



Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 11 September 2014¹

Case C-424/13

Zuchtvieh-Export GmbH
v
Stadt Kempten
(Request for a preliminary ruling

from the Bayerischer Verwaltungsgerichtshof (Germany))

(References for a preliminary ruling — Agriculture — Regulation (EC) No 1/2005 — Protection of animals during transport — Transport of animals from a Member State to a third country — Article 14(1) — Check of the journey log to be carried out by the competent authority of the place of departure before long journeys — Chapter V of Annex I — Provisions relating to watering and feeding intervals, journey times and resting periods — Applicability of those provisions in respect of stages of the journey taking place outside the territory of the European Union)

1. The present request for a preliminary ruling concerns the interpretation of 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 1255/97.²
2. That request has been made in a dispute between Zuchtvieh-Export GmbH ('Zuchtvieh-Export') and the Stadt Kempten (town of Kempten, Germany) regarding the decision taken by the Stadt Kempten, as the competent authority of the place of departure, to refuse clearance for a consignment of cattle to be transported by road from Kempten to Andijan (Uzbekistan).
3. Regulation No 1/2005 requires the organiser of a long journey to submit to the competent authority of the place of departure a journey log, section 1 of which must contain planning for the intended journey. That planning must include the scheduled resting, transfer and exit points. The difficulty raised by the present case is whether or not, in respect of stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination, the organiser of that journey must comply with the requirements relating to journey times and resting periods laid down in Chapter V of Annex I to Regulation No 1/2005.
4. In this Opinion, I will propose that the Court rule that Regulation No 1/2005 must be interpreted as not requiring the organiser of a long journey with its destination in a third country to include in section 1, No 6 of the journey log information on journey times and resting periods in compliance with the requirements laid down in Chapter V of Annex I to that regulation, or the general conditions for the transport of animals in Article 3 of that regulation, in respect of stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination.

¹ — Original language: French.

² — OJ 2005 L 3, p. 1, and — corrigendum — OJ 2011 L 336, p. 86.

5. It follows, in my view, that Article 14(1)(a)(ii) and (c) of Regulation No 1/2005 must be interpreted as meaning that the competent authority of the place of departure may not refuse to stamp the journey log on the ground that the information entered in that log which relates to stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination does not comply with the requirements laid down in Chapter V of Annex I to that regulation or the general conditions applicable to the transport of animals laid down in Article 3 of that regulation.

I – Legal framework

6. The main provisions of Regulation No 1/2005 in the context of the present reference are as follows.

7. Article 1(1) of that regulation defines its scope as follows:

‘This Regulation shall apply to the transport of live vertebrate animals carried out within the Community, including the specific checks to be carried out by officials on consignments entering or leaving the customs territory of the Community.’

8. Article 2 of Regulation No 1/2005 contains a number of definitions, including the following:

(d) “border inspection post” means any inspection post designated and approved in accordance with Article 6 of Directive 91/496/EEC, for carrying out veterinary checks on animals arriving from third countries at the border of the territory of the Community;

...

(f) “competent authority” means the central authority of a Member State competent to carry out checks on animal welfare or any authority to which it has delegated that competence;

...

(h) “control posts” means control posts as referred to in Regulation (EC) No 1255/97;

(i) “exit point” means a border inspection post or any other place designated by a Member State where animals leave the customs territory of the Community;

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

...

(m) “long journey” means a journey that exceeds 8 hours, starting from when the first animal of the consignment is moved;

...

(s) “place of destination” means the place at which an animal is unloaded from a means of transport and

(i) accommodated for at least 48 hours prior to the time of departure; or

(ii) slaughtered;

(t) “place of rest or transfer” means any stop during the journey which is not a place of destination, including a place where animals have changed the means of transport, with or without being unloaded;

...

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

...’

9. Article 3 of Regulation No 1/2005, entitled ‘General conditions for the transport of animals’, provides:

‘No person shall transport animals or cause animals to be transported in a way likely to cause injury or undue suffering to them.

In addition, the following conditions shall be complied with:

(a) all necessary arrangements have been made in advance to minimise the length of the journey and meet animals’ needs during the journey;

(b) the animals are fit for the journey;

...

(f) the transport is carried out without delay to the place of destination and the welfare conditions of the animals are regularly checked and appropriately maintained;

...

(h) water, feed and rest are offered to the animals at suitable intervals and are appropriate in quality and quantity to their species and size.’

10. Article 5 of Regulation No 1/2005 is entitled ‘Planning obligations for the transport of animals’. It provides, in paragraph 4, that ‘[f]or 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’.

11. Article 14 of Regulation No 1/2005, entitled ‘Checks and other measures related to journey log to be carried out by the competent authority before long journeys’, reads as follows in paragraph 1:

‘In the case of long journeys between Member States and with third countries for domestic Equidae and domestic animals of bovine, ovine, caprine and porcine species, the competent authority of the place of departure shall:

(a) carry out appropriate checks to verify that:

(i) transporters indicated in the journey log have the corresponding valid transporter authorisations, the valid certificates of approval for means of transport for long journeys and valid certificates of competence for drivers and attendants;

- (ii) the journey log submitted by the organiser is realistic and indicates compliance with this Regulation;
- (b) where the outcome of the checks provided for in point (a) is not satisfactory, require the organiser to change the arrangements for the intended long journey so that it complies with this Regulation;
- (c) where the outcome of the checks provided for in point (a) is satisfactory, the competent authority shall stamp the journey log;
- (d) send details as soon as possible of the intended long journeys set out in the journey log to the competent authority of the place of destination, of the exit point or of the control post via the information exchange system referred to in Article 20 of Directive 90/425/EEC.'

12. Article 15 of Regulation No 1/2005, entitled 'Checks to be carried out by the competent authority at any stage of a long journey', provides, in paragraph 1, that '[t]he 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'.

13. Article 21 of Regulation No 1/2005, entitled 'Checks at exit points and border inspection posts', reads as follows:

'1. ..., where animals are presented at exit points or border inspection posts, official veterinarians of the Member States shall check that the animals are transported in compliance with this Regulation and in particular:

- (a) that transporters have submitted a copy of a valid authorisation ...;
- (b) that drivers of road vehicles transporting domestic Equidae, domestic animals of bovine, ovine, caprine or porcine species or poultry and attendants have presented a valid certificate of competence ...;
- (c) that the animals are fit to continue their journey;
- (d) that the means of transport by which the animals are to continue their journey complies with Chapter II and where applicable Chapter VI of Annex I;
- (e) that, in case of export, transporters have provided evidence that the journey from the place of departure to the first place of unloading in the country of final destination complies with any international agreement listed in Annex V applicable in the third countries concerned;
- (f) whether domestic Equidae and domestic animals of bovine, ovine, caprine and porcine species have been or are to be transported over long journeys.

2. In the case of long journeys for domestic Equidae and domestic animals of bovine, ovine, caprine and porcine species, official veterinarians of exit points and border inspection posts shall perform and record the checks listed in Section 3 "Place of destination" of the journey log [mentioned] in Annex II. Records of those checks and the check provided for in paragraph 1 shall be kept by the competent authority for a period of at least three years from the date of the checks ...

3. Where the competent authority considers that animals are not fit to complete their journey, they shall be unloaded, watered, fed and rested.'

14. Chapter V of Annex I to Regulation No 1/2005 contains rules relating to watering and feeding intervals, journey times and resting periods. In accordance with points 1.4(d) and 1.5 of that chapter, as far as cattle are concerned, long journeys by road must include, after 14 hours of travel, a rest period of at least one hour during which they must be given liquid and if necessary fed, after which they may be transported for a further period of up to 14 hours, at the end of which animals must be unloaded, fed and watered and be rested for at least 24 hours.

15. Annex II to Regulation No 1/2005 contains provisions relating to the journey log which transporters and organisers are required to keep under Article 5(4) of the regulation for long journeys between Member States and between Member States and third countries. That log comprises five sections relating, respectively, to journey planning, the place of departure, the place of destination, the declaration by transporter concerning, first, the actual itinerary, resting, transfer and exit points, and, second, animal injuries and deaths during the journey, and any anomaly reports. The annex includes the following provisions:

- point 3(e): '[t]he organiser shall ... ensure that the journey log accompanies the animals during the journey until the point of destination or, in case of export to a third country, at least until the exit point';
- point 4: 'Keepers at the place of departure and, when the place of destination is located within the territory of the Community, keepers at the place of destination, shall complete and sign the relevant sections of the journey log. They shall inform the competent authority of any reservations concerning compliance with the provisions of this Regulation using the specimen form in Section 5 as soon as possible';
- point 7: 'If animals are exported to a third country, transporters shall give the journey log to the official veterinarian at the exit point. In the case of export of live bovine animals with refunds, Section 3 of the journey log shall not be required if the agricultural legislation requires a report';
- point 8: 'The transporter referred to in Section 3 of the journey log shall keep ... (a) a copy of the completed journey log; Documents referred to ... shall be made available to the competent authority which granted the transporter's authorisation and upon request to the competent authority of the place of departure, within one month after it has been completed and shall be kept by the transporter for a period of at least three years from the date of the check. Documents referred to in point (a) shall be returned to the competent authority of the place of departure within 1 month after the completion of the journey, unless the [navigation] systems referred to in Article 6(9) were used. ...'

16. The appendix to Annex II to Regulation No 1/2005 contains a specimen of the different sections of the journey log.

II – The main proceedings and the questions referred for a preliminary ruling

17. Zuchtvieh-Export chartered two lorries to transport 62 cattle from Kempten to Andijan via Poland, Belarus, Russia and Kazakhstan, a journey in the order of 7 000 km. The transport operation was to be carried out from 23 April to 2 May 2012. It was described as an exportation without application for export refund.

18. Section 1, No 6 of the journey log submitted in connection with the request for clearance mentioned, as the only places of rest and transfer for the stages of the journey taking place in the third countries concerned, the cities of Brest (Belarus), at which the scheduled arrival was at 13.00 hours on 24 April, and Karaganda (Kazakhstan), at which the scheduled arrival was at 15.00 hours on

30 April, a rest period of 24 hours being planned in each of those cities. According to the order for reference, rest periods were scheduled between those cities during which the animals would be fed and watered, but not unloaded. The final stage of the journey, between Karaganda and Andijan, was to take an additional 29 hours.

19. By a decision of 30 January 2012, the Stadt Kempten refused the clearance of the consignment of cattle, requiring the journey planning to be amended to bring it into line with the provisions of Regulation No 1/2005 also for the stages of the journey taking place in the territory of the third countries concerned, between Brest and Andijan, which had not been the case according to the planning information mentioned in section 1 of the journey log.

20. In addition to an application for an interlocutory injunction, which was not successful, Zuchtvieh-Export brought an action on the merits against the abovementioned decision, which the Bayerischer Verwaltungsgerichtshof (Higher Administrative Court, Bavaria) is currently hearing on appeal. In that action, Zuchtvieh-Export claims *inter alia* that the court should rule that the decision of the Stadt Kempten of 30 January 2012 is unlawful and that the Stadt Kempten should be ordered to issue clearance for the consignment of cattle in question.

21. Before the referring court, the parties to the main proceedings put forward opposing views on the question whether, in the case of a journey commencing in the territory of the European Union but ending outside that territory, Regulation No 1/2005, and in particular Article 14(1) thereof, is also applicable to stages of that journey taking place in the territory of one or more third countries.

22. The referring court supports the view that, under Article 14(1) of Regulation No 1/2005, the competent authority of the place of departure may stamp the journey log for transport operations whose place of departure is in the territory of the European Union and whose place of destination is in the territory of a third country only if the checks which it has carried out demonstrate compliance with the requirements of the regulation outside the territory of the European Union as well. It refers in this regard, first of all, although without any explanation, to Articles 1, 3, 5 and 21(1)(e) of that regulation. It refers, second and above all, to the appendix of Annex II to Regulation No 1/2005, which contains the specimen for the different sections of the journey log, and specifically to section 1, relating to journey planning, which contains the following information:

- Nos 2 to 4 (total expected duration, place and time of departure, place of destination and arrival time), combined with the definition of the notion of ‘journey’ in Article 2(j) of that regulation, which state that information must be provided for the entire journey;
- the declaration by the organiser in No 7 of that section that he has ‘made suitable arrangements to safeguard the welfare of the animals throughout the journey in accordance with the provisions [of that regulation]’.

23. The referring court also observes that, even in the case of exportation, and even though the transporter must hand over the journey log to the official veterinarian at the point of exit in accordance with point 7 of Annex II, he must nevertheless retain a copy and return it to the competent authority of the place of departure in accordance with point 8 of that annex.

24. The referring court considers that the journey log submitted by Zuchtvieh-Export for the stages of the journey in the territory of third countries contains no ‘realistic’ information within the meaning of Article 14(1)(a)(ii) of Regulation No 1/2005. The entries in the journey log do not therefore indicate that the planned journey complies with the requirements of the regulation.

25. It holds in this regard that it is not sufficient for Zuchtvieh-Export to claim that the provisions of the applicable legislation in the third countries through which the journey passes and the applicable international conventions in those countries will be complied with for the stages of the journey outside the territory of the European Union. This must also be indicated in the entries in the journey log. However, that is not the case in this instance, as section 1 of the journey log in question contains no ‘realistic’ information within the meaning of Article 14(1)(a)(ii) of Regulation No 1/2005 because it does not mention any places of rest during the journeys between Brest and Karaganda and between Karaganda and Andijan, the final place of destination. Furthermore, if the authority of the place of departure stamped the journey log, this would suggest that all the arrangements for the journey, up to place of destination, have been approved, which, according to the referring court, is also not appropriate vis-à-vis the authorities in the third countries.

26. According to the opposite view, advocated by Zuchtvieh-Export, approval of the journey planning as part of the checks to be carried out by the competent authority of the place of departure under Article 14(1) of Regulation No 1/2005 covers only stages of the journey to which the regulation is applicable *ratione loci*. A number of provisions of the regulation, including Article 21(1)(e) pertaining to checks at exit points and border inspection posts, suggest that the scheme established by the regulation does not apply beyond the borders of the European Union.

27. Zuchtvieh-Export also claims that the application of the rules of Regulation No 1/2005 outside the territory of the European Union, in particular those of Chapter V of Annex I relating to watering and feeding intervals, journey times and resting periods, are unrealistic and counterproductive; thus, in third countries there is not much hygienically and technically sound accommodation in which to rest the animals being transported with the result that there is high risk of injury and spread of infectious diseases. The rules laid down in the regulation are indissociable from the quality of animal transport infrastructure in the territory of the European Union, such as the control posts (which are places of rest) established there, which Article 36 of that regulation makes subject to technical and health requirements.

28. Furthermore, the fact that the rules of Regulation No 1/2005 are not necessarily applicable, from a substantive point of view is in any event shown by Article 30(6) of that regulation, which provides for the possibility of derogations for long journeys to take account of the remoteness of certain regions from the mainland of the territory of the European Union.

29. It is also clear from the heading of section 1, No 6 of the specimen journey log (‘List of scheduled resting, transfer or exit points’) that the organiser of the transport is not required to mention all resting points. Furthermore, it is not always possible to predict where rests will be taken because of geographic conditions.

30. In addition, those rules might conflict with the regulations applicable in the third countries concerned, such as those in force in the Russian Federation, where the standard practice of the authorities is to prohibit the unloading of animals during rest periods.

31. Lastly, the principle of territoriality weighs in favour of restricting the application of Regulation No 1/2005 to the territory of the European Union.

32. The defendant in the main proceedings and the Landesanstalt für Tiergesundheit Bayern (Public Prosecutor’s Office for the Land of Bavaria, Germany) counter these arguments by contending that the absence of resting points outside the territory of the European Union does not release transporters of their obligations in this regard under Regulation No 1/2005. In particular, the fact that the animals are not unloaded for rest periods means that the transport compartments are not cleaned, that it is not guaranteed that all animals are watered and that it is not possible to inspect the state of health of each

animal. Therefore, having regard to recital 5 in the preamble to that regulation, according to which long journeys should be limited as far as possible, it is necessary to envisage the possibility that particular journeys cannot be carried out unless the logistical prerequisites for the planned journey comply with the applicable rules.

33. Against that background, the Bayerischer Verwaltungsgerichtshof decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘(1) Is Article 14(1) of [Regulation No 1/2005] to be interpreted as meaning that in the case of long journeys for domestic Equidae and domestic animals of bovine, ovine, caprine and porcine species, where the place of departure is in a Member State ... but the place of destination is in a third country, the competent authority of the place of departure may stamp the journey log submitted by the organiser [of the transport] in accordance with Article 14(1)(c) only if [that] log ... meets the requirements set out in Article 14(1)(a)(ii) for the entire journey from the place of departure to the place of destination, and thus also for stages of the journey which lie entirely outside the territory of the ... European Union?
- (2) Is Article 14(1) of [Regulation No 1/2005] to be interpreted as meaning that the competent authority at the place of departure pursuant to that provision may, in accordance with Article 14(1)(b) of that regulation, require the organiser of the transport to change the arrangements for the intended long journey in such a way that it will comply with the provisions of that regulation for the entire journey from the place of departure to the place of destination, even if some stages of that journey lie entirely within third countries?’

III – My analysis

34. By its questions, the referring court essentially asks, in essence, whether Article 14(1) of Regulation No 1/2005 must be interpreted as meaning that transport over a long journey from a Member State to a third country must comply with that regulation, and in particular with the provisions of Chapter V of Annex I to that regulation, which relate, inter alia, to journey times and resting periods, including for stages of the journey taking place outside the territory of the European Union, and may therefore be authorised by the competent authority of the place of departure only if it has been planned in compliance with those provisions.

35. The referring court is thus seeking to ascertain whether the competent authority of the place of departure is legally entitled to refuse to stamp a journey log because it considers, in the light of the entries in that log relating to stages of the journey taking place outside the territory of the European Union, that the log is not realistic within the meaning of Article 14(1)(a)(ii) of Regulation No 1/2005 and does not therefore comply with the provisions of that regulation.

36. The aim of the journey log, a specimen of which is included in Annex II to that regulation, is to provide the competent authorities with the information required for carrying out the checks on compliance with the provisions of Regulation No 1/2005 for long journeys. The declarations concerning the organisation of the journey contained in the journey log must be verified and their conformity confirmed by the competent authority of the place of departure before any loading of animals. That information forms the basis for the official checks that can be made in the actual course of the journey, that is to say on loading, during transport or at the destination.

37. The checks prior to departure relate to the existence and validity of compulsory administrative authorisations (transporters, vehicles, drivers), observance of space allowances for declared categories of animals, and detail regarding the planned route, taking account of the intervals between rests required for the categories of animals concerned, the distance to be travelled and the expected duration of operations at all stages of the journey.

38. Checks can also be made by the competent authorities at any stage of a long journey. Those checks, which are provided for in Article 15 of Regulation No 1/2005, concern inter alia observance of the planning in section 1 of the journey log.

39. The declarations contained in section 1 of the journey log ('Planning'), which form the focus of the present case, are intended to be compared with the declarations contained in sections 2 ('Place of departure'), 3 ('Place of destination'), 4 ('Declaration by transporter') and, if necessary, 5 ('Specimen anomaly report'). Sections 2 to 5 of the journey log are thus completed as the journey progresses and a copy of the log is then returned to the competent authority of the place of departure.

40. It should be pointed out at this stage that the transport of animals to or from third countries is subject to specific checks, at points of exit from and border inspection posts of the European Union.

41. The present reference for a preliminary ruling should be examined having regard to the overall scheme of the checks for long journeys.

42. In order to answer the questions asked by the referring court, it is necessary to determine precisely what is the extent of the information on journey times and resting periods that the organiser of a long journey is required to enter in the journey log. It is partly on the basis of that information that the competent authority of the place of departure is required, under Article 14(1)(a)(ii) of Regulation No 1/2005, to decide whether the journey log is realistic within the meaning of that provision and indicates compliance with that regulation.

43. If we accept the argument put forward by the Stadt Kempten, the Landesanstalt für Tiergesundheit Bayern and the Republic of Lithuania, the journey log would have to detail stages of the journey between the point of exit from the territory of the European Union and the third country of destination in compliance with the requirements relating to journey times and resting periods provided for in points 1.4(d) and 1.5 of Chapter V of Annex I to Regulation No 1/2005. Specifically, for the cattle transport operation which is the subject of the main proceedings, those provisions stipulate the following journey pattern: after 14 hours of travel, animals must 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. Each time that this journey time has elapsed, animals must be unloaded, fed and watered and be rested for at least 24 hours.

44. It is alleged that Zuchtvieh-Export did not plan stages of the journey between the point of exit from the territory of the European Union and the third country of final destination in compliance with those rules.

45. In my view, that allegation is unfounded.

46. It is clear from Article 14(1)(a)(ii) of Regulation No 1/2005 that the prior check to be carried out by the competent authority of the place of departure concerns compliance with the rules contained in that regulation. It is therefore crucial to examine the scope of that regulation.

47. Article 1(1) of Regulation No 1/2005 is unambiguous in this regard. The wording of that provision clearly states that the regulation 'shall apply to the transport of live vertebrate animals carried out *within the Community*, including the specific checks to be carried out by officials on consignments entering or leaving the customs territory of the Community'.³

³ — My italics.

48. In my view, this wording chosen by the EU legislature means that the rules contained in the regulation and the related checks apply only to those stages of the animal transport journey taking place in the territory of the European Union. This includes the specific checks on consignments entering or leaving the customs territory of the European Union, which seems logical in so far as, where such checks are carried out, the transport of animals takes place within the territory of the European Union and must therefore comply with the rules laid down in Regulation No 1/2005, irrespective of its place of departure or destination.

49. In the light of the clear definition of the scope of Regulation No 1/2005 in Article 1(1) thereof, it cannot be claimed that the wording chosen by the EU legislature in Article 14(1) of the regulation to specify those long journeys which must be subject to a prior check by the competent authority of the place of departure supports the view that there is an obligation on the organiser of such journeys to comply with the rules relating to journey times and resting periods, as laid down in Chapter V of Annex I to Regulation No 1/2005, for stages of the journey taking place between the point of exit from the territory of the European Union and a third country.

50. It should be borne in mind that under Article 14(1) of that regulation the competent authority of the place of departure is required to carry out a number of prior checks '[i]n the case of long journeys between Member States and with third countries for domestic Equidae and domestic animals of bovine, ovine, caprine and porcine species'.

51. This designation of long journeys which are subject to a check by the competent authority of the place of departure to ensure compliance with the requirements contained in Regulation No 1/2005 does not mean that, in the case of the transport of animals to third countries, that check must apply not only to those stages of the journey taking place within the territory of the European Union, but also to stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination.

52. This clarification is merely intended to state that *all* long journeys are subject to the prior check carried out by the competent authority of the place of departure, whether they are only between European Union Member States or between Member States and third countries.⁴ Such wording makes it possible to encompass all long journeys in the light of the rules laid down in Regulation No 1/2005, whether they take place entirely or partly within the territory of the European Union.

53. Given both the territorial scope of Regulation No 1/2005 as defined in Article 1(1) of that regulation and the fact that the check to be carried out by the competent authority of the place of departure is a check to ensure compliance with the rules laid down by that same regulation, the organiser cannot be required, on the basis of Article 14(1)(a)(ii) thereof, to record in the journey log information on journey times and resting periods in compliance with the requirements laid down in Chapter V of Annex I to Regulation No 1/2005 for stages of the long journey taking place outside the territory of the European Union.

54. In other words, it would be contradictory if the competent authority of the place of departure could complain that the organiser has failed to enter in the journey log, for stages of the journey taking place between the point of exit from the territory of the European Union and a third country, places of rest with intervals in compliance with the requirements laid down in Chapter V of Annex I to Regulation No 1/2005 when, on the one hand, the scope of that regulation is confined to the territory of the European Union and, on the other, under Article 14(1)(a)(ii) of that regulation, the check to be carried out by that authority is a check to ensure compliance with the rules laid down by the regulation.

4 — The same conclusion applies to Article 5(4) of Regulation No 1/2005, which requires transporters and organisers to comply with the provisions on the journey log set out in Annex II of that regulation *for long journeys between Member States and with third countries*.

55. I therefore conclude that the 'list of scheduled resting, transfer or exit points' which must be included in section 1, No 6 of the journey log requires entries only for places within the territory of the European Union.

56. It follows that Article 14(1)(a)(ii) of Regulation No 1/2005 must, in my view, be interpreted as authorising the competent authority of the place of departure to verify that, with regard inter alia, to the journey times and resting periods provided for in Chapter V of Annex I to that regulation, the journey log submitted by the organiser is realistic and indicates compliance with that regulation only in respect of stages of the journey taking place between the place of departure and the point of exit from the territory of the European Union.

57. The definitions of 'journey' and 'transport' in Article 2(j) and (w) of Regulation No 1/2005 respectively, in so far as they designate the entire transport operation until the unloading of the animals at the place of destination, without drawing a distinction according to whether that place is within the territory of the European Union or in a third country, cannot be relied upon in order to extend the territorial scope of that regulation. On the contrary, those definitions must be read in the light of Article 1(1) thereof, the only article whose purpose is to define the territorial scope of Regulation No 1/2005.

58. Other provisions of that regulation also confirm that, for the purposes of the prior check provided for in Article 14(1)(a)(ii) of the regulation, the organiser is not required to include information on journey planning in compliance with the requirements contained in Chapter V of Annex I to Regulation No 1/2005 in respect of stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination.

59. I would point out in this regard that, in the case of a long journey to a third country, the check carried out by the competent authority of the place of departure is supplemented by other checks. These are, first, the checks provided for in Article 15 of Regulation No 1/2005, which can take place at any stage of the journey within the territory of the European Union in order to verify, inter alia, that the journey times and rest periods have complied with the limits set out in Chapter V of Annex I to that regulation. Second, Article 21 of that regulation requires checks at points of exit from the territory of the European Union.

60. As far as this latter category of checks is concerned, Article 21(1) of Regulation No 1/2005 provides that, where animals are presented at exit points, official veterinarians of the Member States must check that the animals are being transported in compliance with that regulation. In checks at exit points, it is essentially verified that transporters have a valid authorisation, that drivers are able to present a valid certificate of fitness or permit, that the animals are fit to continue their journey, that the means of transport by which the animals are to continue their journey complies with Chapter II and where applicable Chapter VI of Annex I to that regulation, and whether domestic Equidae and domestic animals of bovine, ovine, caprine and porcine species have been or are to be transported over long journeys.

61. Furthermore, Article 21(1)(e) of Regulation No 1/2005 provides that official veterinarians must check that, 'in case of export, transporters have provided evidence that the journey from the place of departure to the first place of unloading in the country of final destination complies with any international agreement listed in Annex V applicable in the third countries concerned'. The annex refers in that regard to the European Convention for the Protection of Animals during International Transport.⁵

⁵ — Convention signed on 13 December 1968 in Paris. Text amended according to the provisions of the Protocol to the European Convention for the Protection of Animals During International Transport, which entered into force on 7 November 1989. With regard to the signing of that convention by the European Union, see 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.

62. In my view, it can be inferred from Article 21(1)(e) of Regulation No 1/2005 that, in a manner consistent with the territorial scope of Regulation No 1/2005 as defined in Article 1(1) of that regulation, the journey between point of exit from the territory of the European Union and the third country of destination is regulated not by the rules contained in that regulation but, where appropriate, by international agreements.

63. In addition, in my view, a number of provisions of Regulation No 1/2005 demonstrate that, in the case of a long journey to a third country, the journey log is intended to be completed only until the point of exit from the territory of the European Union.

64. Thus, Article 21(2) of that regulation states, *inter alia*, that for such journeys ‘official veterinarians of exit points ... shall perform and record the checks listed in Section 3 “Place of destination” of the journey log in Annex II’. For such journeys, the official veterinarian at the exit point therefore replaces the holder at the place of destination, who is responsible, in principle, for completing section 3 of the journey log. In other words, it is the veterinarian, at this stage of the journey, who must certify that the journey complies with Regulation No 1/2005 and, in particular, that the scheduling in section 1 of the journey log has been observed between the place of departure and the exit point.

65. A number of introductory points in Annex II to Regulation No 1/2005 are along similar lines. Thus, under point 3(e) of that annex, the organiser must ‘ensure that the journey log accompanies the animals during the journey until the point of destination or, *in case of export to a third country, at least until the exit point*’.⁶ In addition, the first paragraph of point 7 of that annex states that ‘[i]f animals are exported to a third country, transporters shall give the journey log to the official veterinarian at the exit point’. The observation that, under point 8 of Annex II to Regulation No 1/2005, the transporter must also keep a copy of the completed journey log does not rebut, but in fact confirms, the view that the original of the journey log does not have to be completed after the checks carried out by the official veterinarian at the point of exit from the European Union.

66. If the EU legislature had wished to enforce compliance with the rules contained in Chapter V of Annex I to Regulation No 1/2005 for stages of the journey taking place between the exit point and the third country of destination, it would have required the transporter to keep the original of the journey log for the entire journey and envisaged a system of checks in the third country of destination.

67. It is evident from the foregoing that, in the case of long journeys to third countries, the journey planning entered in section 1 of the journey log will be tangibly reflected in the other sections of that log only until the point of exit from the territory of the European Union. That planning is not therefore intended to be compared with the journey that actually takes place after that exit point. It would thus be inconsistent to require such planning to contain information on journey times and resting periods in compliance with the requirements laid down in Chapter V of Annex I to Regulation No 1/2005 in respect of the journey taking place after the point of exit from the territory of the European Union, as that stage of the journey is not subject to verifications under the general scheme established by that regulation.

68. In this regard, a comparison with the special scheme for export refunds established by the EU legislature shows that, outside that scheme, the requirements contained in Chapter V of Annex I to Regulation No 1/2005 are not intended to apply to stages of the journey for the transport of animals taking place outside the territory of the European Union.

6 — My italics.

69. Under Article 168 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation),⁷ with regard to products of the beef and veal sector, ‘the granting and the payment of the refund for exports of live animals shall be subject to compliance with the provisions established in Community legislation concerning animal welfare and, in particular, the protection of animals during transport’.

70. Article 1 of Commission Regulation (EU) No 817/2010 of 16 September 2010 laying down detailed rules pursuant to Council Regulation (EC) No 1234/2007 as regards requirements for the granting of export refunds related to the welfare of live bovine animals during transport,⁸ entitled ‘Scope’, states that the payment of such refunds ‘shall be subject to compliance, during the transport of the animals to the first place of unloading in the third country of final destination, with Articles 3 to 9 of Regulation (EC) No 1/2005 and the Annexes referred to therein ...’.

71. It is clear from this latter provision that, contrary to the arrangements under the general scheme established by Regulation No 1/2005, the requirements laid down in Articles 3 to 9 of that regulation and the relevant annexes must be complied with for the entire journey, including for stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination.

72. The system of checks established by Regulation No 817/2010 is tailored to this extended scope of the requirements laid down by Regulation No 1/2005.

73. Thus, as regards checks within the customs territory of the European Union, Article 2(2) of Regulation No 817/2010 provides that the official veterinarian at the exit point must conduct the following verifications.

74. First, under Article 2(2)(a) of that regulation, the official veterinarian at the exit point must verify whether ‘the requirements laid down in Regulation (EC) No 1/2005 have been complied with from the place of departure ... until the exit point’.

75. Second, under Article 2(2)(b) of Regulation No 817/2010, the veterinarian must verify whether ‘the transport conditions for the rest of the journey comply with Regulation (EC) No 1/2005 and that the necessary arrangements have been taken to ensure its compliance until the first unloading in the third country of final destination’.

76. The official veterinarian at the exit point enters the outcome of that check in the ‘check report at the exit point’, a specimen of which is included in Annex I to Regulation No 817/2010. That report distinguishes between checks relating to the journey up to the exit point and checks on the journey from the exit point. In order for the checks to be deemed satisfactory, the exporter must comply with the requirements contained in Regulation No 1/2005 for those two stages of the journey.

77. Those checks are then supplemented by checks in third countries.

78. Thus, under Article 3(1)(a) and (b) of Regulation No 817/2010, the exporter must ensure that the animals shall be subject to a check after leaving the customs territory of the European Union in two cases: first, at any place where there is a change of means of transport and, second, at the place of the first unloading in the third country of final destination. Under Article 3(2) of that regulation, these checks must be carried out by an international control and supervisory agency, approved and controlled for this purpose by a Member State or an official agency of a Member State.

7 — OJ 2007 L 299, p. 1.

8 — OJ 2010 L 245, p. 16.

79. In my view, this description of the special scheme established by Regulation No 817/2010 shows that if the EU legislature had wished generally to extend the obligation on the organiser of a long journey to comply with the requirements contained in Chapter V of Annex I to Regulation No 1/2005 in respect of stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination, it would have, first, opted for a broader definition of the scope of that regulation than it adopted in Article 1(1) thereof and, second, it would have made that obligation subject to a system of checks comparable with the system which it established for export refunds.

80. Taking all these factors into account, I consider that Regulation No 1/2005 must be interpreted as not requiring the organiser of a long journey with its destination in a third country to include in section 1, No 6 of the journey log information on journey times and resting periods in compliance with the requirements laid down in Chapter V of Annex I to that regulation in respect of stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination.

81. I therefore take the view that Article 14(1)(a)(ii) and (c) of that regulation must be interpreted as meaning that the competent authority of the place of departure may not refuse to stamp the journey log on the ground that the information entered in that log which relates to stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination does not comply with the requirements laid down in Chapter V of Annex I to Regulation No 1/2005.

82. The reverse is true in the case of the transport of animals from a third country. The organiser of that transport will then be required to comply with the requirements contained in the regulation as from the entry into the territory of the European Union via a border inspection post. On the other hand, given that the scope of that regulation is confined to the territory of the European Union, that organiser cannot be required to have complied with those same requirements for stages of the journey which took place prior to entry into the territory of the European Union, even if the journey from a third country to the Member State of destination constitutes a single journey.

83. I shall now turn to the examination of the validity of the argument put forward by the European Commission in the present case.

84. Although, in the light of the explanations which it provided in its written observations and at the hearing, the Commission also seems to take the view that the requirements laid down in Chapter V of Annex I to Regulation No 1/2005 are not applicable to stages of the journey taking place outside the territory of the European Union, it nevertheless proposes a middle way, essentially consisting in permitting the competent authority of the place of departure to verify whether, in respect of those stages of the journey, the organiser of the journey complies with the 'general conditions for the transport of animals' set out in Article 3 of Regulation No 1/2005.

85. It should be recalled that that provision lays down the principle that '[n]o person shall transport animals or cause animals to be transported in a way likely to cause injury or undue suffering to them'. It also contains a number of general conditions, such as the condition that 'all necessary arrangements have been made in advance to minimise the length of the journey and meet animals' needs during the journey', that 'the transport is carried out without delay to the place of destination and the welfare conditions of the animals are regularly checked and appropriately maintained', and that 'water, feed and rest are offered to the animals at suitable intervals and are appropriate in quality and quantity to their species and size'.

86. I do not think that the approach advocated by the Commission can be upheld, for the following reasons.

87. First, it should be stressed that, unless otherwise indicated, the definition of the territorial scope of Regulation No 1/2005 under Article 1(1) thereof must apply to all the requirements contained in that regulation, whether it be the ‘general conditions for the transport of animals’ as set out in Article 3 of Regulation No 1/2005, or more specific requirements such as the technical rules detailed in Annex I of that regulation.

88. In the light of the clear wording of Article 1(1) of Regulation No 1/2005, it does not therefore seem possible to claim, as the Commission does, first, that the requirements laid down in Chapter V of Annex I to that regulation are not applicable to stages of the journey taking place outside the territory of the European Union and, second, that this lacuna in the regulation can be rectified by extending the scope of the ‘general conditions for the transport of animals’ in Article 3 of Regulation No 1/2005 so that it applies to the entire journey until the third country of destination.

89. Second, the approach suggested by the Commission would amount to conferring on the competent authority of the place of departure a wide discretion for evaluating the appropriateness of the planned journey times and resting periods in respect of stages of the journey taking place outside the territory of the European Union. The ensuing differences of assessment on the part of the competent authorities are difficult to reconcile with the need for uniform application of Regulation No 1/2005 and with the other objectives pursued by that regulation alongside protection of animals during transport, namely eliminating technical barriers to trade in live animals and allowing market organisations to operate smoothly.⁹

90. All in all, to acknowledge that the competent authority of the place of departure enjoys such wide discretion in implementing the conditions laid down in Article 3 of that regulation, which are general in nature, would generate distortions in competition between organisers of transport operations involving live animals.

91. For these reasons, I do not therefore concur with the Commission’s position, which offers a different response to the questions asked by the referring court according to whether the general conditions for the transport of animals as set out in Article 3 of Regulation No 1/2005 or the more specific requirements contained in that regulation, such as those referred to in Chapter V of Annex I to that regulation, are at issue.

92. Lastly, I would point out that I am perfectly aware of the importance attached to the objective of protection of animals during transport. I am also conscious of Article 13 TFEU, which requires the European Union and the Member States to pay full regard to the welfare requirements of animals in formulating and implementing, inter alia, the European Union’s agriculture and transport policies, since animals are sentient beings.

93. I also understand the wish to give practical effect to Regulation No 1/2005 in a manner that is geographically as wide as possible, whether that is on the basis of the general rules in Article 3 of that regulation or of Article 13 TFEU.

94. It must be stated, however, that the EU legislature intended, at least at this stage in the development of Union law, to confine the scope *ratione loci* of Regulation No 1/2005 to the territory of the European Union.

9 — See, in this regard, *Danske Svineproducenter* (C-316/10, EU:C:2011:863, paragraphs 44 and 55).

95. Consequently, in my view, it is for the EU legislature, and it alone, to decide in future to prescribe compliance with the requirements laid down in that regulation for the entirety of a long journey, including in respect of stages of the journey taking place outside the territory of the European Union, and to make such an extension of the territorial scope of that regulation subject to the establishment of an appropriate system of checks.

IV – Conclusion

96. In the light of the above considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Bayerischer Verwaltungsgerichtshof as follows:

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 must be interpreted as not requiring the organiser of a long journey with its destination in a third country to include in section 1, No 6 of the journey log information on journey times and resting periods in compliance with the requirements laid down in Chapter V of Annex I to that regulation, or the general conditions for the transport of animals in Article 3 of that regulation, in respect of stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination.

Consequently, Article 14(1)(a)(ii) and (c) of Regulation No 1/2005 must be interpreted as meaning that the competent authority of the place of departure may not refuse to stamp the journey log on the ground that the information entered in that log which relates to stages of the journey taking place between the point of exit from the territory of the European Union and the third country of destination does not comply with the requirements laid down in Chapter V of Annex I to that regulation or the general conditions applicable to the transport of animals laid down in Article 3 of that regulation.