

OPINION OF ADVOCATE GENERAL

TRSTENJAK

delivered on 2 April 2009¹

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I — Introduction

1. In this case, the Commission seeks, by its action brought under Article 226 EC, a declaration by the Court that the Hellenic Republic has failed to fulfil its obligations under the Community legislation on the protection of animals during transport and at the time of slaughter or, to be more precise, under 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 (OJ 1995 L 148, p. 52) ('Directive 91/628'),² under 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 ('Regulation No 1/2005')³ and under Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing ('Directive 93/119').⁴

animals, to the checking of route plans, to ensuring the provision of rest facilities for animals in ports, to the inspection of means of transport and animals, to ensuring effective penalties in the case of repeated infringements of the legislation and of irregularities committed at the time of the stunning of animals during slaughter, and to the absence of the necessary inspections and controls in slaughterhouses. To prove those failures to fulfil obligations, the Commission relies on the findings made during the missions which the Food and Veterinary Office ('the FVO') of the European Commission's Directorate-General for Health and Consumer Protection carried out in the Hellenic Republic from 2002 to 2006.

II — Legal context

A — *Protection of animals during transport*

2. The Commission alleges that the Hellenic Republic has failed to fulfil its obligations relating to authorisations for the transport of

3. The protection of animals during transport is governed at Community level by Directive 91/628. That directive was repealed from 5 January 2007 by Regulation No 1/2005.

² — OJ 1991 L 340, p. 17.

³ — OJ 2005 L 3, p. 1.

⁴ — OJ 1993 L 340, p. 21.

1. Directive 91/628

4. Under Article 5(A)(1) and (2) of Directive 91/628:

Member State of establishment or, if an undertaking established in a third country is concerned, by a competent authority of a Member State of the Union, subject to a written undertaking by the person in charge of the transport undertaking to comply with the requirements of the Community veterinary legislation in force.

‘A. Member States shall ensure that:

1. any transporter:

...

(a) is:

2. the transporter:

(i) registered in a manner enabling the competent authority to identify the person rapidly in the event of failure to comply with the requirements of this Directive;

...

(ii) covered by an authorisation valid for all transport of vertebrate animals carried out in one of the territories referred to in Annex I to Directive 90/675/EEC, granted by the competent authority of the

(b) for the animals referred to in Article 1(1)(a) which are to be traded between Member States or exported to third countries, and in

cases where the journey time exceeds ...'
eight hours, draws up a route plan in
accordance with the specimen in
Chapter VIII of the Annex, which
will be attached to the health cer-
tificate during the journey, and also
indicates any staging and transfer
points.

5. Under Article 8 of Directive 91/628:

...

(d) ensures:

'Member States shall ensure that, in accord-
ance with the principles and rules of control
laid down in Directive 90/425/EEC, the
competent authorities check that the require-
ments of this Directive have been complied
with, by carrying out non-discriminatory
inspections of:

(i) that the original copy of the
route plan referred to in (b)

(a) means of transport and animals during
transport by road;

— is duly drawn up and
completed by the appro-
priate persons at the appro-
priate time,

(b) means of transport and animals arriving
at their place of destination;

— is attached to the health
certificate accompanying
the consignment
throughout the journey;

(c) means of transport and animals at
markets, at places of departure, at
staging points and at transfer points;

- (d) the particulars on the accompanying documents.
6. Under Article 9 of Directive 91/628:

Such inspections must be carried out on an adequate sample of the animals transported each year within each Member State, and may be carried out at the same time as checks for other purposes.

'1. If it is found in the course of transport that the provisions of this Directive are not being or have not been complied with, the competent authority of the place at which such a finding is made shall require the person in charge of the means of transport to take any action which the competent authority considers necessary in order to safeguard the welfare of the animals concerned.

The competent authority in each Member State shall submit to the Commission an annual report stating the number of inspections carried out in the preceding calendar year in respect of each of the points (a), (b), (c) and (d) and including details of any reported infringements and the action taken as a result by the competent authority.

Depending on the circumstances of each case, such action may include:

Furthermore, where the competent authority of a Member State has information leading it to suspect an infringement, checks may also be carried out during the transport of animals on its territory.

(a) arranging for the journey to be completed or the animals to be returned to their place of departure by the most direct route, provided that this course of action would not cause unnecessary suffering to the animals;

This Article shall not affect checks carried out as part of tasks conducted in a non-discriminatory manner by authorities responsible for the general application of laws in a Member State.'

(b) arranging for the animals to be held in suitable accommodation with appropriate care until the problem is resolved;

- (c) arranging for the humane slaughter of the animals. The destination and use of the carcasses of these animals shall be governed by the provisions laid down in Directive 64/433/EEC.

If the consignor or his representative so requests, the said decisions and reasons shall be forwarded to him in writing with details of the rights of appeal which are available to him under the law in force in the Member State of destination and of the procedure and time-limits applicable.

Any measure taken pursuant to the second subparagraph shall be notified by the competent authority [of] the Animo network according to the procedures, including financial procedures, to be established according to the procedure provided for in Article 17.

However, in the event of a dispute, the two parties concerned may, if they so agree, within a maximum period of one month, submit the dispute for the assessment of an expert whose name appears on a list of Community experts to be drawn up by the Commission.

2. If the person in charge of the means of transport fails to comply with the instructions of the competent authority, the latter shall immediately have the measures in question carried out and shall recover the costs of such measures in the appropriate manner.

Such experts shall issue their opinions within not more than 72 hours. The parties shall abide by the expert's opinion, with due regard for Community veterinary legislation.'

3. Rights of appeal existing under the laws in force in the Member States against decisions by the competent authorities shall not be affected by this Directive.

7. Under Article 18(2) of Directive 91/628:

Decisions taken by the competent authorities of the Member States and the reasons for such decisions shall be notified to the consignor or his representative and to the competent authority of the Member State of dispatch.

'In the case of repeated infringements of this Directive or an infringement which involves serious suffering for the animals, a Member

State shall, without prejudice to any other penalties provided for, take the measures necessary to remedy the shortcomings noted, up to and including suspension or even withdrawal of the authorisation referred to in Article 5A(1)(a)(ii).

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,

Member States shall, when they transpose provisions into their national legislation, provide for the measures which they will take to remedy the shortcomings noted.'

- the transporting vehicle carries appropriate feed for the animal species transported and for the journey time,

8. Under point 48 of Chapter VII of the Annex to Directive 91/628:

- there is direct access to the animals,

'1. The requirements laid down in this Chapter apply to the movement of the animal species listed in Article 1(1)(a), except in the case of air transport, the requirements for which are laid down in Chapter I(E), points 27 to 29.

- adequate ventilation is possible which may be adjusted depending on the temperature (inside and outside),

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

- there are moveable panels for creating separate compartments,

- vehicles are equipped for connection to a water supply during stops,
- in the case of vehicles for transporting pigs, sufficient water is carried for watering during the journey.

- (c) Domestic solidungulates (except registered Equidae within the meaning of Directive 90/426/EEC) may be transported for a maximum period of 24 hours. During the journey they must be given liquid and if necessary fed every eight hours.
- (d) All other animals of the species referred to in point 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.

4. The watering and feeding intervals, journey times and rest periods when using road vehicles which meet the requirements in point 3 are defined as follows:

...

- (a) Unweaned calves, lambs, kids and foals which are still on a milk diet and unweaned piglets must, after nine hours of travel, be given a rest period of at least one hour sufficient in particular for them to be given liquid and if necessary fed. After this rest period, they may be transported for a further nine 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) Pigs may be transported for a maximum period of 24 hours. During the journey, they must have continuous access to water.
- (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.'

isation shall be made available to the competent authority when the animals are transported.'

2. Regulation No 1/2005

11. Under Article 10(1) of Regulation No 1/2005:

9. Under Article 5(4) of Regulation No 1/2005:

'The competent authority shall grant authorisations to transporters provided that:

'For long journeys between Member States and with third countries for domestic Equidae other than registered Equidae, and domestic animals of bovine, ovine, caprine and porcine species, transporters and organisers shall comply with the provisions on the journey log set out in Annex II.'

- (a) the applicants are established, or in case of applicants established in a third country, are represented, in the Member State where they apply for authorisation;

10. Under Article 6(1) of Regulation No 1/2005:

'No person shall act as a transporter unless he holds an authorisation issued by a competent authority pursuant to Article 10(1) or, for long journeys, Article 11(1). A copy of the author-

- (b) the applicants have demonstrated that they have sufficient and appropriate staff, equipment and operational procedures at

their disposal to enable them to comply with this Regulation, including where appropriate good practice guides;

(b) the applicants have submitted the following documents:

(c) the applicants or their representatives have no record of serious infringements of Community legislation and/or national legislation on the protection of animals in the three years preceding the date of the application. This provision shall not apply where the applicant demonstrates to the satisfaction of the competent authority that it has taken all necessary measures to avoid further infringements.'

(i) valid certificates of competence for drivers and attendants as provided for in Article 17(2) for all drivers and attendants carrying out long journeys;

(ii) valid certificates of approval as provided for in Article 18(2) for all means of transport by road to be used for long journeys;

12. Under Article 11(1) of Regulation No 1/2005:

'The competent authority shall grant authorisations to transporters carrying out long journeys upon application, provided that:

(iii) details of the procedures enabling transporters to trace and record the movements of road vehicles under their responsibility and to contact the drivers concerned at any time during long journeys;

(a) they comply with the provisions of Article 10(1);

(iv) contingency plans in the event of emergencies.'

13. Under Article 13(3) and (4) of Regulation No 1/2005:

‘3. The competent authority shall record authorisations provided for in Article 10(1) or Article 11(1) in a manner enabling the competent authority to identify transporters rapidly, in particular in the event of failure to comply with the requirements of this Regulation.

4. The competent authority shall record authorisations issued pursuant to Article 11(1) in an electronic database. The transporter’s name and authorisation number shall be made publicly available during the period of validity of the authorisation. Subject to Community and/or national rules regarding privacy protection, public access to other data in relation to transporters’ authorisations shall be granted by Member States. The database shall also include decisions notified under Article 26(4)(c) and (6).’

14. Under Article 15(1) of Regulation No 1/2005:

‘The competent authority shall carry out at any stage of the long journey appropriate checks on a random or targeted basis to verify that declared journey times are realistic and that the journey complies with this Regulation and in particular that travel times and rest periods have complied with the limits set out in Chapter V of Annex I.’

15. Article 25 of Regulation No 1/2005, headed ‘Penalties’, provides:

‘The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions, as well as provisions for the application of Article 26, to the Commission by 5 July 2006 at the latest and shall notify it without delay of any subsequent amendment affecting them.’

16. Article 26 of Regulation No 1/2005, headed ‘Infringements and notification of infringements’, provides:

4. Where a competent authority establishes that a transporter has not observed, or a means of transport does not comply with this Regulation, or where a competent authority receives a notification as provided for in paragraph 2 or 3 it shall, if appropriate:

‘1. In the case of any infringements of this Regulation, the competent authority shall take the specific measures provided for in paragraphs 2 to 7.

(a) require the transporter concerned to remedy the breaches observed and establish systems to prevent their recurrence;

2. Where a competent authority establishes that a transporter has not observed, or a means of transport does not comply with this Regulation, it shall notify without delay the competent authority which granted the authorisation to the transporter or the certificate of approval of the means of transport and, where the driver is involved in the failure to observe the requirements of this Regulation, the one that issued the driver’s certificate of competence. Any relevant data and documents shall accompany such notification.

(b) subject the transporter concerned to additional checks, in particular requiring the presence of a veterinarian at loading of the animals;

(c) suspend or withdraw the authorisation of the transporter or the certificate of approval of the means of transport concerned.

3. Where a competent authority of a place of destination finds that the journey took place in breach of this Regulation, it shall notify without delay the competent authority of the place of departure. Any relevant data and documents shall accompany such notification.

5. In the case of infringement of this Regulation by a driver or attendant holding a certificate of competence as provided for in

Article 17(2), the competent authority may suspend or withdraw the certificate of competence, in particular if the infringement shows that the driver or attendant lacks sufficient knowledge or awareness to transport animals in compliance with this Regulation.

6. In the case of repeated or serious infringements of this Regulation, a Member State may temporarily prohibit the transporter or means of transport concerned from transporting animals on its territory, even if the transporter or the means of transport is authorised by another Member State, provided that all the possibilities afforded by mutual assistance and exchange of information as provided for in Article 24 have been exhausted.

7. Member States shall ensure that all the contact points as provided for in Article 24(2) are notified without delay of any decision taken under paragraph 4(c), or paragraphs 5 or 6 of this Article.'

17. Under Article 27(1) of Regulation No 1/2005:

'The competent authority shall check that the requirements of this Regulation have been complied with, by carrying out non-discriminatory inspections of animals,

means of transport and accompanying documents. Such inspections must be carried out on an adequate proportion of the animals transported each year within each Member State, and may be carried out at the same time as checks for other purposes. The proportion of inspections shall be increased where it is established that the provisions of this Regulation have been disregarded. The above proportions shall be determined in accordance with the procedures referred to in Article 31(2).'

18. Under Article 33 of Regulation No 1/2005:

'Directive 91/628/EEC and Regulation (EC) No 411/98 shall be repealed from 5 January 2007. References to the repealed Directive and Regulation shall be construed as references to this Regulation.'

19. Under Chapter V of Annex I to Regulation No 1/2005:

'1.1. The requirements laid down in this Section apply to the movement of domestic Equidae, except registered Equidae, domestic animals of bovine, ovine, caprine and porcine species, except in the case of air transport.

- 1.2. Journey times for animals belonging to the species referred to in point 1.1 shall not exceed eight hours.
 - (c) Domestic Equidae may be transported for a maximum period of 24 hours. During the journey they must be given liquid and if necessary fed every eight hours;
- 1.3. The maximum journey time in point 1.2 may be extended if the additional requirements of Chapter VI are met.
 - (d) All other animals of the species referred to in point 1.1 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.
- 1.4. The watering and feeding intervals, journey times and rest periods when using road vehicles which meet the requirements in point 1.3 are defined as follows:
 - (a) Unweaned calves, lambs, kids and foals which are still on a milk diet and unweaned piglets must, after nine hours of travel, be given a rest period of at least one hour sufficient in particular for them to be given liquid and if necessary fed. After this rest period, they may be transported for a further nine hours; ...
 - (b) Pigs may be transported for a maximum period of 24 hours. During the journey, they must have continuous access to water;
- 1.7. (a) Animals must not be transported by sea if the maximum journey time exceeds that laid down in point 1.2, unless the conditions laid down in points 1.3 and 1.4, apart from 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 1.2 to 1.4.'

22. Under Article 5(1) of Directive 93/119:

'Solipeds, ruminants, pigs, rabbits and poultry brought into slaughterhouses for slaughter shall be:

...

B — Protection of animals at the time of slaughter

20. The protection of animals at the time of slaughter is governed by Directive 93/119.

- (d) bled in accordance with the provisions of Annex D.'

23. Under Article 6(1) of Directive 93/119:

21. Under Article 3 of Directive 93/119:

'Animals shall be spared any avoidable excitement, pain or suffering during movement, lairaging, restraint, stunning, slaughter or killing.'

'Instruments, restraint and other equipment and installations used for stunning or killing must be designed, constructed, maintained and used in such a way as to achieve rapid and effective stunning or killing in accordance with the provisions of this Directive. The competent authority shall check that the instruments, restraint and other equipment

used for stunning or killing comply with the above principles and shall check regularly to ensure that they are in a good state of repair and will allow the aforementioned objective to be attained.'

24. Under Article 8 of Directive 93/119:

'Inspections and controls in slaughterhouses shall be carried out under the responsibility of the competent authority, which shall at all times have free access to all parts of slaughterhouses in order to ascertain compliance with this Directive. However, such inspections and controls may be carried out at the same time as controls carried out for other purposes.'

25. Annex D to Directive 93/119 contains more specific rules on the bleeding of animals. Under point 1 of that annex:

'For animals which have been stunned, bleeding must be started as soon as possible after stunning and be carried out in such a way as to bring about rapid, profuse and complete bleeding. In any event, the bleeding must be carried out before the animal regains consciousness.'

III — The pre-litigation procedure and the Commission's action

26. From 1998 onwards, through missions carried out in the Hellenic Republic, the FVO has monitored the effectiveness of the implementation of the Community legislation on the protection of animals, in particular during transport and at the time of slaughter. During the period between 2002 and 2004, it carried out the following missions:

— mission No 8729/2002 from 18 to 20 November 2002;

— mission No 9002/2003 from 13 to 17 January 2003;

— mission No 9176/2003 from 21 to 25 July 2003;

— mission No 9211/2003 from 15 to 19 September 2003;

— mission No 7273/2004 from 4 to 8 October 2004.

29. In that action, the Commission claims that the Court should:

27. The FVO inspectors having detected irregularities in the course of several missions to the Hellenic Republic, on 13 July 2005 the Commission sent a letter of formal notice to the latter, calling on it to put an end to the infringements found. The Hellenic Republic replied to the letter of formal notice on 20 September 2005 and, in its reply, disputed the infringements alleged against it.

28. Following an exchange of information with the Hellenic Republic and after mission No 8042/2006, which took place from 21 February to 1 March 2006, the Commission took the view that the Hellenic Republic had still not put an end to the infringements alleged. On 4 July 2006, therefore, it sent to the Hellenic Republic a reasoned opinion which the latter received on 5 July 2006; the Hellenic Republic replied by letter of 4 September 2006 and, in its reply, disputed the Commission's allegations set out in the reasoned opinion. Taking the view, on expiry of the period indicated in the reasoned opinion, namely 5 September 2006, which had been set for the purpose of fulfilling the obligations, and after further mission No 8167/2006 which lasted from 4 to 15 September 2006, that the Hellenic Republic had still not fulfilled its obligations, the Commission brought an action against the Hellenic Republic on 11 September 2007.

(1) declare that, by failing to adopt the necessary measures:

- so that any transporter of animals is covered by an authorisation from the competent authority and is registered in a manner enabling the competent authority to identify him rapidly, in particular in the event of failure to comply with the rules governing animal welfare during transport,
- so that the competent authorities carry out obligatory checks of the route plan/journey log,
- so that animal rest facilities are provided after unloading, in ports or in their immediate vicinity,

- to ensure that inspections of means of transport and animals are actually carried out, and
- the directive in question, and, from 5 January 2007, under Articles 5(4), 6(1), 13(3) and (4), 15(1), 25, 26 and 27(1) of Council Regulation No 1/2005;
- so that effective, proportionate and dissuasive penalties are imposed in the case of repeated or serious infringements of the provisions relating to the protection of animals during transport,
- (2) declare that, by failing to adopt the necessary measures:

the Hellenic Republic has failed to fulfil its obligations under Article 5(A)(1)(a)(i) and (ii), Article 5(A)(2)(b), the first indent of Article 5(A)(2)(d)(i) and Articles 8, 9 and 18(2) of Directive 91/628, and point [48.]7(b)⁵ of Chapter VII of the Annex to

- to ensure observance of the rules governing the stunning of animals at the time of slaughter, and

5 — In its claims and throughout the grounds of its action, the Commission refers to 'point 7(b)' of Chapter VII of the Annex to Directive 91/628, but that reference is not entirely correct since that provision comes under point 48 of that annex, headed 'Watering and feeding interval, journey times and resting periods'. Consequently, the reference to 'point [48.]7(b)' of Chapter VII of the Annex to Directive 91/628 is entirely correct. That mode of citation of that annex is also found in the Court's case-law; see, for example, Case C-300/05 *ZVK* [2006] ECR I-11169, paragraph 1, and Case C-277/06 *Interboves* [2008] ECR I-7433, paragraph 1. In this Opinion, instead of referring to 'point 7(b)', I shall therefore employ the more accurate reference of 'point 48.7(b)' of Chapter VII of the Annex to Directive 91/628.

- to ensure appropriate inspections and controls in slaughterhouses,

the Hellenic Republic has failed to fulfil its obligations under Articles 3, 5(1)(d), 6(1) and 8 of Directive 93/119; and

V — Advocate General's assessment

A — Introduction

- (3) order the Hellenic Republic to pay the costs.

31. This case is important in relation to the objective of ensuring adequate protection at Community level for animals during transport and at the time of slaughter.⁶ Appropriate regulation of this sphere and observance of the relevant legislation are important in order to avoid unnecessary suffering for animals. At the same time, conduct consistent with that legislation helps to prevent the development of diseases⁷ which could break out as a result of irregularities committed during transport or at the time of slaughter, and thereby indirectly protects the health of the humans who will consume the meat from

IV — Procedure before the Court

30. The Commission's action was lodged at the Court Registry on 4 September 2007, the defence on 26 November 2007. The Commission then lodged its reply which was received at the Court Registry on 7 February 2008; the Greek Government lodged its rejoinder which was received at the Court Registry on 20 March 2008. At the hearing on 22 January 2009, the Commission and the Greek Government submitted oral observations and replied to the Court's questions.

6 — The protection of animals during transport and at the time of slaughter under Community law reflects the general effort directed by the Community towards the protection and welfare of animals. Thus, under Protocol 33 on protection and welfare of animals, which, pursuant to the Treaty of Amsterdam, was annexed to the Treaty establishing the European Community, the Member States, 'desiring to ensure improved protection and respect for the welfare of animals as sentient beings', agreed upon the following provision, which is to be annexed to the EC Treaty: 'In formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage'. It should be added that, as part of the efforts directed towards the protection of animals, the Community has also acceded to the European Convention for the Protection of Animals during International Transport, which was adopted within the framework of the Council of Europe. The Community acceded to it by Council Decision 2004/544/EC of 21 June 2004 on the signing of the European Convention for the Protection of Animals during International Transport (revised) (OJ 2004 L 241, p. 21).

7 — Wilkins, D.B. (ed.), *Animal Welfare in Europe. European Legislation and Concerns*, Kluwer Law International, London, The Hague, Boston, 1997, p. 4, points out that the transport of live animals from one Member State to another influences the spread of diseases within the Community.

those animals. In recent years, the field of animal protection in general has been the subject of a wider public debate in the Community,⁸ on the basis of which the Commission drew up an action plan on the protection and welfare of animals, which provides for guidelines on the future development of Community legislation in this field.⁹ The Community constantly endeavours, therefore, to improve the protection of animals.¹⁰

32. In these proceedings, the Commission seeks a declaration by the Court that the Hellenic Republic has failed to fulfil its obligations under the Community legislation on the protection of animals during transport

and the protection of animals at the time of slaughter or, to be more precise, under Directive 91/628, Regulation No 1/2005 and Directive 93/119. In that regard, the Commission does not allege late or incorrect transposition of the Community directives, but a failure in practice to fulfil the obligations resulting from that legislation. It is apparent from the Court's settled case-law that, even if the applicable national legislation complies with Community law, a failure to fulfil obligations may also, in Community law, arise due to the existence of an administrative practice.¹¹ In that case, the Commission must demonstrate that such an administrative practice is, to some degree, of a consistent and general nature.¹² Where the Commission has adduced sufficient evidence to show that a Member State's authorities have developed a repeated and persistent practice which is contrary to Community law, it is incumbent on that Member State to challenge in substance and in detail the information produced and the consequences flowing therefrom.¹³

8 — In that regard, it should be added that much is also said in that public debate about 'animal rights' and not only about the protection of animals. See, to that effect, Brooman, S. and Legge, D., 'Animal transportation', *New Law Journal Practitioner*, No 6706/1995, p. 1131.

9 — See the communication from the Commission to the European Parliament and the Council on a Community action plan on the protection and welfare of animals 2006-10 (COM(2006) 13 final). Among the main areas of action identified, the action plan places particular emphasis on upgrading existing minimum standards for animal protection and welfare, but also on continuing to support international initiatives to raise awareness and create a greater consensus on animal welfare.

10 — In the literature, to this effect, for example, Marguenaud, J.-P., 'Arrêt "Danske Svineproducenter": la protection communautaire des animaux transportés', *Journal de droit européen*, No 151/2008, p. 206. Similarly, Nentwich, M., 'Die Bedeutung des EG-Rechts für den Tierschutz', in Harrer, F. and Graf, G. (eds), *Tierschutz und Recht*, Orac, Vienna, 1994, p. 87, notes that the Community is very active in the field of animal protection, an area in which it has adopted numerous provisions. Caspar, J., *Zur Stellung des Tieres im Gemeinschaftsrecht*, Nomos, Baden-Baden, 2001, p. 89, notes that some fundamental questions of animal protection are governed by Community law. Bowles, D. and Fisher, C., 'Trade Liberalisation in Agriculture: The Likely Implications for European Farm Animal Welfare', in Bilal, S. and Pezaros, P. (eds), *Negotiating the Future of Agricultural Policies: Agricultural Trade and the Millennium WTO Round*, Kluwer Law International, The Hague, 2000, p. 202, point out that standards of animal protection in the European Union are usually higher than standards in the countries competing with it.

11 — See, for example, Case C-387/99 *Commission v Germany* [2004] ECR I-3751, paragraph 42; Case C-494/01 *Commission v Ireland* [2005] ECR I-3331, paragraph 28; Case C-278/03 *Commission v Italy* [2005] ECR I-3747, paragraph 13; and Case C-441/02 *Commission v Germany* [2006] ECR I-3449, paragraph 47. In the literature, see, for example, Lenaerts, K., Arts, D., Maselis, I. and Bray, R., *Procedural Law of the European Union*, 2nd edition, Sweet & Maxwell, London, 2006, p. 132, point 5-008; Karpenstein, P. and Karpenstein, U., in Grabitz, E., Hilf, M. and Nettesheim, M. (eds), *Das Recht der Europäischen Union*, Beck, Munich, 2008, commentary on Article 226, point 25.

12 — See, for example, Case C-387/99 *Commission v Germany*, paragraph 42, and *Commission v Ireland*, paragraph 28, cited above in footnote 11; Case C-287/03 *Commission v Belgium* [2005] ECR I-3761, paragraph 29; Case C-441/02 *Commission v Germany*, cited above in footnote 11, paragraph 50; and Case C-135/05 *Commission v Italy* [2007] ECR I-3475, paragraph 21.

13 — See, for example, *Commission v Ireland*, cited above in footnote 11, paragraphs 46 and 47, and *Commission v Italy*, cited above in footnote 12, paragraph 32.

B — *Analysis of the pleas in law relating to the protection of animals during transport*

1. Preliminary remark concerning admissibility

33. With regard to the pleas in law relating to the protection of animals during transport, the Commission alleges infringement of Directive 91/628 and of Regulation No 1/2005, which replaced and repealed Directive 91/628 from 5 January 2007.¹⁴ In this respect, it should be noted that Regulation No 1/2005 replaced and repealed Directive 91/628 only on the expiry of a period of two months from the date of receipt of the reasoned opinion, within which the Member State must fulfil its obligations. The Hellenic Republic received the Commission's reasoned opinion on 5 July 2006, so that the period of two months, indicated in the reasoned opinion, which was prescribed for it to fulfil its obligations, expired on 5 September 2006.¹⁵ Regulation No 1/2005 entered into force on 5 January 2007, whereas the Commission brought its action on 11 September 2007.

¹⁴ — See Article 33 of Regulation No 1/2005, which provides inter alia that Directive 91/628 is to be repealed from 5 January 2007 and that references to the repealed directive are to be construed as references to Regulation No 1/2005.

¹⁵ — See point 6 of the Commission's reply, in which it indicates precisely when the period prescribed in the reasoned opinion for the fulfilment of the obligations expired. In point 11 of its reply, it also explains that point 39 of its application incorrectly states that the period prescribed in the reasoned opinion for the fulfilment of the obligations expired in November 2006.

34. As is clear from settled case-law, in proceedings under Article 226 EC, the existence of a failure to fulfil obligations must be assessed in the light of the Community legislation in force at the close of the period prescribed by the Commission for the Member State concerned to comply with its reasoned opinion.¹⁶

35. Although the claims as stated in the application cannot in principle be extended beyond the failures to fulfil obligations alleged in the operative part of the reasoned opinion and in the letter of formal notice, it is none the less the case that the Commission has standing to seek a declaration that a Member State has failed to fulfil obligations which were created in the initial version of a Community act, subsequently amended or repealed, and which were maintained in force under the provisions of a new Community act.¹⁷ On the other hand, the subject-matter of the dispute cannot be extended to cover obligations laid down in new provisions with

¹⁶ — See Case C-61/94 *Commission v Germany* [1996] ECR I-3989, paragraph 42; Case C-365/97 *Commission v Italy* [1999] ECR I-7773, paragraph 32; and Case C-377/03 *Commission v Belgium* [2006] ECR I-9733, paragraph 33. In the literature, see, for example, Lenaerts, K., Arts, D., Maselis, I. and Bray, R., *Procedural Law of the European Union*, cited above in footnote 11, p. 159, point 5-052; Rideau, J. and Picod, F., *Code des procédures juridictionnelles de l'Union européenne*, 2nd edition, Litec, Paris, 2002, p. 175; Karpenstein, P. and Karpenstein, U., in Grabitz, E., Hilf, M. and Nettesheim, M. (eds), *Das Recht der Europäischen Union*, cited above in footnote 11, commentary on Article 226, point 17.

¹⁷ — See *Commission v Italy*, cited above in footnote 16, paragraph 36; Case C-363/00 *Commission v Italy* [2003] ECR I-5767, paragraph 22; *Commission v Belgium*, cited above in footnote 16, paragraph 34. See also my Opinion in Case C-275/07 *Commission v Italy* [2009] ECR I-2005, point 73. In the literature, see, for example, Lenaerts, K., Arts, D., Maselis, I. and Bray, R., *Procedural Law of the European Union*, cited above in footnote 11, p. 158, point 5-048.

no equivalent in the initial version of the act concerned, for that would constitute a breach of the essential procedural requirements of infringement proceedings.¹⁸

2. Plea relating to transporter identification and authorisations

(a) Arguments of the parties

36. It is therefore clear from the case-law that the criterion for assessing the admissibility of the pleas in law in an action which are based on legislation which has recently entered into force is not a formal criterion but a substantive criterion. If a new legal act, which entered into force after the period prescribed in the reasoned opinion expired and before the action was brought, contains the same substantive obligations as the legal act which it has recently replaced, the grounds of the action which are based on that new legal act are admissible only if the latter imposes on the Member State the same obligations as the legal act previously in force. Consequently, it is necessary in this case to ascertain whether the obligations stemming from the provisions of Directive 91/628 and on which the Commission relies in its application have equivalents in the provisions of Regulation No 1/2005. For greater clarity of this Opinion, I shall assess in the context of each individual plea in law in the action whether it is open to the Commission to rely on particular provisions of Regulation No 1/2005.

37. On the basis of the findings made by the FVO in the course of its missions No 7273/2004 and No 8042/2006, the *Commission* submits that the Greek Government has not adopted the measures necessary to ensure that every transporter holds an appropriate authorisation for the transport of animals and has been registered in an appropriate manner enabling the competent authority to identify rapidly whether a particular transporter satisfies the requirements of protection of animals during transport. The Commission alleges that the Hellenic Republic has thereby failed to fulfil its obligations under Article 5(A)(1)(a)(i) and (ii) and Article 5(A)(2)(b) of Directive 91/628 and under Articles 6(1) and 13(3) and (4) of Regulation No 1/2005.

38. The Commission points out that, in the course of mission No 7273/2004 (points 5.3 and 6.3 of the mission report), the FVO inspectors found that certain transporters were not in possession of an authorisation or that the authorisation issued to them was out of date. In the course of mission No 8042/2006 (points 5.3 and 6.3 of the mission report), it was found that, despite some improvements, the rules relating to

18 — See Case C-363/00 *Commission v Italy*, cited above in footnote 17, paragraph 22, and *Commission v Belgium*, cited above in footnote 16, paragraph 34. See also the Opinion in Case C-275/07 *Commission v Italy*, cited above in footnote 17, point 73.

transporter authorisations and identification had not been sufficiently complied with. The Commission points out that, although there are lists of transporters, they have not always been updated.

39. In its defence, the *Greek Government* argues that the identification of only one invalid authorisation in the course of mission No 7273/2004 was an isolated case which is not enough to prove failure to fulfil obligations under Community law; moreover, the competent national authorities had already identified that invalid authorisation. The Greek Government also points out that it has adopted measures aimed at ensuring compliance with Community law. It claims to have informed the competent authorities in particular Greek prefectures of the recommendations made by the FVO inspectors, and to have organised seminars for transporters and veterinarians, which demonstrates, in its view, that the Greek authorities constantly ensure that Community law is correctly applied.

40. In that regard, the *Commission* contends in its reply that the organisation of such seminars does indeed constitute a positive step, but that it cannot by any means replace the official measures which the competent national authorities ought to adopt with regard to transporter authorisations.

(b) Admissibility

41. In the plea relating to transporter identification and authorisations, the Commission alleges an infringement of Article 5(A)(1)(a)(i) and (ii) of Directive 91/628. It further claims in its application that Article 6(1) and Article 13(3) and (4) of Regulation No 1/2005 contain an identical obligation. I shall therefore ascertain below the truth of that argument by the Commission.

(i) Transporter identification

42. *Article 5(A)(1)(a)(i) of Directive 91/628* provides that any transporter must be registered in a manner enabling the competent authority to identify the person rapidly in the event of failure to comply with the requirements of that directive. In the Commission's view, paragraphs 3 and 4 of Article 13 of Regulation No 1/2005 are equivalent to that article. *Article 13(3) of Regulation No 1/2005* provides that the competent authority must record authorisations¹⁹ in a manner enabling the competent authority to identify transporters rapidly, in particular in the event of failure to comply with the requirements of that

¹⁹ — Article 13(3) of Regulation No 1/2005 further specifies that these are the authorisations referred to in Article 10(1) or Article 11(1) of that regulation. Article 10(1) of that regulation lays down requirements for transporter authorisation, while Article 11(1) lays down requirements for long-journey transporter authorisations.

regulation. In my view, it can be stated that the obligation laid down in Article 13(3) of Regulation No 1/2005 is identical to that laid down in Article 5(A)(1)(a)(i) of Directive 91/628. The obligation arising under those two articles relates to the keeping of a register of transporters enabling rapid identification of a transporter when he does not comply with the requirements laid down by the directive or the regulation. Consequently, the Commission is, in my view, entitled to rely in its application on Article 13(3) of Regulation No 1/2005.

(ii) Transporter authorisations

44. Under Article 5(A)(1)(a)(ii) of Directive 91/628, every transporter must hold an authorisation issued by a competent authority of a Member State in which his activity is registered or, if an undertaking established in a third country is concerned, by a competent authority of a Member State of the Union, subject to a written undertaking by the person in charge of the transport undertaking to comply with the requirements of the Community veterinary legislation in force. The Commission views as equivalent to that article Article 6(1) of Regulation No 1/2005, which states that no person is to act as a transporter unless he holds an authorisation issued by a competent authority pursuant to Article 10(1) or, for long journeys, Article 11(1) of Regulation No 1/2005, and that a copy of the authorisation is always to be made available to the competent authority when the animals are transported.

43. In my view, a different conclusion must be drawn with regard to Article 13(4) of Regulation No 1/2005. That paragraph lays down the obligation for the competent authority to record authorisations in an electronic database.²⁰ This is a new obligation which does not appear in Directive 91/628. Consequently, the Commission is not, in my view, entitled to rely on Article 13(4) of Regulation No 1/2005.

20 — Article 13(4) of Regulation No 1/2005 further provides that the transporter's name and authorisation number are to be made publicly available during the period of validity of the authorisation; public access to other data in relation to transporters' authorisations is to be granted by Member States in accordance with Community and/or national rules regarding privacy protection; the database is also to include decisions notified under Article 26(4)(c) and (6).

45. It is, admittedly, apparent from those two articles — Article 5(A)(1)(a)(ii) of Directive 91/628 and Article 6(1) of Regulation No 1/2005 — that every transporter is obliged to hold an authorisation which has been issued to him by the competent authority.

However, it must be borne in mind that, in addition to requiring, in Article 6(1), that every transporter must hold an authorisation, Regulation No 1/2005 provides that that authorisation must be issued pursuant to Article 10(1) or 11(1) of that regulation. Article 10(1) of Regulation No 1/2005 lays down the requirements relating to transporter authorisation,²¹ whereas Article 11(1) lays down the requirements relating to long-journey transporter authorisations.²² It is to be pointed out that Directive 91/628 does not contain any similar precise requirements relating to transporter authorisations. The obligations arising under Regulation No 1/2005 being more precise than those arising under Directive 91/628, the Commission cannot, in my view, rely in its application on Article 6(1) of Regulation No 1/2005. Consequently, the Commission is not, in my view, entitled to rely in its application on Article 6(1) of Regulation No 1/2005.

(c) Legal assessment

46. With regard to the apportionment of the burden of proof, in proceedings under Article 226 EC, the Commission must prove the existence of the failure by a Member State to fulfil obligations.²³ On the other hand, it is incumbent on the defendant Member State to contest substantively and in detail the information produced and the consequences thereof.²⁴ In support of the plea relating to transporter identification and authorisations, the Commission relies on the findings made by the FVO in the course of mission No 7273/2004 (points 5.3 and 6.3 of the mission report) and mission No 8042/2006 (points 5.3 and 6.3 of the mission report), and it must therefore be ascertained whether the facts, which the FVO found in the course of those two missions and on which the Commission relies in its application, prove that that plea is well founded.

21 — Article 10(1) of Regulation No 1/2005 provides that the competent authority is to grant authorisations to transporters provided that the applicants are established, or in the case of applicants established in a third country, are represented, in the Member State where they apply for authorisation; if the applicants have demonstrated that they have sufficient and appropriate staff, equipment and operational procedures at their disposal to enable them to comply with the regulation, including where appropriate good practice guides; and if they have no record of serious infringements of Community legislation and/or national legislation on the protection of animals in the three years preceding the date of the application except where the applicant demonstrates to the satisfaction of the competent authority that it has taken all necessary measures to avoid further infringements.

22 — Article 11(1) of Regulation No 1/2005 provides that the competent authority is to grant authorisations to transporters provided that they comply with the provisions of Article 10(1) and have submitted valid certificates of competence for drivers and attendants; valid certificates of approval for all means of transport by road to be used for long journeys; details of the procedures enabling transporters to trace and record the movements of road vehicles under their responsibility and to contact the drivers concerned at any time during long journeys; and contingency plans in the event of emergencies.

23 — See, for example, Case C-157/94 *Commission v Netherlands* [1997] ECR I-5699, paragraph 59; Case C-147/00 *Commission v France* [2001] ECR I-2387, paragraph 27; *Commission v Ireland*, cited above in footnote 11, paragraph 41; Case C-490/04 *Commission v Germany* [2007] ECR I-6095, paragraph 48; and judgment of 22 December 2008 in Case C-189/07 *Commission v Spain*, paragraph 82.

In the literature, see, with regard to the burden of proof resting upon the Commission, for example, Cremer, W., in Calliess, C. and Ruffert, M. (eds), *ELIV/EGV. Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtscharta. Kommentar*, 3rd edition, Beck, Munich, 2007, p. 1991, point 33, who observes that an action is well founded if the facts relied on by the Commission are correct and if it is apparent from those facts that there has been a breach of Community law which must be attributed to the defendant Member State; it is for the Commission to prove the existence of those facts. Eberhard, G. and Riedl, E., in Mayer, H. (ed.), *Kommentar zu EU- und EG-Vertrag*, Manz, Vienna, 2005, commentary on Article 226, point 76, point out that, in accordance with settled case-law, the Commission carries the burden of proof with respect to breaches of Community law.

24 — In that regard, see, for example, Case 272/86 *Commission v Greece* [1988] ECR 4875, paragraph 21, Case C-119/04 *Commission v Italy* [2006] ECR I-6885, paragraph 41, and Case C-82/06 *Commission v Italy* [2007] ECR I-83, paragraph 35; see also point 35 of my Opinion in Case C-265/06 *Commission v Portugal* [2008] ECR I-2245.

(i) Transporter identification

47. It is apparent from point 5.3 of mission report No 8042/2006 that the Greek Ministry of Rural Development and Food required the competent local authorities to send to it the list of transporters holding an authorisation.²⁵ The report states that the list of all transporters, which existed at the time of the review procedure, was available at ministry level. It is also apparent from the report that the lists were available to all the competent local authorities which were visited.

48. Point 5.3 of mission report No 8042/2006 also states that the information relating to the loading area in vehicles, which the Ministry of Rural Development and Food had required, was not available for all transporters: in the prefecture of Serres, that information did not exist for any transporter, in the prefecture of Kilkis, it existed for one third of transporters and, in the prefecture of Messinia, it did not exist for either of the two main importers of cattle.

49. However, point 6.3 of mission report No 8042/2006 states that the measures

proposed by the Ministry of Rural Development and Food were implemented in a limited and incomplete fashion. It is true that the lists of transporters were available, but they were not always updated and did not contain all the information, such as that relating to the loading area or that relating to a person's written undertaking to comply with the requirements laid down by Directive 91/628.

50. In my view, the facts which emerge from points 5.3 and 6.3 of mission report No 8042/2006 are not sufficient, for a number of reasons, to demonstrate that the Hellenic Republic has infringed its obligation to ensure that transporters can be rapidly identified.

51. Firstly, it is clear from the aforementioned facts that the lists of transporters were available both at the level of the Ministry of Rural Development and Food and to all the competent local authorities which the FVO inspectors visited.

52. Secondly, as regards the Commission's claim that the lists of transporters are not updated, it should be pointed out, as the

²⁵ — It is also apparent from this point of the report that the Greek Ministry of Rural Development and Food asked the competent local authorities to send those lists to it by 20 June 2005. However, the remainder of the report, where it is indicated that those lists were available, does not make clear whether or not the competent local authorities discharged that obligation.

Greek Government contends in its defence²⁶ and rejoinder,²⁷ that that claim is very imprecise. The Commission relies on the general assertions contained in point 6.3 of mission report No 8042/2006, for example, that the lists of transporters ‘were not always updated’ and that they ‘did not contain all the information’, without stating specifically and exactly how many of the lists examined were not updated.²⁸

53. Thirdly, as regards the claim that the lists of transporters are incomplete because they do not contain the information relating to the loading area, it should be pointed out that the obligation to ensure that that information is provided as part of the registration of transporters does not stem from Directive 91/628 and Regulation No 1/2005. The written undertaking by the person in charge of the transport undertaking that he will comply with the requirements of the Community veterinary legislation in force is, under Article 5(A)(1)(a)(ii) of Directive 91/628, necessary for the sole purpose of issuing the authorisation which the competent authority of a Member State of the Union grants to an undertaking established in a third country; nowhere in that article is there an obligation to attach that written undertaking to the list of transporters. Regulation No 1/2005 likewise

contains no specific provisions on the obligation to ensure the provision of information relating to the loading area.

54. Fourthly, when the Commission claims that the breach of Community law results from an administrative practice, it must prove that that practice is, to some degree, of a consistent and general nature.²⁹ The Commission must therefore show that the authorities of the Member State have developed a consistent and persistent practice which is contrary to Community law. However, in this case, it is not apparent from the evidence produced that the practice in question was consistent and persistent; the evidence produced by the Commission concerns only the findings made in 2006, and not findings relating to a longer period of time over which a consistent practice developed.

55. Consequently, in my opinion, the part of the plea relating to transporter identification, in which the Commission alleges that the

²⁶ — See point 8 of the defence.

²⁷ — See point 8 of the rejoinder.

²⁸ — In that regard, it should be mentioned that, whenever the Court has found a failure to fulfil obligations under Community law due to an administrative practice in a particular Member State, it has based its judgment on very specific data relating to the number of instances in practice in which the Community provisions had not been complied with; see, for example, the judgment of 6 October 2005 in Case C-502/03 *Commission v Greece*, paragraph 8, and Case C-423/05 *Commission v France* [2007] ECR I-47, paragraph 12.

²⁹ — See, to that effect, Case C-387/99 *Commission v Germany*, cited above in footnote 11, paragraph 42; *Commission v Ireland*, cited above in footnote 11, paragraph 28; *Commission v Belgium*, cited above in footnote 12, paragraph 29; Case C-441/02 *Commission v Germany*, cited above in footnote 11, paragraph 50; and *Commission v Italy*, cited above in footnote 12, paragraph 21.

Hellenic Republic has failed to fulfil its obligations under Article 5(A)(1)(a)(i) of Directive 91/628 and Article 13(3) of Regulation No 1/2005, should be rejected as unfounded.

(ii) Transporter authorisations

56. It is apparent from point 5.3 of mission report No 7273/2004 that, in 2004, the competent authorities discovered transporters without an authorisation or holding an authorisation which had expired. It is apparent from point 6.3 of mission report No 7273/2004 that some progress had been made in ensuring that transporters held authorisations, although the legislation intended to improve that system was not adopted as originally envisaged. That point of the report also states that the requirement to check travel times for long-distance transport operations was not complied with in three of the four prefectures inspected.

57. It is apparent from point 5.3 of mission report No 8042/2006 that, in order to improve the authorisation system, the Greek Ministry of Rural Development and Food required the competent local authorities to notify all transporters in writing that they were responsible for the renewal of their authorisation, that they were obliged to make that application for renewal one month before the expiry of the authorisation which they had been granted and that they were obliged to notify all changes relating to drivers or vehicles. The report states that 49 of the 54 competent local

authorities replied that transporters had been informed of their obligations; the competent authorities in all the prefectures which the FVO inspectors visited also sent out notifications. It is also apparent from that point of the mission report that, in the prefecture of Laconia, all transporters whose authorisations had expired were sent a general reminder to renew their authorisations, but the reminders were not addressed to particular transporters.

58. Point 5.3 of mission report No 8042/2006 also indicates that the Greek Ministry of Rural Development and Food was not notified of any infringement relating to transporter authorisations. In the prefecture of Laconia, an authorisation was issued to a transporter despite the fact that he had not provided a written undertaking within the meaning of Article 5(A)(1)(a)(ii) of Directive 91/628; the representatives of the competent local authorities stated that certain transporters from third countries held invalid authorisations, but that those authorisations had not been issued by the competent Greek authorities.

59. It is apparent from point 6.3 of mission report No 8042/2006 that the measures which the Greek Ministry of Rural Development and Food proposed were implemented in a limited and incomplete manner. It is also stated in that point that that ministry did not ensure that transporters from third countries had a valid authorisation within the meaning of Article 5(A)(1)(a)(ii) of Directive 91/628.

60. In my view, the facts cited do not prove the Commission's allegation that the Hellenic Republic has failed to fulfil its obligations under Article 5(A)(1)(a)(ii) of Directive 91/628 relating to transporter authorisations.

62. In my view, the findings cited are in no way capable of demonstrating the existence of an administrative practice which is, to some degree, of a consistent and general nature, whereby the Greek authorities have infringed their Community obligations.

61. Point 5.3 of mission report No 7273/2004 does admittedly indicate that the competent authorities discovered transporters without an authorisation or holding an authorisation which had expired, but does not indicate either how many transporters were inspected and the names and number of the prefectures concerned, or how many of the transporters inspected did not hold an authorisation or held an out-of-date authorisation. In its application, the Commission does, it is true, maintain that this did not concern an 'isolated case',³⁰ as the Greek Government contends, but a 'large number of individual cases',³¹ but it does not mention the number of cases, or rather the percentage of the cases inspected in which the transporters did not hold an authorisation or held an out-of-date authorisation. The observations in point 6.3 of that mission report are likewise too general, in my view, for it to be possible, on the basis thereof, to prove the Commission's claims, just as it is not clear from mission report No 8042/2006 how many transporters did not have valid authorisations or had an authorisation which was out of date. On the contrary, the Greek Ministry of Rural Development and Food was not notified of any infringement relating to transporter authorisations, and mission report No 8042/2006 mentions only isolated cases of infringements.

63. Consequently, in my view, the part of the plea relating to transporter authorisations, in which the Commission alleges that the Hellenic Republic has failed to fulfil its obligations under Article 5(A)(1)(a)(ii) of Directive 91/628, should be rejected as unfounded.

(d) Outcome of the analysis

64. In my view, the plea relating to transporter identification and authorisations, in which the Commission claims that the Hellenic Republic has failed to fulfil its obligations under Article 5(A)(1)(a)(i) and (ii) of Directive 91/628 and Article 13(3) of Regulation No 1/2005, should be rejected as unfounded.

³⁰ — See point 7 of the defence.

³¹ — See point 43 of the application.

3. Plea relating to the checking of route plans

(a) Arguments of the parties

65. The *Commission* complains that the Hellenic Republic has failed to adopt the necessary measures to ensure that the competent local authorities carry out the obligatory checking of route plans for the transport of animals. The Commission alleges that the Hellenic Republic has thereby failed to fulfil its obligations under Article 5(A)(2)(b), the first indent of Article 5(A)(2)(d)(i), points (b) and (d) of the first paragraph of Article 8 and Article 9 of Directive 91/628. The Commission further alleges a failure to fulfil the obligations laid down in Articles 5(4) and 15(1) of Regulation No 1/2005.

66. The Commission notes that, in the course of missions No 9002/2003 (point 5.4.2 of the mission report), No 7273/2004 (points 5.3 and 6.4 of the mission report) and No 8042/2006 (points 5.4.2 and 6.4 of the mission report), the FVO inspectors found irregularities in certain route plans. The irregularities consisted in particular of an overlong journey time stated in the majority of the route plans checked, relating to animals transported from other Member States and destined for slaughter in the Hellenic Republic.

67. The *Greek Government* maintains that, by circular in 2003, it introduced an appropriate system for checking the information contained in route plans. In addition, that government contends that, if the competent authorities of other Member States have drawn up those route plans, the Greek authorities are unable to check the information shown in those plans and the criteria which the competent authorities of other Member States have taken into consideration. In the view of the Greek Government, the competent Greek authorities are able to check only the execution of those route plans.

68. The *Commission* counters that argument put forward by the Greek Government by saying that the checking of route plans is aimed at ensuring compliance with the requirements laid down by Directive 91/628. In its view, checking must not be limited to merely verifying the existence of the route plan or merely verifying the information contained in it, but also includes examining whether the transport of animals complies with the Community legislation on the protection of animals during transport. The Commission points out that this is also borne out by Article 9(1) of Directive 91/628, which lays down the measures which must be adopted if it is found during transport that the provisions of that directive are not being complied with. The Commission therefore submits that it is obvious that merely checking the data mentioned in route plans is not sufficient for the purpose of fulfilling the obligations laid down by Directive 91/628. As regards the Greek Government's contention that, in 2003, by circular, it introduced an appropriate system for checking the informa-

tion contained in route plans, the Commission maintains that, during specific inspections, the FVO found that the checks had not been carried out satisfactorily.

(b) Admissibility

69. With regard to the plea relating to the checking of route plans, the Commission alleges a failure to fulfil the obligations laid down in Article 5(A)(2)(b)(i), the first indent of Article 5(A)(2)(d)(i), points (b) and (d) of the first paragraph of Article 8 and Article 9 of Directive 91/628. The Commission also alleges an infringement of Articles 5(4) and 15(1) of Regulation No 1/2005 as equivalent to the aforementioned articles of Directive 91/628.

70. *Article 5(A)(2)(b) of Directive 91/628* provides that Member States are to ensure that the transporter draws up, for animals which are to be traded between Member States or exported to third countries, and in cases where the journey time exceeds eight hours, a route plan which is to be attached to the health certificate during the journey, and which also indicates any staging and transfer points. That route plan is to be drawn up in accordance with the specimen in Chapter VIII of the Annex; that chapter defines the precise content of the route plan which must contain particulars of the transporter, the means of transport, the animal species and number of animals, the place of departure and place of destination, the itinerary and journey time, the number of the health certificate or

accompanying document, the stamp of the veterinarian of the place of departure, the stamp of the competent authority of the point of exit, the date and time of departure, the name and signature of the person in charge during the journey and particulars of the stopping or transfer point. *The first indent of Article 5(A)(2)(d)(i) of Directive 91/628* provides that Member States are to ensure that the transporter ensures that the original copy of the route plan is duly drawn up and completed by the appropriate persons at the appropriate time.

71. The Commission considers that *Article 5(4) of Regulation No 1/2005* is equivalent to the provisions of Directive 91/628 which lay down the obligation for the transporter to complete the route plan. That article provides that, for long journeys between Member States and with third countries for domestic Equidae other than registered Equidae, and domestic animals of bovine, ovine, caprine and porcine species, transporters and organisers are to comply with the provisions on the journey log set out in Annex II. Point 2 of Annex II to Regulation No 1/2005 provides that the journey log must comprise the following sections: planning, place of departure, place of destination, declaration by transporter and anomaly report. Annex II to Regulation No 1/2005 governs the content of the sections of the journey log more specifically in individual sections.

72. The provisions of Directive 91/628 therefore require the transporter to draw up a *route plan*, whereas the provisions of Regulation No 1/2005 require him to draw up a *journey*

log. A comparison between the two shows that Section 1 of the *journey log*, relating to planning, corresponds to a large extent to the route plan provided for by Directive 91/628. However, the remaining parts of the journey log provided for by Regulation No 1/2005 contain more specific information than the route plan provided for by Directive 91/628. Consequently, Section 2 of the journey log, for example, which relates to the place of departure, includes the name and address of the keeper at the place of departure; Section 3, which relates to the place of destination, includes particulars of the keeper and of the official veterinarian as well as data on the checks performed; Section 4 contains the original declaration by the transporter; Section 5 comprises an original anomaly report. From a strictly formal point of view, it is admittedly true that the obligation to draw up Section 1 of the journey log, which relates to planning, corresponds to the obligation to draw up a route plan, but it must be borne in mind that the journey log is an integrated whole and that, by drawing up only Section 1 of the journey log, the transporter does not fully discharge his obligation under Article 5(4) of Regulation No 1/2005 relied on by the Commission. I am therefore of the view that the Commission is not entitled to allege, in the context of the plea relating to the checking of route plans, a failure to fulfil the obligation arising under Article 5(4) of Regulation No 1/2005.

73. In this plea, the Commission also relies on *points (b) and (d) of the first paragraph of Article 8 of Directive 91/628*. This article provides that Member States are to ensure that the competent authorities check that the requirements of the directive have been complied with, by carrying out non-discriminatory inspections of means of transport and animals arriving at their place of

destination (point (b)) and the particulars on the accompanying documents (point (d)). In the Commission's view, the provision which is equivalent to that article is *Article 15(1) of Regulation No 1/2005* which provides that the competent authority is to carry out at any stage of the long journey appropriate checks on a random or targeted basis to verify that declared journey times are realistic and that the journey complies with the regulation and in particular that travel times and rest periods have complied with the limits set out in Chapter V of Annex I to the regulation.

74. With regard to the obligation to perform checks, it can be stated that the obligation laid down in Article 15(1) of Regulation No 1/2005 does not correspond entirely to that laid down in points (b) and (d) of the first paragraph of Article 8 of Directive 91/628. While the obligations laid down in Directive 91/628 relate to the checking of means of transport, animals and, generally, to the checking of the particulars on the accompanying documents, the obligations laid down in Regulation No 1/2005 relate to the checking of journey times, rest periods and to the general requirements that the journey complies with that regulation. In addition, the obligation to carry out checks, laid down in Article 15(1) of Regulation No 1/2005, relates only to checks during long journeys, whereas the first paragraph of Article 8 of Directive 91/628 is not limited to such checks. The further difference between those two articles arises from the fact that, on the basis of Article 15(1) of Regulation No 1/2005, the competent authority is to carry out *at any stage* of the long journey appropriate checks on a random

or targeted basis, whereas point (b) of the first paragraph of Article 8 of Directive 91/628 relates only to checks of means of transport and animals *arriving at their place of destination*.³² Consequently, in my view, the Commission is not entitled to rely on Article 15(1) of Regulation No 1/2005.

arranging for the humane slaughter of the animals.³³ The other paragraphs of Article 9 of Directive 91/628 contain provisions on the consequences of failure by the person in charge of the means of transport to comply with the instructions of the competent authority, and provisions on the existing rights of appeal to the national authorities. So far as this obligation is concerned, the Commission does not rely on any provision of Regulation No 1/2005.

75. Article 9 of Directive 91/628 contains provisions on the course of action to be adopted if it is found that the provisions of the directive have not been complied with. Paragraph 1 of that article provides that, if it is found in the course of transport that the provisions of the directive are not being or have not been complied with, the competent authority of the place at which such a finding is made is to require the person in charge of the means of transport to take any action which the competent authority considers necessary in order to safeguard the welfare of the animals concerned. Depending on the circumstances of each case, such action may include: (a) arranging for the journey to be completed or the animals to be returned to their place of departure by the most direct route, provided that this course of action would not cause unnecessary suffering to the animals; (b) arranging for the animals to be held in suitable accommodation with appropriate care until the problem is resolved; (c)

(c) Legal assessment

76. In support of the plea relating to the checking of route plans, the Commission relies, in the first place, on point 5.4.2 of mission report No 9002/2003 from which it is apparent that the documentation accompanying the animals during a transport operation inside the Hellenic Republic did not include the time of departure. It is also apparent from that point that the FVO inspectors also detected irregularities in certain documents which the competent national authorities had already checked.

32 — Point (a) of the first paragraph of Article 8 of Directive 91/628 does admittedly contain the obligation to inspect means of transport and animals *during transport by road* but, in the context of this plea, the Commission relies only on points (b) and (d) of the first paragraph of Article 8 of that directive. See point 49 of the application.

33 — Article 9 of Directive 91/628 further provides that the destination and use of the carcasses of these animals are to be governed by the provisions laid down in Directive 64/433/EEC (Council directive of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1963-1964 (I), p. 185)). That article also provides that any measure taken pursuant to the second subparagraph is to be notified by the competent authority by the Animo network according to the procedures, including financial procedures, to be established according to the procedure provided for in Article 17.

Copies of health certificates and route plans, which were accompanying animals from Spain, France and the Netherlands, destined for slaughter in the Hellenic Republic, were inconsistent, and important information was missing. The journey times stated in most of the route plans were inconsistent and unfeasible. The intermediate rest period (between the intermediate post in the south of Italy and the place of destination in the Hellenic Republic) was not entered in the route plan.

some additional anomalies which the competent national authorities had not noticed.³⁵

77. The Commission also relies on point 5.4 of mission report No 7273/2004,³⁴ from which it is apparent that the Greek Ministry of Rural Development and Food required the competent authorities in each of the various prefectures to submit a programme of checks for 2003; only 6 of the 54 prefectures submitted such a programme, that is, 11.1% of the prefectures. It is also apparent from that point that, in the prefecture of Phthiotis, 92% of consignments were checked at their place of destination in the second quarter and 83% in the third quarter of 2003. In the prefecture of Karditsa, the checks were carried out at the place of departure; in the prefecture of Larissa, three to five unexpected checks were carried out each quarter in slaughterhouses, but transport operations over long routes were not included in those checks. In the prefecture of Trikala, checks were carried out during unloading after long-distance transport operations. It is further apparent from that point that, in 2003, the national authorities inspected 6 808 vehicles and found three infringements and 24 anomalies in the accompanying documents. During their mission, the FVO inspectors also found

78. Point 6.4 of mission report No 7273/2004 states that the majority of prefectures had not submitted a programme for checking route plans and that there was no consistency among the prefectures inspected as to how, if at all, to ensure that route plans were checked.³⁶

79. The Commission also relies on points 5.4.2 and 6.4 of mission report No 8042/2006. It is apparent from point 5.4.2 of that report that, in the prefecture of Kilikis, the competent national authority indicated that it had not carried out any checking of route plans. In the prefectures of Messinia, Laconia, Thesprotia and Elis, the competent national authorities did not find, during the checks, that the route plans estimated an overlong journey time or that they contained anomalies. In the prefecture of Thesprotia, the competent local authorities retained original route plans instead of returning them to the transporters who were required to return them to the competent

34 — In its application, the Commission does not expressly rely on this point of mission report No 7273/2004, but I cite its content because that point is important in the context of this plea.

35 — For example, in the prefecture of Larissa, overlong journey times were stated in numerous route plans and, in the prefecture of Phthiotis, important information was missing from route plans.

36 — The Commission also relies on point 5.3 of mission report No 7273/2004 from which, it claims, it is apparent that the checking of route plans was carried out only in one of the four prefectures inspected: the prefecture of Phthiotis. But what the Commission claims, namely that the checking of route plans was carried out only in that prefecture, is not stated in that point of the report; rather, what it states is that, in the prefecture of Phthiotis, transporters' written undertakings relating to the plans of their usual routes were verified.

authority of the place of origin. At Patras, the competent national authorities checked route plans only as far as the port but not for the remainder of the journey as far as the final destination; the competent national authorities therefore did not discover that the crossing time on many journeys to the islands of Lesbos and Chios was longer than the authorised time. Point 6.4 of mission report No 8042/2006 indicates that the competent local authorities, which had drawn up a programme for checking route plans, did not achieve the objectives pursued either, since, generally speaking, they relied on the controls carried out in slaughterhouses, but also often carried out checks when they were not particularly useful.

- to check means of transport and animals arriving at their place of destination (point (b) of the first paragraph of Article 8 of Directive 91/628);
- to check the particulars on the accompanying documents (point (d) of the first paragraph of Article 8 of Directive 91/628);
- to adopt measures in the event of irregularities (Article 9 of Directive 91/628).

80. It is apparent from the provisions relied on by the Commission in this plea that it alleges failure by the Hellenic Republic to fulfil five of its obligations:

- to ensure that transporters have a route plan (Article 5(A)(2)(b) of Directive 91/628);
- to ensure that transporters' route plans are appropriate (first indent of Article 5(A)(2)(d)(i) of Directive 91/628);

81. On the basis of the evidence produced by the Commission, it is not possible, in my view, to find that the Hellenic Republic has failed to fulfil its obligation to ensure that transporters have a route plan (Article 5(A)(2)(b) of Directive 91/628). It is not apparent from any mission report that the transporters *did not have* route plans. Consequently, the part of the plea in which the Commission alleges a failure to fulfil the obligation arising under Article 5(A)(2)(b) of Directive 91/628 should, in my view, be rejected as unfounded.

82. The obligation to ensure that transporters' route plans are appropriate (first indent of Article 5(A)(2)(d)(i) of Directive 91/628)

includes the obligation for route plans to contain all the necessary particulars and for those particulars to be correct and appropriate (for example, journey times should not be too long). As regards the failure to fulfil that obligation, the Commission has indeed produced evidence that some route plans showed anomalies. However, in my view, that evidence is not precise enough to be capable of proving the existence of a consistent and general breach of the Greek authorities' obligations. Thus, the FVO inspectors found, for example, that anomalies appeared in 'certain documents', that the journey times 'in the majority of route plans' were inconsistent and unfeasible and that 'many transport operations' had a journey time longer than that authorised. There is no doubt that some route plans in the Hellenic Republic contained irregularities, but the percentage of audited cases in which such irregularities were apparent is not clear from the Commission's evidence. In my view, the Commission has not produced data precise enough to be capable of proving failure to fulfil the obligation relating to the appropriateness of route plans. Consequently, the part of the plea in which the Commission alleges a failure to fulfil the obligation arising under the first indent of Article 5(A)(2)(d)(i) of Directive 91/628, should, in my view, be rejected as unfounded.

83. With regard to the obligation to inspect means of transport and animals arriving at their place of destination (point (b) of the first paragraph of Article 8 of Directive 91/628), the Commission has not, in my view, produced any proof. Nowhere in the above-mentioned reports is it expressly indicated that vehicles were not inspected *at the place of destination*. On the contrary, for the prefec-

ture of Phthiotis, the relevant item of evidence states³⁷ that 92% of consignments were checked at the place of destination in the second quarter and 83% in the third quarter of 2003. Consequently, the part of the plea in which the Commission alleges a failure to fulfil the obligation arising under point (b) of the first paragraph of Article 8 of Directive 91/628 should be rejected as unfounded.

84. In my view, the part of the plea in which the Commission alleges a failure to fulfil the obligation to check the particulars on the accompanying documents (point (d) of the first paragraph of Article 8 of Directive 91/628) is not well founded either. Although the competent national authorities of particular prefectures did not submit programmes of checks in 2003, it is apparent from point 5.4 of mission report No 7273/2004 that such checks were nevertheless carried out in the prefectures which were visited by the FVO inspectors. Admittedly, in certain cases, the competent national authorities did not find the existing irregularities, but checks were nevertheless performed — for 2003, there is, for example, clear information that 6 808 inspections were carried out. I am therefore of the view that the part of the plea in which the Commission alleges a failure to fulfil the obligation arising under point (d) of the first paragraph of Article 8 of Directive 91/628 should be rejected as unfounded.

37 — See point 77 of this Opinion.

85. As regards the obligation to take action in the event of irregularities (Article 9 of Directive 91/628), I believe that the Commission has not produced evidence to support this part of the plea. The finding of a failure to fulfil the obligation arising under that article would require the production of evidence proving that the competent Greek authorities did not take appropriate action on finding an infringement. However, the Commission has produced no evidence regarding the number of cases or regarding the prefectures in which the competent national authorities had found infringements and did not take appropriate action in that regard. Consequently, in my view, the part of the plea in which the Commission alleges a failure to fulfil the obligation arising under Article 9 of Directive 91/628 should be rejected as unfounded.

4. Plea relating to the absence of rest facilities in ports

(a) Arguments of the parties

87. The *Commission's* complaint against the Hellenic Republic is that missions No 9211/2003 (point 5.2.2 of the mission report) and No 8042/2006 (point 5.4.2 of the mission report) demonstrate that it did not ensure that, in ferry ports or in their immediate vicinity, there were rest facilities where the animals could have rested for 12 hours after being unloaded from the vessel if the journey time at sea came to 29 hours. In that regard, the Commission alleges, in the grounds of its application, failure to fulfil the obligation arising under point 48.7(b)³⁸ of Chapter VII of the Annex to Directive 91/628 and a failure to fulfil the obligation arising under point 1.7(b) of Chapter V of Annex I to Regulation No 1/2005. However, in its claims, it seeks only a declaration of failure to fulfil the obligation arising under point 48.7(b) of Chapter VII of the Annex to Directive 91/628.

(d) Outcome of the analysis

86. I am of the opinion that the plea relating to the checking of route plans, in which the Commission alleges failure to fulfil the obligations arising under Article 5(A)(2)(b), the first indent of Article 5(A)(2)(d)(i), points (b) and (d) of the first paragraph of Article 8 and Article 9 of Directive 91/628, should be rejected as unfounded.

88. With regard to one of the ports (Igoumenitsa), the Commission notes that there are places which could be used for rest facilities, but that it is not possible to use them for that purpose for want of any authorisation to that effect given by the competent authorities. According to the Commission, the Greek Government, in its reply to the reasoned

38 — With regard to the correct mode of citation of point 48.7(b) of Chapter VII of the Annex to Directive 91/628, see footnote 5 to this Opinion.

opinion, did indicate that it had taken the steps necessary to ensure that there were resting points in that port but, according to the Commission, that government did not produce any evidence to support that contention.

transit in the Community takes longer than 29 hours is incorrect.

89. The *Greek Government* contends that the Commission has not mentioned any specific cases in which transport by sea between two Community ports took longer than 29 hours. It notes that point 48.7(b) of Chapter VII of the Annex to Directive 91/628 does not require Member States to ensure rest facilities in ports; in the Greek Government's submission, that provision imposes on transporters the obligation to provide, within their route plan, which includes transport by sea, for stops at appropriate rest facilities. In addition, the Greek Government states that, in practice, no transport between a Greek ferry port and another ferry port in the Community takes longer than 29 hours. In that regard, the Greek Government points out that the crossing time between the port of Bari in Italy and the Greek port of Igoumenitsa, which is the main Greek port of transit, does not exceed 10 or 11 hours, while the crossing time between the port of Bari and Patras does not exceed 15 hours.

90. In its reply, the *Commission* disputes the Greek Government's arguments. It contends that it is clear from the wording of point 48.7(b) of Chapter VII of the Annex to Directive 91/628 that Member States must ensure that there are rest facilities in ports or in their immediate vicinity. In addition, the Commission submits that the Greek Government's contention that no crossing between any Greek port of transit and another port of

(b) Admissibility

91. As regards the plea relating to the absence of rest facilities, the Commission alleges failure to fulfil the obligation arising under point 48.7(b) of Chapter VII of the Annex to Directive 91/628 and point 1.7(b) of Chapter V of Annex I to Regulation No 1/2005. However, I must stress the fact that the Commission alleges failure to fulfil the obligations arising under the provisions of both those legal acts only in the grounds of its application, whereas, in its actual heads of claim, it alleges only failure to fulfil the obligation arising under point 48.7(b) of Chapter VII of the Annex to Directive 91/628, but not failure to fulfil the obligation arising under point 1.7(b) of Chapter V of Annex I to Regulation No 1/2005.

92. *Point 48.7(b) of Chapter VII of the Annex to Directive 91/628* provides that, 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.

that the Hellenic Republic's failure was persistent. Consequently, in the context of this plea, I shall examine only whether the Hellenic Republic has failed to fulfil its obligations under point 48.7(b) of Chapter VII of the Annex to Directive 91/628.

93. *Point 1.7(b) of Chapter V of Annex I to Regulation No 1/2005* provides that, 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 1.2 to 1.4 of that chapter of Annex I.

(c) Legal assessment

95. In examining this plea relating to the absence of rest facilities in ports, it is necessary, first of all, to explain the nature of a Member State's obligations under point 48.7(b) of Chapter VII of the Annex to Directive 91/628.

94. A comparison of those two provisions shows that they contain the same obligation to rest the animals for 12 hours in the case of transport by sea on regular links where vehicles are loaded on to vessels without unloading the animals.³⁹ Consequently, it might, theoretically, be open to the Commission to rely on point 1.7(b) of Chapter V of Annex I to Regulation No 1/2005. However, in its actual claims, the Commission does not seek a declaration of failure to fulfil the obligation arising under that point of the annex to Regulation No 1/2005. In addition, it explained at the hearing that the provisions of Directive 91/628 were sufficient for a failure to fulfil obligations to be found in this case, and that it relied on the provisions of Regulation No 1/2005 only in order to prove the assertion

96. In the first place, it is true that that provision does not expressly state that Member States must ensure that there are rest facilities for animals in ports, but that obligation is to be inferred, in my view, from the requirement that the animals are to rest for 12 hours after unloading at the port of destination or in its immediate vicinity. I am of the view that it is not possible to accept the Greek Government's argument that, under the abovementioned provisions, only transporters have an obligation to provide in their route plan — which includes transport by sea — for stops at appropriate rest facilities. If

39 — [This footnote concerns only the Slovene version of the Opinion.]

the journey time cannot be included within the journey time under points [48.]2 to [48.]4 of Chapter VII of the Annex to Directive 91/628,⁴⁰ the animals will have to rest in the ports and not elsewhere en route.

maximum journey time for pigs and domestic solipeds is 24 hours.⁴⁴ All other animal species may be transported for 14 hours, after which they must be given a rest period of one hour to be given liquid and if necessary fed, then they may be transported for a further 14 hours.⁴⁵

97. In the second place, it should be pointed out that the Commission's submission that rest facilities are necessary when the journey time exceeds 29 hours is incorrect. It is apparent from points [48.]2 to [48.]4 of Chapter VII of the Annex to Directive 91/628 that permitted maximum journey times vary and that they depend on the equipment of the vehicle in which the animals are transported and on the animal species transported.⁴¹ Journey times for domestic solipeds and domestic animals of the bovine, ovine, caprine and porcine species must not, in principle, exceed *eight hours*.⁴² That maximum journey time may be extended if the vehicles by which the animals are transported meet certain requirements, such as: if they have sufficient bedding, sufficient feed and water, and if they are equipped with ventilation and with panels which can be used to create separate compartments.⁴³ If vehicles meet those requirements, the maximum journey time for unweaned animals is *nine hours*, after which they must be given a rest period of at least one hour, then they may be transported for a further *nine hours*. The

98. It is clear from the explanations set out in point 97 of this Opinion that, in particular cases, animals must also rest if the journey by sea is shorter and that, in those cases as well, it will be necessary to ensure that there are rest facilities in the ports.⁴⁶ Consequently, it is also impossible to accept the Greek Government's argument that rest facilities are not necessary because no journey by sea between a Greek ferry port and another Community ferry port takes longer than 29 hours.

99. In addition, it should be pointed out that, when the Commission submits that the provision of rest facilities in ports or in their

40 — For more details in this regard, see, point 97 of this Opinion.

41 — In the literature, with regard to the maximum journey times for animals, Radford, M., 'Animal passions, animal welfare and European policy making', in Craig, P. and Harlow, C. (eds), *Lawmaking in the European Union*, Kluwer Law International, London, 1998, p. 424, points out that the positions of the Member States on this question were very diverse at the time of the adoption of Directive 91/628.

42 — See point [48.]2 of Chapter VII of the Annex to Directive 91/628.

43 — For the precise provisions on the additional requirements to be met by vehicles, see point [48.]3 of Chapter VII of the Annex to Directive 91/628.

44 — See point [48.]4(b) and (c) of Chapter VII of the Annex to Directive 91/628.

45 — See point [48.]4(d) of Chapter VII of the Annex to Directive 91/628.

46 — In practice, account will also have to be taken of the fact that it is often difficult to ensure rest at the time when the maximum journey time allowed for a particular animal species expires; if, for example, the transport of pigs by sea takes 23 hours and the unloading takes half an hour, it will have to be ensured that the rest facility for the animals is situated in the immediate vicinity of the port. In addition, account must be taken of the Court's ruling in *ZVK*, cited above in footnote 5: transport includes the time taken to load and unload the animals; the total journey time is thereby further extended.

immediate vicinity must be ensured if the journey time exceeds 29 hours, it manifestly takes account of the journey time for all other animal species and not of the specific provisions relating to the journey time for unweaned animals or pigs and domestic solipeds; in that regard, it calculates the maximum journey time according to the formula '14+1+14' (14 hours of transport + one hour of rest + 14 hours of transport). However, as is apparent from the judgment in *Interboves*,⁴⁷ such a calculation is incorrect. In that case, the Court held that implementing such a rest period at sea is almost impossible in practice, since it would mean the vessel having to berth for at least one hour after 14 hours at sea, before sailing on for a further period of 14 hours.⁴⁸ It therefore ruled that, in such a case, the maximum journey time at sea was 28 hours.⁴⁹

100. In this case, the Commission relies, in support of the plea relating to the absence of rest facilities, on point 5.2.2 of mission report No 9211/2003 and point 5.4.2 of mission report No 8042/2006.

101. It is apparent from point 5.2.2 of mission report No 9211/2003 that there are no rest facilities for animals in Greek ferry ports. The

competent national authorities attempted to justify this by the fact that it was possible to include the sea crossing in the permitted total journey time, but the FVO inspectors demonstrated that this was not always possible. In certain cases in which animals were transported from the south of Italy to the Hellenic Republic, the journey by sea took longer than the permitted maximum journey time, and the animals should therefore have been provided with rest facilities.

102. Point 5.4.2 of mission report No 8042/2006 specifically states that there are no rest facilities in the ports of Patras and Piraeus themselves or in their immediate vicinity. In the immediate vicinity of the port of Igoumenitsa, there is admittedly an area which could be used as a rest facility for animals being transported, but the competent authorities have not authorised its use for that purpose.

103. It is apparent from the aforementioned mission reports that the Hellenic Republic has not, in any of its ports, ensured that there is a rest facility for animals, and consequently the plea relating to the absence of rest facilities is, in my view, well founded.

⁴⁷ — Cited above in footnote 5.

⁴⁸ — See *Interboves*, cited above in footnote 5, paragraph 30. See also point 33 of the Opinion of Advocate General Mengozzi in *Interboves*, from which it is clear that a rest period of one hour during transport by sea is redundant.

⁴⁹ — *Interboves*, cited above in footnote 5, paragraph 32.

(d) Outcome of the analysis

104. By not taking the measures necessary to ensure the provision of rest facilities for animals after unloading in ports or in their immediate vicinity, the Hellenic Republic has failed to fulfil its obligations under point 48.7(b) of Chapter VII of the Annex to Directive 91/628.

106. The Commission notes *inter alia* that, in some Greek prefectures — Achaea, Kilis and Serres — no provision was made to carry out an inspection of means of transport and animals, either because those prefectures lacked the staff, or because the inspection had already been carried out in the Greek ports. The Commission points out that the pilot programme which provided for additional inspections did not cover all the regions, including Thessaly, in respect of which irregularities had been found in the course of mission No 9211/2003.

5. Plea relating to the insufficient inspection of means of transport and animals

(a) Arguments of the parties

105. The *Commission* submits that it is apparent from mission reports No 9211/2003 (point 5.2.1), No 7273/2004 (point 5.5) and No 8042/2006 (point 5.5) that the Hellenic Republic has not adopted the appropriate measures for the inspection of means of transport and animals in order to prevent the illegal transport of animals by road. In connection with this plea, the Commission alleges that the Hellenic Republic has failed to fulfil its obligations under Article 8 of Directive 91/628 and Article 27(1) of Regulation No 1/2005.

107. The *Greek Government* submits that Article 8 of Directive 91/628 and Article 27(1) of Regulation No 1/2005 should be interpreted as meaning that, for there to be an infringement of those provisions, it is necessary to prove the complete absence of any checks in respect of the protection of animals during transport, and that it is for the competent authorities to determine how and where those checks must be carried out. Article 8 of Directive 91/628 provides for different forms of check, and not only for the roadside check to which the Commission refers. The Greek Government contends that the implementation of the pilot programme under which joint teams have carried out inspections in specified prefectures together with the penalties imposed on transporters and the introduction of various mutual assistance procedures with certain Member States prove that the Greek authorities are carrying out the checking required by the

Community provisions. By way of proof, the Greek Government attaches to its defence some documents proving the imposition of penalties and the initiation of mutual assistance procedures.⁵⁰

108. The *Commission* counters this by saying that, in order to comply with the Community provisions, the inspection of means of transport and animals must be appropriate, sufficient and effective. In the Commission's view, the checks of route plans which the Greek authorities carried out were not effective and appropriate for the purpose of preventing the illegal transport of animals by road.

(b) Admissibility

109. As regards the plea relating to the insufficient inspection of means of transport and animals, the Commission alleges that the Hellenic Republic has failed to fulfil its obligations under Article 8 of Directive 91/628 and Article 27(1) of Regulation No 1/2005.

110. In its *first paragraph*, Article 8 of Directive 91/628 provides that Member States are to ensure that the competent authorities check that the requirements of the directive have been complied with,⁵¹ by carrying out non-discriminatory inspections of: (a) means of transport and animals during transport by road; (b) means of transport and animals arriving at their place of destination; (c) means of transport and animals at markets, at places of departure, at staging points and at transfer points; (d) the particulars on the accompanying documents. In its *second paragraph*, that article requires such inspections to be carried out on an adequate sample of animals and, in its *third paragraph*, it requires the competent authority to submit to the Commission an annual report concerning the inspections carried out. The *fourth paragraph* provides that checks may also be carried out during the transport of animals, and the *fifth paragraph* provides that checks carried out by authorities responsible for the general application of laws in a Member State are not to be affected by this article.

111. Article 27(1) of Regulation No 1/2005, which, in the Commission's view, is equivalent to Article 8 of Directive 91/628, provides in its *first sentence* that the competent authority is to check that the requirements of the regulation have been complied with, by carrying out non-discriminatory inspections of animals, means of transport and accompanying documents. In its *second sentence*, Article 27(1) of Regulation No 1/2005 further provides that

⁵⁰ — They concern the following decisions imposing fines: No 1537 of 17 March 2006, No 2324 of 19 April 2007, No 5505 of 24 September 2007, No 1556 of 23 August 2006, No 16 of 8 January 2007 and No 2961 of 2 October 2006. The documents proving the initiation of mutual assistance procedures with other Member States are: No 308252 of 25 September 2006, No 308313 of 14 November 2006, No 261133 of 7 March 2007, No 304840 of 12 June 2007, No 304908 of 24 July 2007 and No 304856 of 25 June 2007.

⁵¹ — That article further provides that the competent authorities are to check such compliance in accordance with the principles and rules of control laid down in Directive 90/425/EEC (Council directive of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29)).

such inspections must be carried out on an adequate proportion of the animals transported each year within each Member State and, in its *third sentence*, that the proportion of inspections is to be increased where it is established that the provisions of the regulation have been disregarded.⁵²

112. A comparison of those two provisions shows that the first paragraph of Article 8 of Directive 91/628 lays down precisely where non-discriminatory inspections of means of transport and animals must be carried out: during transport by road, on arriving at their place of destination, at markets, at places of departure, at staging points and at transfer points; it also provides that the competent authorities must check the particulars on the accompanying documents. The first sentence of Article 27(1) of Regulation No 1/2005 contains a general rule that the competent authority must carry out non-discriminatory inspections of animals, means of transport and accompanying documents. Perhaps it might actually be argued that those differences in wording between the two articles are not such as to alter the content of the obligations of the competent authorities, and that, under those two articles, the competent authorities are obliged to undertake non-discriminatory inspections of animals, means of transport and accompanying documents. However, I must point out that the first

sentence of Article 27(1) of Regulation No 1/2005 confers on the competent authorities a greater degree of latitude when deciding where and how they will undertake those inspections. By contrast, the types of inspection provided for by the first paragraph of Article 8 of Directive 91/628 are laid down cumulatively and the competent authority cannot, on its own initiative, decide which types of inspection it will carry out and which it will not undertake. Consequently, it cannot, in my view, be maintained that the obligations arising under the first paragraph of Article 8 of Directive 91/628 and under the first sentence of Article 27(1) of Regulation No 1/2005 are in all respects identical, and the Commission is therefore not entitled to rely on the first sentence of Article 27(1) of Regulation No 1/2005.

113. The second sentence of Article 27(1) of Regulation No 1/2005, which provides that inspections must be carried out on an adequate proportion of animals, corresponds to the second paragraph of Article 8 of Directive 91/628, which provides that inspections must be carried out on an adequate sample of animals, and the Commission is therefore entitled to rely on that article of Regulation No 1/2005. The third to fifth paragraphs of Article 8 of Directive 91/628 have no equivalent in Article 27(1) of Regulation No 1/2005.⁵³

52 — That article further provides that the proportions are to be determined in accordance with the procedures referred to in Article 31(2) of Regulation No 1/2005.

53 — Article 27(2) of Regulation No 1/2005 could be equivalent to the third paragraph of Article 8 of Directive 91/628, but the Commission does not refer to it.

(c) Legal assessment

animals in Greece was still a very widespread phenomenon.

114. In this plea, the Commission relies on the findings made in point 5.2.1 of mission report No 9211/2003, point 5.5 of mission report No 7273/2004 and point 5.5 of mission report No 8042/2006.

115. It is apparent from point 5.2.1 of mission report No 9211/2003 that, in the Greek prefectures, inspection is carried out only in the ports and at border posts, but it is never carried out elsewhere en route. In addition, the competent authorities have not agreed with the police that the latter will facilitate roadside inspections.

116. It is apparent from point 5.5 of mission report No 7273/2004 that a meeting was convened between representatives of the Greek Ministry of Rural Development and Food, on the one hand, and of the Greek Ministry of Public Order, on the other, to organise roadside inspections; such an inspection would have begun to be carried out only once other specified administrative measures were adopted.⁵⁴ The representative of the Ministry of Rural Development and Food acknowledged that the illegal transport of

117. It is apparent from point 5.5 of mission report No 8042/2006 that the Greek Ministry of Rural Development and Food asked four prefectures (Kilkis, Serres, Thesprotia and Achaea) to carry out roadside inspections under the pilot programme with police assistance. In response to this, the competent authorities in the prefecture of Serres informed the ministry that they had no intention of carrying out such an inspection; the competent authorities in the prefecture of Kilkis indicated that there was insufficient staff to proceed with such an inspection; and in the prefecture of Thesprotia, the inspection was planned on two occasions, but was not carried out due to other police priorities. The competent authorities in the prefecture of Achaea indicated that they were concentrating the inspection on the port of Patras and that they did not need police assistance, for the port authorities stopped the vehicles.

118. It is also apparent from point 5.5 of mission report No 8042/2006 that the Greek Ministry of Rural Development and Food required all 54 Greek prefectures to introduce further measures to prevent illegal transport. Only 21 prefectures responded to that demand, while 33 prefectures did not respond to it at all. Of the seven prefectures which were visited by the FVO inspectors, two responded to that request: Karditsa and Trikala. In the prefecture of Karditsa, four transporters were fined, one of whom was also fined in the prefecture of Trikala.

⁵⁴ — Point 5.5 of mission report No 7273/2004 does not indicate the nature of these measures.

119. As regards this plea, it should first of all be explained that, in its application, the Commission does indeed formally rely on the whole of Article 8 of Directive 91/628 but, strictly speaking, alleges only two specific infringements.

120. Firstly, as the Greek Government rightly points out,⁵⁵ the Commission puts forward in this plea evidence proving the failure to fulfil the obligations laid down in point (a) of the first paragraph of Article 8 of Directive 91/628, relating to the obligation to provide for inspections of means of transport and animals during transport *by road*. Secondly, it produces evidence proving the failure to implement the ‘further measures’⁵⁶ which had been proposed by the Greek Ministry of Rural Development and Food.

121. As regards the ‘further measures’ which were to have been implemented, it is not clear from the evidence what measures these were and whether they were to have been implemented at the places of destination, the places of departure or in ports or whether they involved checking the particulars on accompanying documents. In my view, that evidence does not serve to identify which of the obligations provided for by Article 8 of Directive 91/628 it is claimed that the Hellenic Republic has failed to fulfil. Moreover, it is to be noted that I have already observed in connection with the plea relating to the checking of route plans that the Commission has not demonstrated that the Hellenic

Republic has failed to fulfil its obligations under points (b) and (d) of the first paragraph of Article 8 of Directive 91/628.⁵⁷ Consequently, the plea relating to the insufficient inspection of means of transport and animals, so far as it concerns the failure to fulfil the obligation to implement ‘further measures’, should be rejected.⁵⁸

122. In relation to this plea, I shall therefore concentrate my analysis on ascertaining whether the Hellenic Republic has infringed point (a) of the first paragraph of Article 8 of Directive 91/628.

123. In my view, it is possible, on the basis of the information cited, which is taken from the mission reports, to find that the plea relating to the insufficient inspection of means of transport and animals, so far as it concerns the inspection of means of transport and animals *by road*, is well founded. It is apparent from the aforementioned reports that, from 2003 to 2006, the inspection of means of transport and

57 — As regards the unfoundedness of that part of the plea relating to the failure to fulfil the obligations arising under point (b) of the first paragraph of Article 8 of Directive 91/628, see point 83 of this Opinion; as to the unfoundedness of that part of the plea relating to the failure to fulfil the obligations arising under point (d) of the first paragraph of Article 8 of Directive 91/628, see point 84 of this Opinion.

58 — In that regard, I would add that the Greek Government’s argument that, in order to find an infringement of the first paragraph of Article 8 of Directive 91/628, it is necessary to prove the total absence of inspection of means of transport and animals and that the competent authorities enjoy unfettered discretion when determining how and where those inspections are to be carried out cannot be accepted. The types of inspection listed in points (a) to (d) of the first paragraph of Article 8 of Directive 91/628 are cumulative, and not alternative, in nature and, by carrying out only one type of inspection, Member States do not discharge all their obligations under the first paragraph of Article 8 of Directive 91/628.

55 — See point 16 of the defence.
56 — See point 118 of this Opinion.

animals during transport by road was almost non-existent. The insufficient inspection was carried out only in the ports and at the border posts, but almost never on the road.

124. It should also be pointed out that the inspection of transport by road, which is the commonest form of transport used for animals, is of still greater importance because, for the animals, such transport is, as a rule, more stressful than other forms of transport, while the conditions in which animals destined for slaughter are transported are usually the worst.⁵⁹

125. As regards the item of evidence which the Greek Government annexes to its defence and by which it proves that, firstly, penalties were imposed in the prefectures of Achaia, West Attica, Thesprotia and Pella and that, secondly, the Greek authorities introduced various mutual assistance procedures with the authorities of other Member States, it should be pointed out that, with the exception of the two abovementioned measures,⁶⁰ the measures were all implemented after the expiry of the period prescribed in the reasoned opinion for fulfilling the obligations, that is, 5 September 2006. According to settled case-law, the question whether a

Member State has failed to fulfil its obligations must be determined by reference to the situation at the end of the period laid down in the reasoned opinion.⁶¹ When ruling in proceedings under Article 226 EC, the Court cannot take into consideration developments which took place between the dates of the reasoned opinion and the initiation of proceedings, but must confine itself to examining the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion. In order to prove that it fulfilled its obligations, the Hellenic Republic has produced only two examples of decisions imposing penalties before the expiry of that period,⁶² which, in my view, do not suffice to prove that the Hellenic Republic has discharged its obligations under point (a) of the first paragraph of Article 8 of Directive 91/628.⁶³

(d) Outcome of the analysis

126. By failing to adopt the measures necessary to ensure that inspections of means of transport and animals during transport by road were actually carried out, the Hellenic Republic has failed to fulfil its obligations

59 — See Wilkins, D.B. (ed.), *Animal Welfare in Europe. European Legislation and Concerns*, cited above in footnote 7, pp. 3 and 4.

60 — The two cases cited are: (1) an administrative fine of EUR 2 935 for infringement of Directive 91/628, which was imposed on 17 March 2006 in the prefecture of Achaia for overloading a vehicle and lack of space for the animals to be able to remain in their natural position; and (2) an administrative fine of EUR 1 000 for infringement of Directive 91/628, which was imposed on 23 August 2006 for an inadequate watering system for cattle and a faulty device for watering sheep.

61 — See, to that effect, Case C-384/97 *Commission v Greece* [2000] ECR I-3823, paragraph 35; Case C-152/98 *Commission v Netherlands* [2001] ECR I-3463, paragraph 21; Case C-423/00 *Commission v Belgium* [2002] ECR I-593, paragraph 14; Case C-350/02 *Commission v Netherlands* [2004] ECR I-6213, paragraph 31; Case C-254/05 *Commission v Belgium* [2007] ECR I-4269, paragraph 39; Case C-152/05 *Commission v Germany* [2008] ECR I-39, paragraph 15; and Case C-265/06 *Commission v Portugal*, cited above in footnote 24, paragraph 25.

62 — See footnote 60 to this Opinion.

63 — At the hearing, the Hellenic Republic stated that the infringements had indeed been found before the expiry of the period which had been prescribed in the reasoned opinion for it to fulfil its obligations, but it adduced no evidence to support that assertion; consequently, it is impossible, in my view, to accept that assertion.

under point (a) of the first paragraph of Article 8 of Directive 91/628. The remainder of the plea relating to the insufficient inspection of means of transport and animals must be rejected as unfounded.

the competent authorities impose effective, proportionate and dissuasive penalties on offenders, and submits as proof a list of the decisions imposing administrative fines.⁶⁴

6. Plea relating to the insufficiency of penalties in the case of repeated infringements of the rules on the protection of animals

(b) Admissibility

(a) Arguments of the parties

127. The *Commission* claims that, in the course of missions No 9002/2003 (point 5.4.5 of the mission report), No 9211/2003 (point 5.4 of the mission report), No 7273/2004 (point 6.7 of the mission report) and No 8042/2006 (point 5.4.3 of the mission report), it was found that the Hellenic Republic had not adopted the appropriate measures to ensure that effective, proportionate and dissuasive penalties were imposed on the offenders in the case of repeated or serious infringements of the provisions on the protection of animals during transport. In this plea, the Commission alleges an infringement of Article 18(2) of Directive 91/628 and of Articles 25 and 26(6) of Regulation No 1/2005.

129. In the plea relating to the insufficiency of the penalties in the case of repeated infringements of the rules on the protection of animals, the Commission alleges an infringement of Article 18(2) of Directive 91/628. It submits that Article 25 and, particularly as regards repeated infringements, Article 26(6) of Regulation No 1/2005 are equivalent to that article.

130. *Article 18(2) of Directive 91/628* provides that, in the case of repeated infringements of the directive or an infringement which involves serious suffering for the animals, a Member State must, without prejudice to any other penalties provided for, take the measures necessary to remedy the shortcomings noted, up to and including suspension or even withdrawal of the authorisation referred to in Article 5A(1)(a)(ii) of the same directive. That article further provides

128. The *Greek Government* contends that the Commission has not cited any hard facts in support of its arguments. It maintains that

⁶⁴ — The Greek Government refers to the decisions imposing fines cited in footnote 50 to this Opinion.

that Member States must, when they transpose provisions into their national legislation, provide for the measures which they will take to remedy the shortcomings noted.

131. *Article 25 of Regulation No 1/2005* provides that the Member States are to lay down the rules on penalties applicable to infringements of the provisions of the regulation and take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.⁶⁵ Under that article, the Member States therefore have a general obligation to ensure that penalties are applicable to infringements of that regulation, and not an obligation to ensure that penalties are applicable to repeated infringements, as provided for in Article 18(2) of Directive 91/628. Consequently, Article 25 of Regulation No 1/2005 could, at the very most, be equivalent to Article 18(1) of Directive 91/628, which imposes on Member States the duty to take the appropriate measures to penalise any infringement of that directive by natural or legal persons. However, in its application, the Commission does not allege an infringement of Article 18(1), but an infringement of Article 18(2) of Directive 91/628. Article 25 of Regulation No 1/2005 not being equivalent to that article, the Commission is not, in my view, entitled to rely on it.

⁶⁵ — That article further provides that the Member States are to notify those provisions, as well as provisions for the application of Article 26 of the regulation, to the Commission by 5 July 2006 at the latest and notify it without delay of any subsequent amendment affecting them.

132. *Article 26(6) of Regulation No 1/2005* provides that, in the case of repeated or serious infringements of the regulation, a Member State may temporarily prohibit the transporter or means of transport concerned from transporting animals on its territory, even if the transporter or the means of transport is authorised by another Member State.⁶⁶

133. Under that article of the regulation, the Member State can therefore prohibit a transporter only *temporarily* from transporting animals, whereas under Article 18(2) of Directive 91/628 the Member State is allowed, in general, to take measures to remedy the shortcomings noted, up to and including suspension or even withdrawal of the authorisation. The scope available to the Member State for penalising repeated infringements under Article 26(6) of Regulation No 1/2005 is therefore more restricted than that provided for by Article 18(2) of Directive 91/628, but the wider scope for imposing penalties, provided for by that directive, includes *a maiore ad minus* the temporary

⁶⁶ — That article further provides that such prohibition is possible only if all the possibilities afforded by mutual assistance and exchange of information as provided for in Article 24 of the regulation have been exhausted. Article 24(1) of the regulation provides that the rules and information procedures set out in Council Directive 89/608/EEC of 21 November 1989 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of legislation on veterinary and zootechnical matters (OJ 1989 L 351, p. 34) are to apply for the purposes of the regulation, whereas Article 24(2) provides that each Member State is to communicate details of a contact point for the purposes of the regulation to the Commission, including, where available, an electronic address, within three months of the date of entry into force of the regulation as well as any update of such data. The Commission is to forward details of the contact point to the other Member States within the framework of the Standing Committee on the Food Chain and Animal Health.

prohibition of transporting animals provided for by the regulation in question. Consequently, the Commission is, in my view, entitled to rely on Article 26(6) of Regulation No 1/2005.

infringement gives rise to criminal proceedings.

(c) Legal assessment

134. In order to demonstrate that this plea is well founded, the Commission relies on point 5.4.5 of mission report No 9002/2003, on point 5.4 of mission report No 9211/2003, on point 6.7 of mission report No 7273/2004 and on 5.4.3 of mission report No 8042/2006.

135. It is apparent from point 5.4.5 of mission report No 9002/2003 that the Greek Ministry of Rural Development and Food established a system for checking compliance with the rules on the protection of animals during transport and at the time of slaughter. That system is based on checklists for recording inspections carried out during transport and at the time of slaughter; summaries of the results entered during those inspections are then drawn up. Under that system, a first infringement of the rules on the protection of animals is penalised by a written warning, the second infringement by an administrative fine,⁶⁷ but the third

136. It is also apparent from point 5.4.5 of mission report No 9002/2003 that certain checks carried out by the national authorities were reviewed and that irregularities were found on those occasions.⁶⁸

137. Point 5.4 of mission report No 9211/2003 indicates that, in 2002, nine oral warnings were given, 16 written warnings sent, and one administrative fine imposed, for a total of 26 infringements. There were no suspensions or withdrawals of transport authorisations either in 2001 or in 2002. It was found that four fines of EUR 3 000 had been proposed in order to penalise infringements committed in one prefecture, but that they had not been imposed.

138. Point 6.7 of mission report No 7273/2004 indicates that the system of penalties is not effective, since the basic

67 — A fine of EUR 3 000 to EUR 15 000 is provided for in the case of infringement of the rules on the protection of animals during transport, together with suspension or withdrawal of the transport authorisation, whereas a fine of EUR 1 500 to EUR 3 000 is provided for in the case of an infringement of the rules on the protection of animals at the time of slaughter.

68 — Those irregularities included, for example, a cargo of 2 345 pigs from the Netherlands, 184 of which were dead on arrival, while 150 were in a weak state. The competent local authority notified the Greek Ministry of Rural Development and Food which in turn notified the competent Dutch authorities and the Commission.

checks are weak, that the number of written warnings is insignificant, and that the procedures for enforcing penalties are problematic.

139. It is apparent from point 5.4.3 of mission report No 8042/2006 that the Ministry of Rural Development and Food required the competent authorities in the prefectures to issue a written warning for the first infringement which was not accompanied by serious suffering for the animals, and to impose an administrative fine for a repeated infringement. It required them to withdraw the transporter's authorisation if, after having an administrative fine imposed on him, he continued to infringe the Community legislation on the protection of animals during transport. It also required them to impose an immediate administrative fine if it was apparent that the transport of animals was being carried out without the necessary authorisation or with an authorisation which was out of date. On reviewing the implementation of those requirements imposed by the ministry, it was apparent that, in the port of Patras, only oral, and never written, warnings were issued for infringements, or that another form of penalty was imposed.⁶⁹ During checks at the borders, only oral warnings were issued and sometimes infringements accompanied by serious suffering for the animals remained unpunished.

140. In my view, this plea is not well founded.

⁶⁹ — In that regard, point 5.4.3 of mission report No 8042/2006 does not state what the other form of penalty was.

141. Firstly, the Commission alleges, by this plea, ineffective punishment of *repeated* infringements and attempts to prove it by quoting various reports of missions carried out in the Hellenic Republic. However, within that evidence, data relating to merely isolated infringements are mixed with data relating to repeated infringements. The Commission attempts, therefore, to prove the latter while also referring to cases relating to merely isolated infringements. Secondly, the data which the Commission cites in its application and which come from the mission reports are imprecise and general. Nowhere do the mission reports indicate precisely how many times the infringements were repeated or whether these were repeated infringements committed by the same offender or how serious the repeated infringements were. In addition, it is apparent from this evidence produced by the Commission that some penalties, which were mainly oral and written warnings, were imposed.

(d) Outcome of the analysis

142. Consequently, in my view, the plea relating to the insufficiency of penalties in the case of repeated infringements of the rules on the protection of animals, in which the Commission alleges that the Hellenic Republic has failed to fulfil its obligations under Article 18(2) of Directive 91/628 and Article 26(6) of Regulation No 1/2005, must be rejected as unfounded.

7. Outcome of the analysis of the pleas in law relating to the protection of animals during transport

143. In the light of the foregoing, I am of the opinion that, by failing to take the measures necessary to ensure the provision of rest facilities for animals after unloading, in the ports or in their immediate vicinity, and that inspections of means of transport and animals during transport by road are actually carried out, the Hellenic Republic has failed to fulfil its obligations under point 48.7(b) of Chapter VII of the Annex to and point (a) of the first paragraph of Article 8 of Directive 91/628.

at present carried out by various methods: with an electric current, by a blow to the head, by exposure to carbon dioxide or by captive bolt pistol.⁷¹ However, over recent years, numerous studies⁷² have been carried out in this regard, and new technologies have been introduced, as a result of which certain methods provided for by Directive 93/119 are now obsolete. Since it is envisaged that that directive will in the future be replaced by a new regulation,⁷³ which will take account of new scientific results in the methods of stunning and slaughter, it is all the more important that Member States observe the level of protection of animals at the time of slaughter provided for by Directive 93/119.

C — Analysis of the pleas in law put forward concerning the protection of animals at the time of slaughter

2. Plea relating to the stunning of animals during slaughter

1. Introduction

(a) Arguments of the parties

144. Every year nearly 360 million pigs, sheep, goats and cattle as well as more than 4 000 million poultry are killed in EU slaughterhouses.⁷⁰ In order to avoid unnecessary suffering for those animals at the time of killing, there must be a faultless process and regular maintenance of the facilities for stunning and killing the animals. Stunning is

145. The *Commission* complains that the Hellenic Republic has not adopted the appropriate measures to ensure compliance with

⁷⁰ — This information is taken from the explanatory memorandum to the proposal for a Council regulation on the protection of animals at the time of killing (COM(2008) 553 final, p. 3).

⁷¹ — See point 1(A) of Annex C to Directive 93/119.

⁷² — Thus, for example, Wilkins, D.B. (ed.), *Animal Welfare in Europe. European Legislation and Concerns*, cited above in footnote 7, p. 3, notes that, on the basis of the research carried out into stunning methods, much more is known about, for example, the quantity of electric current needed for the animal to lose consciousness, the manufacture of captive bolt pistols and the use of carbon dioxide to stun pigs.

⁷³ — Proposal for a Council regulation on the protection of animals at the time of killing, cited in footnote 70, p. 3.

the rules on the stunning of animals during slaughter and has thereby failed to fulfil its obligations under Articles 3, 5(1)(d) and 6(1) of Directive 93/119.

146. The Commission points out that, during missions No 9002/2003 (point 5.4.4 of the mission report), No 7273/2004 (point 5.6 of the mission report) and No 8042/2006 (point 5.7 of the mission report), the FVO found that, in certain slaughterhouses, the checking of the stunning of pigs and cattle was insufficient and that, as a result, it was possible that the animals were not effectively stunned. Similarly, it was found that the interval of time between stunning and bleeding was too long, with the result that animals were able to regain consciousness.

147. In addition, the Commission maintains that, in the course of mission No 8042/2006, the FVO again found irregularities concerning the stunning of animals. The FVO inspectors found, *inter alia*, a failure to maintain stunning equipment, a malfunctioning of that equipment and overlong intervals between stunning and bleeding. The Commission further points out that its duty is to determine whether the equipment necessary for stunning and slaughter is being used rapidly and effectively in order to spare the animals any suffering.

148. The *Greek Government* contends that the Commission's arguments are imprecise and general and that it does not cite in support of them any specific cases of infringement of Community legislation. The Greek Government points out that the irregularities found are, in any event, minimal and that they relate only to isolated cases for which appropriate penalties were imposed. It further submits that it remedied those irregularities by organising various training seminars for veterinarians.

(b) Legal assessment

149. Under Article 3 of Directive 93/119, animals must be spared any avoidable excitement, pain or suffering during movement, lairaging, restraint, stunning, slaughter or killing. Article 5(1)(d) of Directive 93/119 provides that solipeds, ruminants, pigs, rabbits and poultry brought into slaughterhouses for slaughter must be bled in accordance with the provisions of Annex D to that directive. That annex contains more specific rules on the bleeding of animals: point 1 provides that, for animals which have been stunned, bleeding must be started as soon as possible after stunning and be carried out in such a way as to bring about rapid, profuse and complete bleeding. In any event, the bleeding must be carried out before the animal regains consciousness.

150. Under Article 6(1) of Directive 93/119, instruments, restraint and other equipment and installations used for stunning or killing must be designed, constructed, maintained and used in such a way as to achieve rapid and effective stunning or killing in accordance with the provisions of that directive; that article further provides that the competent authority is to check that the instruments, restraint and other equipment used for stunning or killing comply with the above principles and is to check regularly to ensure that they are in a good state of repair and will allow the aforementioned objective to be attained.

- to ensure that the equipment used for stunning and killing is maintained properly and used effectively (Article 6(1) of Directive 93/119).

152. In order to prove the allegation of infringement, the Commission relies on the findings contained in several mission reports.

151. In this plea, the Commission alleges, therefore, failure to fulfil three obligations:

- to spare animals suffering before and during slaughter (Article 3 of Directive 93/119);
- to bleed animals rapidly and effectively (Article 5(1)(d) of in conjunction with Annex D to Directive 93/119);

153. It is apparent from point 5.4.4 of mission report No 9002/2003 that, at the three slaughterhouses which were visited by the FVO inspectors, the equipment used to stun animals and the maintenance of that equipment complied, substantially, with the Community provisions, except at one pig slaughterhouse where the pigs had not been effectively stunned with the equipment which administers electric shocks. Problems also appeared during the actual stunning of animals. At one of the slaughterhouses, the tethering, stunning and bleeding of only three cows took an hour; in addition, the interval of time between the stunning and slaughter of two cattle was 120 seconds, which enabled the animals to regain consciousness. Similarly, during the slaughter of sheep, the interval between stunning and slaughter was so long

(37 seconds) that the animals may have regained consciousness. The demonstration of those procedures supported the conclusion that irregularities arose during them and that those procedures were not routinely followed.

point 5.7 of mission report No 8042/2006. Thus, in the slaughterhouse which they inspected in the prefecture of Kilkis, the FVO inspectors found numerous irregularities.⁷⁵ The same was true in the prefectures of Serres,⁷⁶ Thesprotia,⁷⁷ Messinia,⁷⁸ Laconia⁷⁹ and Elis.⁸⁰

154. Irregularities in the slaughter of animals at numerous slaughterhouses are also apparent from point 5.6 of mission report No 7273/2004. At a slaughterhouse in the prefecture of Phthiotis, there was no equipment for watering the animals in their temporary lairage facilities and, in addition, the floor was not level. In the prefecture of Larissa, the slaughterhouse which had been notified as non-operational prior to the mission was in fact operating, but the equipment in it was found to be unfit.⁷⁴ At another slaughterhouse which was inspected, there was no current for the electrical stunning of animals. In the prefecture of Trikala, the stunning of pigs at the slaughterhouse visited by the FVO inspectors was ineffective, and the interval between stunning and slaughter was too long. The stunning of cattle was not effective either and, in that regard, no spare stunning equipment was available.

155. Numerous irregularities during the slaughter of animals are also apparent from

156. As regards the failure to fulfil the obligation to spare animals suffering before and during slaughter (Article 3 of Directive 93/119), I am of the view that the Commission's complaint is well founded. It is apparent from points 153 to 155 of this Opinion that, in the majority of the slaughter-

⁷⁴ — More specifically, in that slaughterhouse, there were no restraining straps for the stunning of animals, no screens displaying the voltage or current, no spare stunning equipment, and the tongs used to administer electric shocks were not properly cleaned.

⁷⁵ — These irregularities included ineffective stunning of cattle, insufficient maintenance and cleaning of tethering equipment, insufficient maintenance of the equipment for the stunning of all animal species, malfunctioning of the captive bolt pistol and non-functioning of the electrical equipment for the stunning of sheep, in addition to which there was no suitable spare stunning equipment available.

⁷⁶ — In one of the three slaughterhouses visited in the prefecture of Serres, the area for sick animals was inadequate and there was an uncovered manhole; in addition, the watering installations were not working. In the second slaughterhouse, the equipment for the stunning of small ruminants was unsuitable. In the poultry slaughterhouse, crude and unsuitable equipment for shackling the poultry was discovered, the water in the waterbath used to stun the poultry was overflowing. During stunning, the amperage was too low, with the result that the poultry were not effectively stunned.

⁷⁷ — In the two slaughterhouses which were visited in the prefecture of Thesprotia, the FVO inspectors discovered unsuitable stunning equipment, the absence of spare stunning equipment, poor maintenance of the animal rest facilities and no facilities for watering the animals. In one of the two slaughterhouses, slaughter was recorded at a later time than that at which it was actually carried out, because, on the date when slaughter was carried out, authorisation had not been issued.

⁷⁸ — In the prefecture of Messinia, the FVO inspectors discovered overlong intervals between stunning and slaughter and the absence of spare stunning equipment.

⁷⁹ — At a relatively new slaughterhouse in the prefecture of Laconia, the FVO inspectors found that there were overlong intervals between the stunning and slaughter of pigs, the captive bolt pistol was inadequately maintained and that the measuring device for the electrical stunning of animals did not work.

⁸⁰ — In the prefecture of Elis, it was found that the time elapsing in the slaughterhouse between stunning and killing was too long, and that the screen on the device for measuring current was not displaying correct data.

houses which the FVO inspectors checked, irregularities arose during the procedure for stunning the animals, which caused them suffering. It can also be affirmed that this practice was consistent, for this was a question of numerous infringements which were found between 2003 and 2006. Moreover, the irregularities which the FVO inspectors found are real irregularities: the prefectures in which there were irregularities in the slaughterhouses visited by the inspectors are clearly apparent from the reports. The number of slaughterhouses visited and the prefectures where they are situated are clearly indicated in the reports, just as the irregularities which there were in those slaughterhouses are precisely described in those reports. The Greek Government's argument that the Commission's arguments are imprecise and general cannot therefore be upheld. Nor is it possible, in my view, to accept the Greek Government's argument that it remedied those irregularities by the training of veterinarians. Whatever the quality of the veterinarian training may have been, it does not guarantee that the Community rules on the protection of animals at the time of slaughter are in practice being observed. The Greek Government has therefore, in my view, failed to fulfil its obligation under Article 3 of Directive 93/119 to spare animals suffering before and during slaughter.

157. As regards the failure to fulfil the obligation to kill animals rapidly and effectively (Article 5(1)(d) of in conjunction with Annex D to Directive 93/119), the Commis-

sion has not, in my view, produced any evidence. The majority of the infringements mentioned, which are taken from the mission reports, concern irregularities which arose during the stunning of animals, irregularities connected with overlong intervals between stunning and slaughter, and inadequate maintenance of the installations used for stunning and slaughter. However, it is nowhere indicated in the mission reports that any irregular killing of animals was found. Consequently, in my view, the part of the plea in which the Commission alleges a failure to fulfil the Greek Government's obligations under Article 5(1)(d) of in conjunction with Annex D to Directive 93/119 should be rejected as unfounded.

158. As regards the failure to fulfil the obligation to maintain properly and use effectively the equipment for stunning and killing (Article 6(1) of Directive 93/119), I take the view that this complaint by the Commission is well founded. Numerous irregularities in the maintenance and use of that equipment are apparent from the mission reports. It can be concluded from those mission reports that animals were caused suffering as a result of the poor maintenance, malfunctioning or incorrect use of the installations for stunning and killing. Those infringements also took place over quite a long period of time, from 2003 to 2006. I am therefore of the view that the Greek Government has failed to fulfil its obligations under Article 6(1) of Directive 93/119.

(c) Outcome of the analysis

159. Consequently, I am of the view that, by not taking the measures necessary to ensure compliance with the rules relating to the stunning of animals at the time of slaughter, the Hellenic Republic has failed to fulfil its obligations under Articles 3 and 6(1) of Directive 93/119.

3. Plea relating to ensuring the necessary inspections and controls in slaughterhouses

(a) Arguments of the parties

160. As regards the plea relating to ensuring the necessary inspections and controls in slaughterhouses, the *Commission* alleges that the Hellenic Republic has failed to fulfil its obligations under Article 8 of Directive 93/119.

161. The Commission claims that considerable irregularities were found in slaughterhouses in the course of missions No 7273/2004 (point 5.6 of the mission report) and No 8042/2006 (point 5.7 of the mission report), and that the Hellenic Republic has not adopted the necessary measures so that inspections and controls are appropriately ensured in slaughterhouses.

It complains primarily that the Greek Government has not fully implemented the action plan, which it had announced, for ensuring inspections in slaughterhouses. That plan included provision for a further inspection of all slaughterhouses in all Greek prefectures before the end of 2001. It also criticises the Greek authorities for not cooperating sufficiently with the FVO inspectors. The Commission refers to the example of a slaughterhouse which was due to be visited by the inspectors but was not accessible because the competent veterinary office of the prefecture concerned had suspended the operation of that slaughterhouse two weeks before the FVO mission. It also notes that it was impossible to gain access to certain slaughterhouses which were due to undergo an inspection, owing to strikes which were announced only one day before the mission.

162. The *Greek Government* contends that it has difficulty in identifying precisely what breaches of obligations are alleged against it. In any event, it submits that it cannot be accused of failing to fulfil its obligations under Article 8 of Directive 93/119, since the competent veterinarians carried out proper controls, training seminars were organised and all slaughterhouses were reinspected.

163. The *Commission* disputes those arguments of the Greek Government and claims that the organisation of training seminars, while indeed a positive measure, most certainly cannot be the only solution to the consistent practice at issue.

(b) Legal assessment

164. In this plea, the Commission alleges that the Hellenic Republic has failed to fulfil its obligations under Article 8 of Directive 93/119, which provides that inspections and controls in slaughterhouses are to be carried out under the responsibility of the competent authority, which must at all times have free access to all parts of slaughterhouses in order to ascertain compliance with the directive. However, such inspections and controls may be carried out at the same time as controls carried out for other purposes.

165. In order to prove the Hellenic Republic's breach of the obligations relating to inspections and controls in slaughterhouses, the Commission relies on point 5.6 of mission report No 7273/2004, from which it is apparent that, on 11 July 2001, the Greek Ministry of Rural Development and Food required the competent authorities in each of the prefectures to undertake the inspection of all slaughterhouses in order to determine whether those slaughterhouses were in compliance with the provisions of Directive 93/119. The initial time-limit set for discharging that obligation was the end of 2001. That obligation to carry out the inspection had not been discharged when that time-limit was reached; in August 2003, the ministry therefore sent to the competent authorities in each of the prefectures a revised checklist and a model summary of an inspection report, and set a new time-limit of the end of February 2004 for carrying out the inspection. In September 2004, the ministry asked the competent authorities in each of the prefectures to inform it by 27 September 2004 of the results of the inspections carried out, but by the end of mission No 7273/2004,

which lasted from 4 to 8 October 2004, the competent authorities in 50% of the prefectures had still not produced the results of the inspections.

166. It is then apparent from point 5.7 of mission report No 8042/2006 that the time-limits set for producing the inspection results were extended over and over again and that the time-limit was finally set as 30 July 2005. During mission No 7273/2004, which lasted from 21 February to 1 March 2006, the Greek Ministry of Rural Development and Food indicated that the competent authorities in 38 of the 54 prefectures had undertaken the inspection in slaughterhouses. It is therefore apparent from that mission report that an inspection was carried out in 70.37% of prefectures, but not in 29.63%.

167. In my opinion, it is possible to find, on the basis of those data, that the plea by which the Commission complains that the Hellenic Republic did not undertake an inspection in slaughterhouses and has thus failed to fulfil its obligations under Article 8 of Directive 93/119 is well founded.

168. Firstly, it is apparent from the aforementioned data that the Hellenic Republic did not ensure that an effective inspection was carried out in slaughterhouses, since the time-limits for implementing the inspections were being extended over and over again and the

competent authorities did not carry out those inspections within the prescribed time frames. Secondly, after many extensions of the time-limit or, to be more precise, *after more than four years* had elapsed since the time-limit first set of the end of 2001, the competent authorities in just 70.37% of the prefectures had carried out inspections. Those facts prove that the Greek authorities developed a consistent practice of not carrying out inspections in slaughterhouses.

ensure inspections and controls in slaughterhouses, the Hellenic Republic has failed to fulfil its obligations under Article 8 of Directive 93/119.

(c) Outcome of the analysis

169. So far as the lack of cooperation by the Greek authorities with the FVO inspectors is concerned, it is to be noted that Article 8 of Directive 93/119 gives rise to no obligation to cooperate with the FVO inspectors.⁸¹ Moreover, the Commission indicated at the hearing that it did not allege lack of cooperation by the Greek authorities as a specific plea.⁸²

171. On the basis of the above reasoning, I am of the opinion that, by not adopting the measures necessary to ensure inspections and controls in slaughterhouses, the Hellenic Republic has failed to fulfil its obligations under Article 8 of Directive 93/119.

170. In my view, it must, therefore, be held that, by not taking the measures necessary to

4. Outcome of the analysis of the pleas in law concerning the protection of animals at the time of slaughter

81 — Such an obligation to cooperate could be inferred, at the most, from Article 14(3) of that directive, which provides that a Member State in whose territory a check is being carried out is to give all the necessary assistance to the experts in carrying out their duties. However, since the Commission does not allege a failure to fulfil the obligations arising under Article 14(3) of Directive 93/119, that article cannot be taken into account in the analysis of the pleas in law.

82 — It should also be pointed out that, as regards the lack of cooperation on the part of the Greek authorities, the Commission does indeed allege a breach of Article 10 EC in the reasoned opinion, but that, in its application, it no longer alleges a breach of that article. This supports the conclusion that the Commission restricted the legal basis of its application as compared with that of the reasoned opinion. Consequently, nor can Article 10 EC be taken into account in the analysis of the pleas in law.

172. On the basis of the analysis of the pleas in law concerning the protection of animals at the time of slaughter, I am of the opinion that, by failing to take the measures necessary to ensure compliance with the rules relating to the stunning of animals during slaughter, and

to ensure inspections and controls in slaughterhouses, the Hellenic Republic has failed to fulfil its obligations under Articles 3, 6(1) and 8 of Directive 93/119.

applied for in the successful party's pleadings. However, under the first subparagraph of Article 69(3) of the Rules of Procedure, the Court may order the parties to bear their own costs where each party succeeds on some and fails on other heads, or where the circumstances are exceptional.

D — *Costs*

173. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been

174. In this case, the Commission's action has been only partially successful, and I therefore suggest that the Court should order that the Commission and the Hellenic Republic bear their own costs.

VI — **Conclusion**

175. In the light of all the foregoing considerations, I suggest that the Court should:

(1) declare that, by failing to take the measures necessary:

- to ensure the provision of rest facilities for animals after unloading, in the ports or in their immediate vicinity, and

- to ensure that inspections of means of transport and animals during transport by road are actually carried out,

the Hellenic Republic has failed to fulfil its obligations under point 48.7(b) of Chapter VII of the Annex to and point (a) of the first paragraph of Article 8 of 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;

(2) declare that, by failing to take the measures necessary:

- to ensure compliance with the rules relating to the stunning of animals at the time of slaughter, and
- to ensure inspections and controls in slaughterhouses,

the Hellenic Republic has failed to fulfil its obligations under Articles 3, 6(1) and 8 of Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing;

- (3) dismiss the remainder of the action;
- (4) order the Commission of the European Communities and the Hellenic Republic to bear their own costs.