



Reports of Cases

OPINION OF ADVOCATE GENERAL
WAHL
delivered on 21 January 2016¹

Case C-469/14

Masterrind GmbH

v

Hauptzollamt Hamburg-Jonas
(Request for a preliminary ruling)

from the Finanzgericht Hamburg (Finance Court, Hamburg, Germany))

(Agriculture — Regulation (EU) No 817/2010 — Export refunds — Regulation (EC) No 1/2005 — Protection of animals during transport — Journey times and resting periods — ‘14+1+14 rule’ — Requirement of a ‘rest period of at least one hour’ — Declaration issued by the official veterinarian that the transport of animals does not meet the requirements under Regulation No 1/2005 — Power of a body of a different Member State responsible for payment of export refunds to review that declaration)

1. A popular saying, unauthoritatively ascribed to Mahatma Gandhi, has it that the greatness of a nation and its moral progress can be judged by the way its animals are treated. If that is the case, then the matter under consideration warrants particular attention.
2. The main action turns on the lawfulness of a decision ordering the repayment of export refunds in respect of a transport operation of live cattle from Germany to Morocco (‘the transport at issue’). In the EU, payment of export refunds for the export of live animals to third countries is, as a matter of policy, conditional upon compliance with rules on animal welfare during transport. Disagreement has arisen as to whether the transport at issue complied with those rules.
3. The matter under consideration raises two distinct issues: first, how to interpret and apply the rule set out in point 1.4(d) of Chapter V of Annex I to Regulation No 1/2005² (‘the 14+1+14 rule’). Second, what effect a declaration issued by an official veterinarian of one Member State has on the competent authority of another Member State.
4. With regard to the latter issue, in my view such a declaration merely has persuasive, and not binding, effect. And as for the former issue, although a certain measure of practicality is necessary when having recourse to the 14+1+14 rule, that may not lead to lowering the welfare requirements under Regulation No 1/2005.

¹ — Original language: English.

² — Council Regulation (EC) of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ 2005 L 3, p. 1).

I – Legal framework

A – Regulation No 817/2010³

5. According to the first sentence of Article 1 ('Scope') of Regulation No 817/2010, the payment of export refunds is conditional upon '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 No 1/2005 and the Annexes referred to therein, and with Regulation No 817/2010 itself.

6. Pursuant to Article 2(3) of Regulation No 817/2010 ('Checks within the customs territory of the Community'), if the official veterinarian at the exit point is satisfied, inter alia, that the requirements laid down in Regulation No 1/2005 have been complied with within the EU customs territory, 'he [is to] certify this by one of the entries listed in Annex II and by stamping and signing the document constituting evidence of exit from the [EU] customs territory, either in Section J of the control copy T5 or in the most appropriate place on the national document'.

7. Article 4(2) of Regulation No 817/2010 ('Procedure for payment of export refunds') states, inter alia, that applications for the payment of export refunds are to be supplemented with the document referred to in Article 2(3) of that regulation, 'duly completed'.

8. Article 5(1)(c) of Regulation No 817/2010 ('Non-payment of export refunds') provides, inter alia, that export refunds will not be paid for animals for which the competent authority considers that, 'in the light of the documents referred to in Article 4(2) and/or all other elements at its disposal concerning compliance with this regulation', Articles 3 to 9 of Regulation No 1/2005 and the Annexes referred to therein have not been complied with.

B – Regulation No 1/2005

9. Article 3 of Regulation No 1/2005 ('General conditions for the transport of animals') states, in its first sentence, that 'no person shall transport animals or cause animals to be transported in a way likely to cause injury or undue suffering to them'. According to the second sentence of that provision, in addition, eight specific general requirements must be met. Those requirements include, inter alia, that (i) all necessary arrangements have been made in advance to minimise the length of the journey and meet animals' needs during the journey; (ii) 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 (iii) 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 6(3) of Regulation No 1/2005 ('Transporters') provides that 'transporters [are to] transport animals in accordance with the technical rules set out in Annex I'. Chapter V of Annex I to Regulation No 1/2005 ('Watering and feeding interval, journey times and resting periods') sets out the following rules for, inter alia, domestic animals of bovine species:

- 1.1. The requirements laid down in this Section apply to the movement of ... domestic animals of bovine ... 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.

3 — Commission Regulation (EU) 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 (OJ 2010 L 245, p. 16).

- 1.3. The maximum journey time in point 1.2. may be extended if the additional requirements of Chapter VI are met.
- 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:
- ...
- (d) All ... animals [other than unweaned calves, lambs, kids and foals which are still on a milk diet, unweaned piglets, pigs and domestic Equidae] 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, the animals may be transported for a further 14 hours.
- 1.5. After the journey time laid down, animals must be unloaded, fed and watered and be rested for at least 24 hours.
- ...
- 1.8. In the interests of the animals, the journey times in [points 1.3. and 1.4.] may be extended by two hours, taking account in particular of the proximity to the place of destination.
- ...'

II – Facts, procedure and the questions referred

11. By an export declaration of 16 June 2011, Masterrind GmbH ('Masterrind') declared six breeding cattle and applied for an advance payment of the corresponding export refunds. That application was granted by the Hauptzollamt Hamburg-Jonas (the head customs office of Hamburg-Jonas; 'the Hauptzollamt') by decision of 13 July 2011.

12. The animals were loaded onto a lorry in Northeim (Germany) at 10.30 on 16 June 2011. That lorry left the loading site at approximately 11.30. At 19.00 on the same day, it arrived in Wasserbillig (Luxembourg) where it stopped for a one-hour feed and water break. After two further hours of transport and in order to comply with the statutory driving times and rest periods of road transport laid down in Regulation No 561/2006,⁴ the lorry made a second feed and water stop for 10 hours in Épinal (France). The lorry continued its journey on the following morning at approximately 8.00 and reached the port of Sète (France) on the same day at 17.00. The transport from Northeim to Sète took 30 hours and 30 minutes. The animals were then loaded onto a ship for the onward journey to Morocco.

13. By letter of 17 January 2012, the Hauptzollamt informed the applicant that the official veterinarian at the customs office of exit in Sète had endorsed the control document with the entry 'Non conforme au contrôle officiel visé à l'article 2 du règlement (CE) n° 817/2010' (Not compliant with the official check pursuant to Article 2 of Regulation No 817/2010), in respect of all the animals. The Hauptzollamt further informed the applicant that it could request the competent French veterinary authority to review the lawfulness of the veterinarian's entry. Following a meeting with the French veterinary authority, it transpired that the abovementioned entry is made where the journey, including the statutory driving times and rests periods, exceeds 31 hours.

⁴ — Regulation (EC) of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1).

14. In light of the official veterinarian's negative endorsement in respect of all the animals, the Hauptzollamt took the view that the applicant had not met the conditions set out in Article 2(2) of Regulation No 817/2010 and, consequently, that the refunds granted in advance were to be repaid. Accordingly, by decision of 5 June 2012 amending its decision of 13 July 2011, the Hauptzollamt sought to recover the export refunds which had been paid to the applicant in advance, plus a supplement of 10%.

15. The applicant challenged the decision of 5 June 2012 and, subsequently, sought an interpretation from the Commission of the journey times and rest periods set out in Regulation No 1/2005. In letters dating 7 March 2013 and 27 July 2013, the then Directorate-General for Health and Consumers ('DG SANCO') replied that for bovines, the maximum permitted journey time is 29 hours from loading, including a 1-hour rest break in the vehicle. This period might be extended by two hours in the interests of the animals and taking into account, in particular, the proximity of the place of destination. Accordingly, DG SANCO took the view that the rules provide a maximum journey time of 31 hours for bovines.

16. By decision of 19 July 2013, the Hauptzollamt rejected the applicant's challenge. The Hauptzollamt considered itself and the applicant to be bound by the decision of the French official veterinarian, whose negative endorsement had not been amended following the replies given by the Commission. This prompted the applicant to bring an action before the referring court on 21 August 2013 seeking the annulment of the decisions of 5 June 2012 and of 19 July 2013.

17. The referring court explains that the transport at issue is characterised by the fact that it was divided into three legs of actual physical movement (travel), each not exceeding 14 hours. That court observes that when taken together, the first and second legs do not exceed 14 hours, as is also the case for the second and third legs when considered jointly. It also mentions that when combined, the three legs of travel do not exceed 28 hours. It therefore considers that EU law does not preclude the transport at issue from having been completed in three stages. However, the referring court states that the transport at issue was interrupted by two rest periods totalling 11 hours.

18. On that basis, the referring court considers the outcome of the main action to depend, first, on whether a rest period of more than one hour is permissible under EU law. Second, in the affirmative, the question arises whether the Hauptzollamt is bound by the entry made by the official veterinarian at the point of exit or whether it may, of its own authority, decide that the transport at issue was carried out in accordance with the provisions of Regulation No 1/2005. Accordingly, entertaining doubts as to the interpretation of Regulations No 1/2005 and No 817/2010, the Finanzgericht Hamburg (Finance Court, Hamburg) decided on 14 October 2014 to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- '(1) Is the rule set out in point 1.4. of Chapter V of Annex I to Regulation No 1/2005 ... according to which, after 14 hours of travel, animals are to be given a rest period of at least 1 hour sufficient for them in particular to be given liquid and if necessary fed, after which they may be transported for a further 14 hours, to be interpreted as meaning that the periods of transport may also be interrupted by a rest period of more than 1 hour or by several rest periods, at least one of which lasts for 1 hour?
- (2) Is the competent payment body of a Member State bound by the entry made by the official veterinarian at the exit point in accordance with Article 2(3) of Regulation No 817/2010 ..., with the result that the lawfulness of a refusal to make the entry is reviewable only by the authority accountable for the actions of the border veterinarian, or is the entry made by the official veterinarian a mere procedural act by the authority which may be contested only in tandem with the judicial review proceedings that lie against the payment body's substantive decisions?'

19. Written observations have been submitted by the Hauptzollamt, the French Government and the Commission. Pursuant to Article 76(2) of the Rules of Procedure, no hearing has been held.

III – Analysis

A – *The first question referred*

1. Introductory remarks and observations submitted by the parties participating in the preliminary ruling procedure

20. Despite being the subject matter of detailed technical specifications, the rules on transport of animals are distinctively opaque. Not surprisingly, they have been at the heart of a copious amount of litigation before the Court, including several requests for a preliminary ruling from the referring court itself.⁵ The matter under consideration, which mainly turns on the interpretation of the expression ‘at least one hour’ appearing in the 14+1+14 rule, is no different in that regard.

21. It appears that, in the main proceedings, the transport at issue lasted for 30½ hours. The actual travel time, during which the lorry was physically moving, totalled 19½ hours. The order for reference states that the lorry driver took a 10-hour break in order to comply with the requirements set out in Regulation No 561/2006. As this is not explicitly stated in the order for reference, I must specify that the working assumption of this Opinion is that the animals were not unloaded during that rest period.

22. Hence, by its first question, the referring court essentially wishes to know whether, on a proper construction of the 14+1+14 rule, there is an upper limit to the length of rest periods, and whether they may serve a purpose other than the welfare of the animals transported. In other words: does the fact that, under that rule, rest periods must last for ‘at least one hour’, potentially authorise keeping the animals for a very long time aboard a stationary vehicle?

23. The referring court has not put a question on the interplay between the rules on animal welfare during transport and those on maximum driving periods and minimum rest periods for road drivers. I shall therefore not address that issue in this Opinion.

24. The Hauptzollamt adheres to the view of the referring court, according to which it follows from the expression ‘in particular’, appearing in the 14+1+14 rule, that DG SANCO’s interpretation of that rule (referred to in point 15 above) is not necessarily correct. The Finanzgericht Hamburg (Finance Court, Hamburg) favours an interpretation to the effect that the maximum journey time of 28 hours may be interrupted by several rest periods, one of which must last for at least 1 hour and that, when combined, the rest periods may not exceed 14 hours, that being the upper limit to one leg of travel under the 14+1+14 rule.

25. The French Government submits that the 14+1+14 rule cannot be construed as authorising an excessively long rest period which would compromise the well-being of the animals. In that government’s view, the expression ‘in particular’, apart from referring to feeding the animals and giving them liquids, denotes actions aiming to preserve the well-being of the animals. Moreover, the French Government does not consider it feasible to keep animals on board a vehicle for 10 hours without compromising the aim of Regulation No 1/2005.

⁵ — See, as regards export refunds, inter alia judgments in *Viamex Agrar Handel and ZVK*, C-37/06 and C-58/06, EU:C:2008:18; *Viamex Agrar Handel*, C-96/06, EU:C:2008:158; and *Viamex Agrar Handel*, C-485/09, EU:C:2011:440.

26. The Commission takes the view that, under the 14+1+14 rule, the maximum possible journey time is 29 hours, save for the exceptional situation referred to below at point 32. Moreover, according to the Commission, a period of rest may not be used for purposes extraneous to the welfare of animals. The Commission submits that the words ‘in particular’ do not lend support to a different view, as those words are followed by the terms ‘to be given liquid and if necessary fed’.

2. Assessment

a) Preliminary comments

27. As we shall see below, neither the wording nor the context of the 14+1+14 rule provides an answer to the question raised above at point 22. In particular, the concepts featuring, on the one hand, in the definitions provided in the main text of Regulation No 1/2005 and, on the other hand, in Annex I thereto, are used incoherently and inconsistently, both internally within each document and especially in relation to each other. This has unfortunately necessitated specifying, throughout this Opinion, the exact set of rules in respect of which those concepts are used.

28. The incoherence mentioned in the preceding point requires the aim of Regulation No 1/2005 — which is crystal clear — to be given full precedence. Doing so entails interpreting the 14+1+14 rule in a way which sets a plain limit to rest periods spent inside a motionless vehicle.

29. For the aim of Regulation No 1/2005 is indisputable: to avoid transporting animals in a way likely to cause them injury or undue suffering.⁶ This is in line with Article 13 TFEU, according to which animals are sentient beings. Accordingly, that provision requires the EU and its Member States, in formulating and implementing the EU’s agriculture policies, to pay full regard to the welfare requirements of animals.⁷

30. Before going any further however, it is necessary, first, to become fully acquainted with the 14+1+14 rule.

b) The 14+1+14 rule

31. The 14+1+14 rule forms part of a set of rules on ‘watering and feeding interval, journey times and resting periods’ in Annex I to Regulation No 1/2005. It applies to the physical transportation of animals using road vehicles which meet certain minimum animal welfare requirements (relating to the roof and floor of the vehicle, bedding for the animals, feed, partitioning, age rules, water supply, ventilation and navigation systems). If those requirements are met, then the vehicle may transport bovines for 14 hours, after which they must ‘be given a rest period of at least one hour sufficient for them in particular to be given liquid and if necessary fed’, before (possibly) transporting them further for at most another 14 hours. After that, pursuant to point 1.5 of Chapter V of that annex, the bovines must be unloaded, fed and watered and be rested for at least 24 hours.

⁶ — See recital 11 of Regulation No 1/2005.

⁷ — Article 13 TFEU mirrors the Protocol on protection and welfare of animals annexed to the Treaty of Amsterdam, OJ 1997 C 340, p. 110 (the ‘Animal Welfare Protocol’), applicable at the time of adoption of Regulation No 1/2005 (see also judgment in *Zuchtvieh-Export*, C-424/13, EU:C:2015:259, paragraph 35). Whether an EU measure takes sufficient account of animal welfare is a matter reviewable in the context of the principle of proportionality, see judgment in *Jippes and Others*, C-189/01, EU:C:2001:420, paragraphs 79 and 85.

32. By way of exception, under point 1.8 of Chapter V of Annex I to Regulation No 1/2005 ('the +2 rule'), the total 'journey time', as that concept is used in the annex, may be extended by two hours, but only if doing so would be in the interests of the animals. The close proximity to the place of destination is a typical example of a situation where enduring a further two hours' transport might cause less suffering to the animals than being unloaded and reloaded, a notoriously stressful experience.⁸

33. As is apparent from the foregoing, the 14+1+14 rule does not explicitly state how long rest periods may last at the most, nor what activities may be undertaken during such periods.

34. Recourse to case-law does not resolve that issue either: the Court has confined itself to holding that the 14+1+14 rule 'establishes a maximum of 28 hours of travel, interrupted by a minimum rest period of 1 hour after the first 14-hour section ... Accordingly, [that rule] must be understood as authorising a maximum period of travel of 28 hours, interrupted by a minimum rest period of 1 hour'.⁹

35. As the 14+1+14 rule does not provide a clear answer to the matter under consideration, it is necessary to explore certain other aspects of Regulation No 1/2005.

c) Contextualising Regulation No 1/2005

36. Article 2 of Regulation No 1/2005 defines a number of key concepts for the purpose of its application. Those definitions include that of a *journey* ('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') and of *transport* ('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').¹⁰

37. Generally speaking, it follows from the definitions in Article 2 of Regulation No 1/2005 that a *journey* is always preceded and followed by a minimum buffer of 48 hours' rest for the animals outside the vehicle.¹¹ Accordingly, a journey does not come to an end unless the animals are accommodated for 48 hours at a site of unloading.

38. Now, Article 2 of Regulation No 1/2005 attempts to maintain a dichotomy between 'journey' and 'transport', in the sense that the former covers the entire logistical operation, and the latter only the actual physical movement. However, unlike previously,¹² the concept of 'transport' now oddly includes rest. For if, under that provision, a 'journey' is the sum total of all the periods of transport and rest,

8 — See, inter alia, recital 13 and Article 3(d) of Regulation No 1/2005. See also *The welfare of animals during transport (details for horses, pigs, sheep and cattle)*, Report of the Scientific Committee on Animal Health and Animal Welfare, adopted on 11 March 2002, European Commission, Health and Consumer Protection Directorate-General, Directorate C — Scientific Opinions, p. 24.

9 — Judgment in *Interboves*, C-277/06, EU:C:2008:548, paragraphs 15 and 16, in respect of a similar rule in point 48.4(d) of the Annex to Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17, as amended).

10 — For the sake of coherence, I have attempted to adhere, throughout this Opinion, to the definitions generally listed in Article 2 of Regulation No 1/2005, including those of 'journey' and 'transport'. However, as will become apparent below, this has been increasingly difficult. As mentioned previously, I have endeavoured to be specific where necessary.

11 — Article 2 of Regulation No 1/2005 defines a *place of departure* as the place at which the animal is first loaded on to a means of transport provided that it had been accommodated there for at least 48 hours prior to the time of departure. A *place of destination* is defined as the place at which an animal is unloaded from a means of transport and either accommodated for at least 48 hours prior to the time of departure or slaughtered. Under certain conditions, assembly centres may be deemed to be a place of departure without having to meet the 48-hour requirement. However, that exception does not extend to the definition of a place of destination. Therefore, a journey from the first place of loading to an assembly centre which qualifies as a place of departure will not formally come to an end unless the animals are accommodated for 48 hours (or slaughtered) at the assembly centre.

12 — See Article 2(2)(b) of Directive 91/628, which defined 'transport' as 'any movement of animals, effected by a means of transport, which involves loading and unloading the animals'.

adding rest to the concept of ‘transport’ begs the question as to what difference actually remains between a journey and transport. This apparent lack of coherence has implications for the interpretation of the terms used in Annex I to the regulation, to which I shall revert below at point 46.

39. Article 2 of Regulation No 1/2005 also defines a *place of rest*, namely ‘any stop during the journey which is not a place of destination’, whether the animals have been unloaded or not. However, the concept of *rest period* itself, which lies at the heart of the matter under consideration, has not been defined. On that point, the predecessor to Regulation No 1/2005¹³ did contain a definition, namely ‘a continuous period in the course of a journey during which animals are not being moved by a means of transport’. However, that definition neither indicates whether a rest period may be spent inside the vehicle nor what purpose it must serve (if any). Therefore, it does not resolve the dispute under consideration either.

40. Next, I would draw attention to a provision central to Regulation No 1/2005, cited by many of the parties who have lodged observations: Article 3. Its *first sentence* embodies what I shall refer to as the ‘general clause’ on the protection of animals during transportation. The general clause is stated in mandatory terms and applies whenever the regulation applies. Moreover, the general clause is phrased in the negative, rather than in the positive. Apart from requiring the prohibited behaviour to be liable to cause harm or undue suffering to animals, the obligation to refrain from doing so does not depend on other factors, such as the passing of a certain amount of time or a minimum geographic distance.

41. The *second sentence of Article 3* of Regulation No 1/2005 specifies certain basic requirements with which anyone intending to transport animals must comply. Those requirements are worded in positive terms and must be met consistently throughout the ‘transport’ (as defined in Article 2). Although the choice of words (‘in addition’) indicates that those requirements apply independently and on top of the general clause, the heading of Article 3 nevertheless indicates that the general conditions for the transport of animals are cumulative.

42. I shall limit myself to adding that establishing whether Article 3 has been breached — breach which may in principle give rise to the imposition of a penalty under Article 25 of Regulation No 1/2005 — seems to me to require a comprehensive assessment taking into account all relevant circumstances.

43. Last but not least, I shall revert to the legislative context leading to the adoption of Regulation No 1/2005 at points 51 and 52 below.

d) Position taken

44. The remarks made above prompt me to take the following view:

45. First, as a point of order, I should like to state my agreement with the referring court that the 14+1+14 rule permits taking several, and not merely one, rest periods, as long as at least 1 hour of rest is taken after at most 14 hours of physical movement (for instance 7+1+7+1½+12½). Otherwise, the rule would seem entirely unmanageable to me: drivers would be encouraged to wait 14 hours before stopping to attend to their personal needs. Moreover, this would give rise to the question whether any involuntary halt due to, say, road works, traffic congestion or at a train crossing comes within the concept of ‘rest’.

¹³ — Article 2(2)(h) of Directive 91/628.

46. Next, as for the ambiguous meaning of a ‘rest period of at least one hour’, Annex I to Regulation No 1/2005 does not contain any definitions. Therefore, the general definitions set out in Article 2 of the regulation presumably apply.

47. However, regrettably, those definitions are simply not workable when interpreting Chapter V of Annex I to Regulation No 1/2005: *first*, the general definition of a ‘journey’ in Article 2 of the regulation comprises the rest periods taken along the way. By contrast, that chapter refers, in its heading, to ‘journey times’ and ‘resting periods’, as if in opposition to each other. *Second*, the understanding of a ‘journey’, in Article 2 of the regulation, as something which is normally bordered by two 48-hour periods (see point 37 above), seems at odds with the use of the term ‘journey time’ in point 1.5 of that chapter, according to which a 24-hour resting period ‘neutralises’ the periods of travel sustained thus far. *Third*, as referred to above in point 38, the concept of ‘transport’ now includes ‘rest’. This is in contrast to the 14+1+14 rule, which distinguishes between ‘rest periods’, on the one hand, and ‘travel’ or ‘transport’ on the other.¹⁴

48. This evident lack of coherence makes it necessary to interpret the 14+1+14 rule on its own terms, in the light of the basic aim of Regulation No 1/2005 itself; that aim which is stated above at point 29.

49. It is not open to question that journeys (as used in Article 2 of Regulation No 1/2005), especially long ones, may be a source of discomfort to the animals transported. To be sure, it seems that the regulation is founded on the premiss that any journey involving the confinement and the loading and unloading of animals, as well as their possibly being deprived of food and water, causes them some measure of suffering. In this sense, the aim of the regulation is simply to avoid transportation which causes or is likely to cause *injuries and undue suffering* to animals. So, the regulation accepts some measure of discomfort to animals during transportation as a necessary evil, but attempts to minimise it. Yet that discomfort may reach a point where it is no longer justified and becomes undue suffering. But when is that the case?

50. Here, I agree with the Commission that if the aggregate ‘journey times and rest periods’, as specified in point 1.4(d) of Chapter V of Annex I to Regulation No 1/2005, *exceed 29 hours* — that is to say, adding the three component parts of the 14+1+14 rule — this would *in and of itself* fall foul of Regulation No 1/2005 as being likely to cause undue suffering to the animals. Of course, this is without prejudice to the application of the +2 rule.

51. In support of my view, I would point out, *first*, that the aim of Regulation No 1/2005 is clearly to minimise, as far as possible, long journeys (as used in Article 2 of the regulation) involving the transport of animals.¹⁵ Allowing open-ended rest periods spent inside the vehicle which, under point 1.5 of Chapter V of Annex I to Regulation No 1/2005, do not have the effect of ‘neutralising’ the actual travel time sustained thus far, would be contrary to that aim. The fact that neither the expert advice to limit the journey time for cattle to 24 hours,¹⁶ nor the Commission proposal consisting of a 9-hour travel time limit followed by a 12-hour rest period (which could be repeated),¹⁷ was followed by the Council when adopting the regulation, does not shake me in my view. Indeed,

14 — It is necessary to point out that the various language versions of point 1.4(d) of Chapter V of Annex I to Regulation No 1/2005 also lack consistency both internally and as between each other. First, not all language versions exclusively use the word ‘transport’, some versions using terms which are not defined (German: ‘Beförderung’, English: ‘travel’). Second, certain language versions use the word ‘journey’ instead of ‘transport’ (Italian: ‘viaggio’; Portuguese: ‘viagem’; Romanian: ‘călătorie’).

15 — According to *recital 5* of Regulation No 1/2005, ‘the transport of animals over long journeys, including animals for slaughter, should [, for reasons of animal welfare,] be limited as far as possible’, long journeys being, according to *recital 18*, ‘likely to have more detrimental effects on the welfare of animals than short ones’. Moreover, the *second sentence of Article 3* of the regulation provides that the ‘transport [must be] carried out without delay to the place of destination and the welfare conditions of the animals [must be] regularly checked and appropriately maintained’. Lastly, *Article 5(3)(a)* (‘Planning obligations for the transport of animals’) obliges organisers to ensure that for each journey, ‘the welfare of the animals is not compromised by insufficient coordination of the different parts of the journey, and that the weather conditions are taken into account’.

16 — *The welfare of animals during transport (details for horses, pigs, sheep and cattle)*, op. cit., p. 80.

17 — Proposal of 16 July 2003 for a Council Regulation on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC (COM(2003) 425 final/3), Annex I, Chapter V, point 1.1(d) (p. 49).

although the Council essentially chose to keep unchanged the rules on journey times and resting periods appearing in Chapter VII of the Annex to Directive 91/628, I cannot imagine that the Council, when '[paying] full regard to the welfare requirements of animals' during the legislative process, pursuant to the Animal Welfare Protocol, had indefinite rest periods inside a vehicle in mind.

52. It is true that, in *Interboves* (C-277/06, EU:C:2008:548), referred to by the parties to this procedure, the Court entertained the idea that the 'journey times' under Chapter V of Annex I to Regulation No 1/2005 might exceed 28 hours. However, that does not lead me to take a different view. For in that judgment, the Court interpreted the rules on journey times and resting periods in Directive 91/628. Those rules were primarily adopted in order to eliminate technical barriers to trade in live animals and to allow market organisations to operate smoothly while also ensuring, as a secondary objective, a satisfactory level of protection for the animals concerned.¹⁸ Under Regulation No 1/2005, this balancing of objectives appears to have been reversed: its primary aim is now the protection of animals, the harmonisation of legislation being ancillary thereto.¹⁹ In any event, the judgment in *Interboves* ought to be read with care, as unscrupulous transporters might otherwise take advantage of the inherent differences between the rules on transportation by road and sea.²⁰

53. Accordingly, for the reason set out in the previous point, the fact that Advocate General Mengozzi has stated that 'a journey time might, for example, be 50 hours, that is to say, two (maximum) periods of transport of 14 hours each, interrupted by a rest period of 22 hours',²¹ is of no bearing on the matter under consideration. In any event, no mention was made as to whether a rest period of 22 hours could lawfully be spent inside a motionless vehicle.

54. *Second*, the +2 rule provides that the 'journey times' (not a 'journey' under Article 2 of Regulation No 1/2005) — that is to say, the combined periods of physical movement between each 'neutralising' 24-hour rest period, and not the individual stages thereof — may be extended by two hours in the interests of the animals, taking account in particular of the proximity to the place of destination. The +2 rule thus seems to suggest that, in the default situation, 'journey times' (again: not a 'journey' under Article 2 of Regulation No 1/2005) have a fixed upper limit which, for better or worse, I understand to be 28 hours in the case of the 14+1+14 rule.

55. Hence, in my opinion, a 'rest period of at least one hour' may never have the consequence of the 'journey times and rest periods' under the 14+1+14 rule exceeding 29 hours (or, where applicable, 31 hours, pursuant to the +2 rule). On the other hand, a 'journey', as used in Article 2 of Regulation No 1/2005, may consist of several 29-hour 'journey times and rest periods' under Chapter V of Annex I to Regulation No 1/2005, provided that those 29-hour periods each are separated by 24-hour periods where the animals are unloaded, fed and watered, and rested.

56. However, apart from that, in addition, is it also a requirement that the rest periods pursue a certain aim?

18 — See the third and fourth recitals of Council Directive 95/29/EC of 29 June 1995 amending Directive 91/628/EEC concerning the protection of animals during transport (OJ 1995 L 148, p. 52).

19 — See, to that effect, judgment in *Pfotenhilfe-Ungarn*, C-301/14, EU:C:2015:793, paragraph 33, and the case-law cited. The judgment in *Zuchtvieh-Export*, C-424/13, EU:C:2015:259, according to which transport organisers must show, prior to receiving authorisation for an international transport of animals beginning in the EU, that all the requirements of Regulation No 1/2005 will be complied with, including journey times and resting periods where parts of the journey take place in a third country, bears witness to this reversed hierarchy of policy objectives.

20 — An example: the maximum authorised travel time by road under the 14+1+14 rule without a 'neutralising' 24-hour rest is nearly spent (27½ hours) just prior to boarding an intra-EU roll-on/roll-off ferry. The crossing itself exceeds 28 hours (if such crossings exist). Here, the judgment in *Interboves* (C-277/06, EU:C:2008:548, paragraphs 33 and 38) seems to suggest that a 12-hour rest period suffices to 'neutralise' the minimum 55½ hours of travel by road and ferry which immediately preceded that rest, during which the animals have not been unloaded. In this example, it is furthermore unclear whether, following a 'neutralising' 12-hour rest, the animals may be transported for a further 28 hours by road (provided they receive a minimum 1-hour rest). In the case of transportation by roll-on/roll-off ferry to a point outside the EU, no 'neutralising' period is prescribed; see the judgment in *Schwanninger Martin*, C-207/06, EU:C:2008:414, paragraphs 30 to 35.

21 — Opinion of Advocate General Mengozzi in *Interboves*, C-277/06, EU:C:2008:162, point 18.

57. On this point, the Commission argues that the minimum one hour rest period may be extended *only* for reasons pertaining to the well-being of the animals. The French Government takes a less strict position: rest periods may not exceed a reasonable duration beyond which the basic principle of prevention of injuries or undue suffering of the animals would no longer be observed.

58. To my mind, it is clear that the entire transport operation, or ‘journey’ if you will — including rest — must comply with all of the requirements of Regulation No 1/2005. Indeed, as the Court has held, it appears that the EU legislature considered, on the basis of scientific and veterinary studies as well as assessments of the application of EU legislation carried out in the animal protection field, that once the provisions of that regulation concerning the health of animals are no longer complied with, animal welfare is liable to be endangered and can no longer be guaranteed.²² This means at least two things:

59. To begin with, rest periods must comply with the general clause. That involves a duty to refrain from (potentially) causing injury or undue suffering to animals, rather than an obligation to act exclusively in their interest. Of course, normally speaking a period during which the vehicle is at a halt will cause less suffering to animals than a period where it is in motion: for instance, the transported animals are at a lesser risk of losing their balance or suffering motion sickness.²³ However, I cannot exclude the possibility that a rest period which does not bring the total ‘journey times and rest periods’ under the 14+1+14 rule beyond 29 hours might still be liable to cause injury or undue suffering to the animals. To use an example, I do not think the general clause permits animals to be physically moved for 1 hour, followed by a 27-hour rest period spent inside the vehicle, before moving them for a further hour.

60. Next, a number of obligations set out in Regulation No 1/2005 must be positively and consistently met during periods of rest. I am thinking, first and foremost, of those which follow from the second sentence of Article 3 of Regulation No 1/2005, as well as the requirements listed in Annex I thereto and in particular in Chapter VI, which applies to ‘long journeys’ as defined in Article 2 of the regulation.

61. For my part, I am unable to read too much into the fact that the 14+1+14 rule mentions that the animals are to be given ‘a rest period sufficient for them in particular to be given liquid and if necessary fed’. Although such actions are clearly in the interests of the animals, that expression appears to add nothing more to the positive requirements which already follow from Regulation No 1/2005.²⁴ Moreover, the counter-argument is obvious: the term ‘in particular’ does not explicitly rule out the possibility of a rest period which is not exclusively in the interests of the animals. As the expression of political compromise, the 14+1+14 rule ought to be apprehended with some measure of pragmatism, as illustrated above at point 45.

62. Establishing whether a rest period fails to observe the requirements set out in Regulation No 1/2005 is a factual assessment which is a matter for the national authorities and, ultimately, the national courts. However, I would call to mind that in the context of export refunds, it is for the exporter to prove that the conditions for granting the refunds are met.²⁵ All things being equal, it would seem to me that the longer the duration of a rest period, the more difficult it will be for the exporter to do so.

22 — See, to that effect, *Viamex Agrar Handel*, C-96/06, EU:C:2008:158, paragraph 48.

23 — See, as regards the loss of balance of cattle during long distance transport, *The welfare of animals during transport (details for horses, pigs, sheep and cattle)*, op. cit., p. 81.

24 — See Article 3(h) of Regulation No 1/2005, as well as points 1.3 to 1.5 and points 2.1 to 2.3 of Chapter VI of Annex I to that regulation.

25 — Judgment in *Heemskerk and Schaap*, C-455/06, EU:C:2008:650, paragraph 24.

63. What is more, Article 22(2) of Regulation No 1/2005 ('Delay during transport') requires the competent authority, in the event that a 'consignment of animals has to be detained during transport for more than two hours ... to ensure that appropriate arrangements are made for the care of the animals and, where necessary, their feeding, watering, unloading and accommodation'. I do not see any valid reason why this two-hour rule might not, *mutatis mutandis*, serve as a yardstick in respect of transporters where a halt is attributable to them. This, moreover, supports the view that the idea that bovines might be kept on board a stationary vehicle for 14 hours without being unloaded, as suggested by the referring court, is simply not feasible.

64. Turning to the main proceedings, I have taken note of the fact that the duration of the transport at issue exceeds 29 hours, and that Masterrind has not, according to the information which is at the Court's disposal, invoked the +2 rule. However, as the place of destination of the transport at issue was Morocco, I greatly doubt that it might be possible for Masterrind to rely on the +2 rule. Consequently, I am minded to think that the transport at issue falls foul of the 14+1+14 rule, and that the action ought to be dismissed as ill founded.

65. In any event I consider that, save in exceptional circumstances, a 10-hour 'rest period' spent inside a motionless vehicle cannot be justified and is thus liable to cause the animals undue suffering. It is for the referring court to establish the conditions under which the 10-hour rest took place.

66. On the basis of the foregoing considerations, I propose that the Court answer the first question referred to the effect that, on a proper construction of the rule set out in point 1.4 of Chapter V of Annex I to Regulation No 1/2005, the 'journey times and rest periods' referred to in that point may involve a rest period of more than 1 hour or several rest periods, provided that a period of rest of at least 1 hour separates every combined period of physical movement of at most 14 hours and, moreover, that this would not breach the other requirements set out in that regulation. That is a matter for the national courts to verify. However, until the animals reach the place of destination, as defined in Article 2 of that regulation, point 1.5 of Chapter V of Annex I to that regulation requires them to be unloaded, fed and watered, and rested for at least 24 hours every 29 hours following their first loading at the place of departure, as defined in that same provision. This is without prejudice to the possibility, under point 1.8 of that chapter, of extending the journey time by two hours in the interests of the animals, taking account in particular of the proximity to the place of destination.

B – *The second question referred*

67. By its second question, the referring court essentially asks whether an administrative body of a Member State responsible for payment of export refunds is bound by a declaration, issued by an official veterinarian of another Member State, pursuant to which the journey (as used in Article 2 of Regulation No 1/2005) for which export refunds have been applied did not comply with the animal welfare rules.

68. As observed by the parties to this procedure, the case-law of the Court goes a long way in addressing that question.

69. In *Viamex Agrar Handel*, the Court was called upon to interpret a previous incarnation of Regulation No 817/2010.²⁶ Unlike the approach taken by its Advocate General,²⁷ the Court held that the presentation, by the exporter, of the documents mentioned in Regulation No 615/98 — now Regulation No 817/2010 — does not constitute irrefutable proof of compliance with the applicable export refunds rules, or of compliance with rules on animal welfare during transport. The evidence

26 — Commission Regulation (EC) No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine animals during transport (OJ 1998 L 82, p. 19).

27 — Opinion of Advocate General Mengozzi in *Viamex Agrar Handel*, C-96/06, EU:C:2007:680, points 29 and 30 and the operative part.

provided by those documents suffices only in so far as the competent payment body does not have at its disposal elements in the light of which it may find that the rules on animal welfare during transport have not been complied with. The obligation incumbent upon that body is to analyse that evidence, together with any other element available to it, in order to reach a finding as to whether or not those rules have been complied with and decide whether or not to grant the export refunds.²⁸

70. However, the Court has also held that this does not empower the competent payment body arbitrarily to call into question the evidence attached by the exporter to its export refunds application. The competent payment body may reach a finding of non-compliance only on the basis of documents mentioned in Regulation No 615/98 — now Regulation No 817/2010 — and/or of any other objective element with implications for the welfare of the animals. It cannot confine itself to noting mere suppositions or doubts concerning compliance, but must base its findings on objective and specific elements relating to the welfare of the animals and must, in any event, give reasons as to why it considers that the evidence provided by the exporter does not enable it to conclude that the animal welfare rules have been complied with.²⁹

71. That ruling was subsequently confirmed by the Court in *Heemskerk and Schaap*, sitting in Grand Chamber formation.³⁰

72. In both the abovementioned cases, the exporter was in possession of a declaration of the official veterinarian attesting to the conformity of the seafaring vessel concerned, and thus the transport as such, with the animal welfare rules. The main proceedings concern the reverse situation: the official veterinarian has declared that the journey has not taken place in compliance with the animal welfare rules during transport. The exporter is challenging that view.

73. Now, unlike what the Hauptzollamt argues, the fact that Article 5(1)(c) of Regulation No 817/2010 refers only to situations where the animal welfare requirements have not been complied with, rather than situations where they have been complied with, does not logically mean that the competent payment body may deny payment to a transport which actually meets those requirements. Indeed, under Article 1 of Regulation No 817/2010, the payment of export refunds for live bovine animals is 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 No 1/2005 and the Annexes referred to therein, and with Regulation No 817/2010 itself. Nothing more, nothing less. For in point of fact, the aim of the export refunds procedure — a procedure applicable to export refunds sought in respect of the export of live bovine animals — is simply to ensure that the product concerned satisfies all the conditions necessary for the refunds.³¹

74. Hence, the fact that it is for the exporter to show that all conditions are met for the approval of a request for export refunds is irrelevant, as that merely relates to the allocation of the burden of proof. On no account does it alter the fact that the scheme for export refunds aims to foster decisions which are correct on their merits, irrespective of whether they approve or deny such requests, in keeping with the general principle that administrative authorities must act in accordance with the law.

28 — Judgment in *Viamex Agrar Handel*, C-96/06, EU:C:2008:158, paragraphs 34 and 37 and the first indent of the operative part.

29 — *Ibid.*, paragraphs 39 to 41, and the first indent of the operative part.

30 — Judgment in *Heemskerk and Schaap*, C-455/06, EU:C:2008:650, paragraphs 24 to 32.

31 — See, to that effect, judgment in *Viamex Agrar Handel*, C-96/06, EU:C:2008:158, paragraphs 31 and 32.

75. What is more, I must confess to having difficulty in accepting the view that the validity and effects in law of a declaration, issued by an official veterinarian for the purposes of the legal system of which Regulation No 817/2010 forms part, are simply a matter of the law of the Member State of the point of exit, rather than of EU law as such.³²

76. Accordingly, the case-law mentioned above at points 69 to 71 applies conversely to the situation under consideration. It follows that a declaration issued by the official veterinarian, attesting to the non-compliance with the animal welfare rules of the journey for which export refunds are sought, does not constitute irrefutable proof thereof.

77. I am not persuaded by certain arguments which have been raised in support of the opposite view.

78. First, the argument submitted by the Hauptzollamt, according to which the document referred to in Article 2(3) of Regulation No 817/2010 is ‘duly completed’, and therefore open to review under Article 4(2)(a) of that regulation, only if the official veterinarian at the exit point certifies that the results of the checks pursuant to Article 2 of that regulation are satisfactory, must be rejected. To begin with, the term ‘duly completed’ cannot be interpreted as prescribing a particular result of the checks. Next, Article 2(4) of the regulation states that the document referred to in Article 2(3) thereof is to be endorsed with the total number of animals for which an export declaration has been accepted, minus the number of animals which gave birth or aborted during transport, died or for which the requirements of Regulation No 1/2005 were not complied with.

79. Second, I do not accept an argument according to which, in the interest of the welfare of the animals, it ought not to be possible to review declarations finding a breach of the rules on animal welfare during transport. The objective of protecting the welfare of animals, laudable as it may be, cannot justify a refusal to pay export refunds where, contrary to a declaration of non-compliance issued by the official veterinarian of another Member State, there has in fact *not* been a breach of those rules.

80. Last, an argument based on protection of the financial interests of the EU, raised by the Hauptzollamt, seems evidently ill founded to me. There is no legitimate threat to those interests where the rules on animal welfare have, in actual fact, been complied with. Besides, to put that argument into context, in the hypothetical event of a breach of the principle of legality by the Commission, the Court does not similarly uphold the amount of a fine imposed for breach of the competition rules for fear of a financial loss to the EU.³³

81. Be that as it may, as stated by the Hauptzollamt, the French Government and the referring court, the assessment of the physical condition and state of health of animals requires specific expertise and experience, and checks should therefore be carried out by a veterinarian.³⁴ The results of such checks amount to factual on-the-spot assessments involving complex and technical evaluations of the health and well-being of the animals. It follows that the discretion afforded to the competent payment body when reviewing such a declaration attesting to the non-compliance with the rules on animal welfare during transport is not unlimited³⁵ — rather, it is circumscribed in the same manner, *mutatis mutandis*, as mentioned above in point 70.

32 — In that sense, although I agree that the legal system of the export refund regulations has ‘led to the creation of a Community network’ which ‘necessarily implies cooperation between the Member States’ (see Opinion of Advocate General Mengozzi in *Viamex Agrar Handel*, C-96/06, EU:C:2007:680, points 27 and 28), I would in contrast infer from this a need to be able to review declarations such as the one at issue in the main proceedings.

33 — See Article 83 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (O) 2012 L 298, p. 1).

34 — See recital 5 of Regulation No 817/2010.

35 — See, to that effect, judgment in *Heemskerck and Schaap*, C-455/06, EU:C:2008:650, paragraph 29 and the case-law cited.

82. When challenging a declaration of non-compliance, the exporter must demonstrate conclusively, by way of objective evidence, that the assessment made by the official veterinarian is unreliable. However, the mere fact that the exporter takes a view different from that of the official veterinarian as regards the state of the animals for which export refunds are sought, does not mean that the veterinarian's assessment is manifestly wrong or based on incorrect facts.

83. So far as concerns the legal consequences of the official veterinarian's findings, as indicated by the referring court, the expertise which veterinarians possess does not justify the same caution on the part of the competent payment body. Any legal consequences drawn are therefore fully open to review.

84. On the basis of the foregoing considerations, I propose that the Court answer the second question referred to the effect that, when considering an application for export refunds under Article 4(2) of Regulation No 817/2010, a body responsible for the payment of export refunds is not bound by the entry made, in accordance with Article 2(3) of that regulation, by the official veterinarian. However, where that body decides to depart from the factual assessment made by that veterinarian of the health and welfare of the animals on which that entry is based, it must rely on objective and specific evidence relating to the health and welfare of the animals. If the application is refused in whole or in part, that body must, in any event, provide reasons therefor, it being for the exporter to show, in that case, that the evidence relied on by that body is irrelevant.

IV – Conclusion

85. In the light of the foregoing considerations, I propose that the Court answer the questions referred in Case C-469/14 by the Finanzgericht Hamburg (Finance Court, Hamburg) to the effect that:

- on a proper construction of the rule set out in point 1.4 of Chapter V of Annex I to 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, the 'journey times and rest periods' referred to in that point may involve a rest period of more than 1 hour or several rest periods, provided that a period of rest of at least 1 hour separates every combined period of physical movement of at most 14 hours and, moreover, that this would not breach the other requirements set out in that regulation. That is a matter for the national courts to verify. However, until the animals reach the place of destination, as defined in Article 2 of that regulation, point 1.5 of Chapter V of Annex I to that regulation requires them to be unloaded, fed and watered, and rested for at least 24 hours every 29 hours following their first loading at the place of departure, as defined in that same provision. This is without prejudice to the possibility, under point 1.8 of that chapter, of extending the journey time by two hours in the interests of the animals, taking account in particular of the proximity to the place of destination;
- when considering an application for export refunds under Article 4(2) 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, a body responsible for the payment of export refunds is not bound by the entry made, in accordance with Article 2(3) of that regulation, by the official veterinarian. However, where that body decides to depart from the factual assessment made by that veterinarian of the health and welfare of the animals on which that entry is based, it must rely on objective and specific evidence relating to the health and welfare of the animals. If the application is refused in whole or in part, that body must, in any event, provide reasons therefor, it being for the exporter to show, in that case, that the evidence relied on by that body is irrelevant.