility checks according to Art. 14 (1) (a), (ii) regarding the official approval of long-distance, border-crossing animal transports in third countries], *Amtstierärztlicher Dienst und Lebensmittelkontrolle* [Official Veterinary Service and Foodstuffs Control] 26, 16–17

27 Maisack, C., Rabitsch, A. (2019): Transporte von Rindern und Schafen in Tierschutz-Hochrisikoststaaten gehen weiter [Transport of cattle and sheep to high risk animal welfare countries continues], *Amtstierärztlicher Dienst und Lebensmittelkontrolle* [Official Veterinary Service and Foodstuffs Control] 27, 37–45

Bibliography

ECJ Judgment of 23. April 2015, C-424/13

ECJ Judgment of 19. October 2017, C-383/16

EU Commission, Guide to Good Practices for the Transport of Cattle, DG for Health and Food Safety, August 2018.

Maisack, C., Rabitsch, A. (2018): Zur Plausibilitätsprüfung nach Artikel 14 (1) (a), (ii) anlässlich der Genehmigung langer grenzüberschreitender Transporte in Drittstaaten [On plausibility checks according to Art. 14 (1) (a), (ii) regarding the official approval of long-distance, border-crossing animal transports in third countries], Amtstierärztlicher Dienst und Lebensmittelkontrolle [Official Veterinary Service and Foodstuffs Control] 25, 209–215

Maisack, C., Rabitsch, A. (2019): Ergänzung zum Aufsatz “Zur Plausibilitätsprüfung nach Artikel 14 (1) (a), (ii) anlässlich der Genehmigung langergrenzüberschreitender Transporte in Drittstaaten” [Addendum to the Essay “On plausibility checks according to Art. 14 (1) (a), (ii) regarding the official approval of long-distance, border-crossing animal transports in third countries], Amtstierärztlicher Dienst und Lebensmittelkontrolle [Official Veterinary Service and Foodstuffs Control] 26, 16–17

Maisack, C., Rabitsch, A. (2019): Transporte von Rindern und Schafen in Tierschutz-Hochrisikostaaen gehen weiter [Transport of cattle and sheep to high risk animal welfare countries continues], Amtstierärztlicher Dienst und Lebensmittelkontrolle [Official Veterinary Service and Foodstuffs Control] 27, 37–45

Meschik, T., Senft, B., Rabitsch, A., Troxler, J., Baumgartner, J. (2020): Rinderexporte aus der Europäischen Union in Drittstaaten – Daten und Herausforderungen. [Cattle exports from the European Union to third countries – data and challenges.] Wien Tierärztl Monat – Vet Med Austria 107, 15–280

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