

INTERBOVES

JUDGMENT OF THE COURT (Third Chamber)

9 October 2008*

In Case C-277/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Finanzgericht Hamburg (Germany), made by decision of 2 June 2006, received at the Court on 26 June 2006, in the proceedings

Interboves GmbH

v

Hauptzollamt Hamburg-Jonas,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Ó Caoimh, J.N. Cunha Rodrigues, J. Klučka (Rapporteur), and P. Lindh, Judges,

* Language of the case: German.

Advocate General: P. Mengozzi,
Registrar: J. Swedenborg, Administrator,

having regard to the written procedure and further to the hearing on 23 May 2007,

after considering the observations submitted on behalf of:

— Interboves GmbH, by O. Wenzlaff, Rechtsanwalt,

— Hauptzollamt Hamburg-Jonas, by S. Plenter, acting as Agent,

— the Belgian Government, by A. Hubert, acting as Agent,

— the Greek Government, by V. Kontolaimos and S. Papaioannou, acting as Agents,

— the Swedish Government, by A. Kruse and S. Johannesson, acting as Agents,

— the Commission of the European Communities, by F. Erlbacher and J.C. Schieferer,
acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 March 2008,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of point 48.7(a) and (b) of the annex to 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 (OJ 1991 L 340, p. 17), as amended by Council Directive 95/29/EC of 29 June 1995 (OJ 1995 L 148, p. 52 ('Directive 91/628')).

- ² The reference was made in the course of proceedings between Interboves GmbH ('Interboves') and Hauptzollamt Hamburg-Jonas ('the Hauptzollamt'), concerning the Hauptzollamt's refusal to pay export refunds following transport of live bovine animals by Interboves to the former Yugoslavia.

Legal context

3 Directive 91/628 applies to the transport of domestic animals of the bovine species pursuant to Article 1(1)(a) thereof.

4 Under Article 2(2) of that directive, the following definitions apply:

‘ ...

(b) “transport”, any movement of animals, effected by a means of transport, which involves loading and unloading the animals;

...

(g) “journey”, transport from place of departure to place of destination;

- (h) “rest period”, a continuous period in the course of a journey during which animals are not being moved by a means of transport;

...’

5 Point 26(b)(i) to (iii) of the annex to that directive provides:

‘ ...

- (i) the animals compartment shall be properly fixed to the vehicle; the vehicle and the animals’ compartment shall be equipped with adequate tying facilities enabling them to be secured fast to the ship. On a covered deck of a roll-on/roll-off vessel, sufficient ventilation for the number of vehicles transported must be maintained. Where possible, a vehicle for the transport of animals should be placed near a fresh air inlet;

- (ii) the animals’ compartment shall have a sufficient number of vents or other means of ensuring that it is adequately ventilated, bearing in mind that the air flow is restricted in the confined space of [a] ship’s vehicle hold. There must be sufficient room inside the animals’ compartment and at each of its levels to ensure that there is adequate ventilation above the animals where they are in a naturally standing position;

(iii) direct access must be provided to each part of the animals' compartment so that the animals can, if necessary, be cared for, fed and watered during the voyage.'

6 Point 48 of the annex to Directive 91/628, headed 'Watering and feeding interval[s], journey times and resting periods', provides:

' ...

2. Journey times for animals belonging to the species referred to [in Article 1] shall not exceed eight hours.

3. The maximum journey time in point 2 may be extended where the transporting vehicle meets the following additional requirements:

— there is sufficient bedding on the floor of the vehicle,

— the transport vehicle carries appropriate feed for the animal species transported and for the journey time,

- (d) All other animals of the species referred to [in Article 1] must, after 14 hours of travel, 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.

...

- 7. (a) Animals must not be transported by sea if the maximum journey time exceeds that laid down in point 2, unless the conditions laid down in points 3 and 4, except for journey times and rest periods, are met.

- (b) In the case of transport by sea on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels without unloading of the animals, the latter must be rested for 12 hours after unloading at the port of destination or in its immediate vicinity unless the journey time at sea is such that the voyage can be included in the general scheme of points 2 to 4.

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 7 It is apparent from the order for reference that, on 12 June 2002, Interboves declared to Friedrichshafen Hauptzollamt (Principal Customs Office) 33 live bovine animals for export to the former Yugoslavia and applied for an export refund in that respect.
- 8 The Hauptzollamt refused that application by a decision of 23 July 2003, on the ground that Interboves had not complied with point 48.7(b) of the annex to Directive 91/628. The Hauptzollamt found that, according to the route plan, the bovine animals had been transported over a journey time of 23 hours, namely 14 hours 30 minutes by sea, on board a roll-on/roll-off ferry between Bari (Italy) and Igoumenitsa (Greece), and 8 hours 30 minutes by road to Evzoni, the border post between Greece and the former Yugoslav Republic of Macedonia, without any rest period having been provided.
- 9 Interboves lodged an administrative appeal against the decision of 23 July 2003, submitting, *inter alia*, that the sea-crossing time should not be included in the calculation of the journey time pursuant to point 48.7(a) of the annex to Directive 91/628.
- 10 By decision of 21 June 2005, the Hauptzollamt rejected that administrative appeal, stating that the sea-crossing time had to be regarded as an extension of the transport by road. Consequently, according to the Hauptzollamt, in order to ascertain whether the total transport time complied with point 48.7(b) of the annex to Directive 91/628, the journey time by sea had to be added to the previous and subsequent journey time by road, which would amount, in the present case, to a total duration of 32 hours and 45 minutes.

11 On 21 July 2005, Interboves lodged an appeal against that decision of 21 June 2005, submitting again that it considered it had complied with the provisions of Directive 91/628.

12 In those circumstances, the Finanzgericht Hamburg decided to stay proceedings and to refer to the Court for a preliminary ruling the following questions:

‘(1) Does point 48.7(a)... of the annex to Directive 91/628/EEC define the basic conditions for transport [of animals] by sea so that, in principle, — provided that the conditions laid down in points 48.3 and 48.4... of the [above] annex, except for journey times and rest periods, are met — the journey times by road before and after transport by sea are not interconnected, even where animals are being transported on so called roll-on/roll-off ferries?’

(2) Does point 48.7(b)... of the annex to Directive 91/628/EEC include a special provision for so-called roll-on/roll-off ferries operating in the Community which applies alongside or in addition to the conditions laid down in point 48.4(d)..., so that a new maximum journey time of 29 hours (cf. point 48.4(d)... of the annex...) does not commence after arrival of the ferry at the port of destination (the animals having instead to be rested for 12 hours) only if the journey time at sea is such that the voyage has exceeded the general scheme of points 48.2 to 48.4 of... the annex to [that] Directive — namely 29 hours in accordance with point 48.4(d)?’

Preliminary observations

- 13 In its decision, the national court refers to point 48.4(d) of the annex to Directive 91/628, which establishes the '14 + 1 + 14' rule. Thereunder, after 14 hours of travel, the animals must be given a rest period of at least 1 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.
- 14 In view of the wording of the second question referred, it would appear that the national court interprets the rule in point 48.4(d) as authorising a maximum transport time of 29 hours.
- 15 As the Advocate General observes in point 18 of his Opinion, point 48.4(d) of the annex to Directive 91/628 establishes a maximum of 28 hours of travel, interrupted by a minimum rest period of 1 hour after the first 14 hour section.
- 16 Accordingly, the '14+1+14' rule in point 48.4(d) must be understood as authorising a maximum period of travel of 28 hours, interrupted by a minimum rest period of 1 hour.

The questions referred

- 17 By its first and second questions, which will be considered together, the referring court asks, essentially, first, whether transport by roll-on/roll-off ferry, on a regular and direct link between two geographical points of the Community, as referred to in point 48.7(b) of the annex to Directive 91/628, can be characterised as transport by sea within the meaning of point 48.7(a) of that annex. If the answer to that question is in the affirmative, the referring court then asks whether the journey times by road preceding and following a period of transport by roll-on/roll-off ferry must be interconnected. Lastly, it asks whether, after transport by roll-on/roll-off ferry apparently lasting more than 14 hours — the maximum period of transport laid down in point 48.4(d) of the annex to Directive 91/628 — before a minimum rest period of 1 hour, the animals must be rested for 12 hours pursuant to point 48.7(b), or whether they can be transported by road immediately after unloading for a maximum period of 28 hours, interrupted by a minimum rest period of 1 hour.
- 18 The referring court takes the view that point 48.7(a) of the annex to Directive 91/628 lays down the essential requirements applicable to transport by sea, including transport by roll-on/roll-off ferry.
- 19 It would follow, first, that the provisions relating to journey time and rest periods do not apply to transport by sea where the requirements laid down in point 48.3 to 48.4 of that annex are satisfied. Secondly, the periods of transport by road preceding and following the transport by sea would not be connected. Thirdly, a new maximum duration of 28 hours of transport within the meaning of point 48.4(d) of the annex to Directive 91/628, interrupted by a minimum rest period of 1 hour, could begin immediately the roll-on/roll-off ferry arrives at the port of destination.

- 20 The Court would point out, first of all, that point 48 of the annex to Directive 91/628 lays down the rules concerning watering and feeding intervals, journey times and resting periods for the animal species, including bovine animals, listed in Article 1(1)(a) of that directive during transport, with the exception of transport by air.
- 21 Secondly, the rules concerning journey times and resting periods, where transport is by sea, are governed by point 48.7(a) and (b) of that annex. Point 48.7(a) lays down the general provisions applicable to transport by sea and point 48.7(b) specifies the conditions under which a resting period of 12 hours is mandatory in the case of transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the Community (see, to that effect, Case C-207/06 *Schwaninger* [2008] ECR I-5561, paragraphs 23, 24 and 30).
- 22 Concerning, first of all, the characterisation of transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the Community as transport by sea, as the Advocate General observed in point 28 of his Opinion, the wording of both point 48.7(b) of the annex to Directive 91/628 and point 26 of that annex shows that, notwithstanding its special features, transport by roll-on/roll-off ferry is transport by sea.
- 23 First, point 48.7(b) of that annex refers expressly to that means of transport as transport by sea. Secondly, it follows from point 26 of that annex that, in laying down the specific measures to be taken in respect of means of transporting animals, the Community legislature included that type of vessel under means of transport by sea.

24 Since transport by roll-on/roll-off ferry is transport by sea, it follows that points 48.7(a) and (b) of the annex to Directive 91/628 are applicable to it.

25 As regards, next, the question whether the journey times by road preceding and following the transport by roll-on/roll-off ferry must be interconnected, point 48 of the annex to Directive 91/628 does not expressly provide that that should be the case.

26 However, it follows from the wording of point 48.7(b) of the annex to Directive 91/628 and from the purpose of that directive that the question whether those journey times by road are interconnected must be assessed having regard to whether the maximum duration of 28 hours of transport by roll-on/roll-off ferry, referred to in point 48.4(d) of that annex, has been exceeded.

27 It must be noted, in this connection, that point 48.7(b) of the annex to Directive 91/628 provides that animals must be rested for 12 hours after unloading at the port of destination or in its immediate vicinity unless the journey time at sea is such that the voyage can be included in the general scheme of point 48.2 to 48.4.

28 By referring to that general scheme, the Community legislature appears to have intended to take into account the rule establishing a maximum journey time of 28 hours in point 48.4(d) of the annex to directive 91/628 where transport is by roll-on/roll-off ferry, with the exception, however, of the rest period of at least 1 hour.

- 29 As the Advocate General explained in point 33 of his Opinion, compliance with that rest period requirement is not justified during transport by sea.
- 30 First, implementing such a rest period at sea is almost impossible in practice, since it would mean the vessel having to berth for at least 1 hour after 14 hours at sea, before sailing on for a further period of 14 hours.
- 31 Secondly, unlike transport by road, where the lorry has to stop so that the animals can be cared for, fed and watered, the special features of transport by sea enable those operations to be carried out during the voyage, in accordance with point 26 of the annex to Directive 91/628.
- 32 It therefore follows from point 48.7(b) of that annex that, where the maximum journey time of 28 hours by roll-on/roll-off ferry is exceeded, it is a requirement that the animals be rested for 12 hours before they may be transported again for a further maximum duration of 28 hours, interrupted by a minimum 1-hour rest period, in accordance with point 48(4)(d) of that annex.
- 33 In such circumstances, the separate periods of transport by road do not have to be added together inasmuch as the rest period of 12 hours necessarily has the effect of neutralising the periods of transport completed before that rest period. The 12 hours provided for in that provision serve the same purpose of neutralising the periods of transport completed before that rest period as the 24-hour period referred to in point 48.5 of the annex to Directive 91/628 applicable to transport by road.

34 On the other hand, where the journey time by roll-on/roll-off ferry is such that the voyage can be included in the general scheme of point 48.2 to 48.4 of the annex to Directive 91/628, in particular if it does not exceed the maximum duration of 28 hours of transport and, consequently, a rest period of 12 hours is unnecessary, a period of transport by road may begin immediately after arrival of the vessel at the port of destination.

35 However, in that situation, it is necessary, in order to ascertain the duration of that further period of transport by road, to take account of the duration of the transport by road which preceded the transport by roll-on/roll-off ferry, unless the animals were given a rest period of 24 hours before they were loaded onto the vessel. If that is the case, connecting the periods of transport by road is not justified, since the effect of the 24-hour rest period is to neutralise the period of transport by road before the transport by roll-on/roll-off ferry.

36 Consequently, if the journey time by roll-on/roll-off ferry is less than 28 hours and that of the transport by road which preceded it was not neutralised by a 24-hour rest period, in accordance with point 48.5 of the annex to Directive 91/628, the duration of the journey times by road which preceded and followed the transport by roll-on/roll-off ferry must be added together.

37 By contrast, if the duration of the transport by roll-on/roll-off ferry is less than 28 hours and that of the transport by road which preceded it was neutralised by a 24-hour rest period, a further period of transport by road of a maximum duration of 28 hours, interrupted by a minimum 1-hour rest period, can begin immediately after unloading, without taking into account the duration of the transport by road preceding the transport by roll-on/roll-off ferry.

- 38 Any other interpretation of point 48.7(b) of the annex to Directive 91/628 would be tantamount to accepting that, after transport by roll-on/roll-off ferry for less than 28 hours, a new maximum 28-hour period of transport by road, interrupted by a minimum 1-hour rest period, could begin without taking into account the duration of any transport by road which preceded the transport by roll-on/roll-off ferry. That would make it possible to cumulate several periods of journey time by various means of transport without a 12- or 24-hour rest period being given.
- 39 Such an interpretation of point 48.7(b) would directly contravene the principal objective of Directive 91/628, which is the protection of animals during transport (see, to that effect, Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handel and ZVK* [2008] ECR I-69, paragraph 29), as well as the purpose of that directive, as explained *inter alia* in the eighth recital in the preamble thereto, which states that, for reasons of animal welfare, the transport over long distances of animals, including animals for slaughter, should be reduced as far as possible.
- 40 As regards, lastly, the question whether, after a period of transport by roll-on/roll-off ferry the duration of which appears to be more than 14 hours, the animals must be rested for 12 hours pursuant to point 48.7(b) of the annex to Directive 91/628, or whether transport by road may be resumed immediately after unloading for a maximum duration of 28 hours, interrupted by a minimum 1-hour rest period, it need merely be pointed out that, as follows from paragraph 34 of this judgment, where the journey time by roll-on/roll-off ferry does not exceed the maximum duration of 28 hours of travel and, consequently, a rest period of 12 hours is unnecessary, a period of transport by road may begin immediately after arrival of the vessel at the port of destination, the duration of which must be calculated using the method set out in paragraph 36 of this judgment.

41 In the light of all the foregoing, the Court's answer to questions 1 and 2 is that:

- Point 48.7(a) of the annex to directive 91/628 is to be interpreted as defining the general provisions applicable to transport by sea, including transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels without unloading of the animals, with the exception, so far as that type of vessel is concerned, of rest periods given to the animals after unloading, which are provided for in point 48.7(b) of that annex.

- In accordance with that latter provision, whether there is a connection between the periods of transport by road preceding and following a period of transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels without unloading of the animals depends on whether or not the maximum duration of 28 hours of travel on a roll-on/roll-off ferry referred to in paragraph 48.4(d) of the annex to Directive 91/628 has been exceeded.

- Where the duration of transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels without unloading of the animals is less than the maximum duration of 28 hours, a period of transport by road can begin immediately after the animals are unloaded at the port of destination. In order to calculate the duration of that period, the duration of the period of transport by road which preceded transport by roll-on/roll-off ferry should be taken into account, unless a rest period of at least 24 hours, in application of point 48.5 of the annex to Directive 91/628, has neutralised the period of transport by road preceding the transport by sea. It is for the national court to ascertain whether, in the dispute in the main proceedings, the journey at issue meets the abovementioned conditions.

Costs

⁴² Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

- **Point 48.7(a) of the Annex to 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, as amended by Council Directive 95/29/EC of 29 June 1995, is to be interpreted as defining the general provisions applicable to transport by sea, including transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the European Community by means of vehicles loaded on to vessels without unloading of the animals, with the exception, so far as that type of vessel is concerned, of rest periods given to the animals after unloading, which are provided for in point 48.7(b) of that annex.**

- **In accordance with that latter provision, whether there is a connection between the periods of transport by road preceding and following a period of transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels without unloading of the animals depends on whether or not the**

maximum duration of 28 hours of travel on a roll-on/roll-off ferry referred to in paragraph 48.4(d) of the annex to Directive 91/628 has been exceeded.

- **Where the duration of transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels without unloading of the animals is less than the maximum duration of 28 hours, a period of transport by road can begin immediately after the animals are unloaded at the port of destination. In order to calculate the duration of that period, the duration of the period of transport by road which preceded transport by roll-on/roll-off ferry should be taken into account, unless a rest period of at least 24 hours, in application of point 48.5 of the annex to Directive 91/628, has neutralised the period of transport by road preceding the transport by sea. It is for the national court to ascertain whether, in the dispute in the main proceedings, the journey at issue meets the abovementioned conditions.**

[Signatures]