

ZVK

JUDGMENT OF THE COURT (Second Chamber)

23 November 2006\*

In Case C-300/05,

REFERENCE for a preliminary ruling under Article 234 EC by the Bundesfinanzhof (Germany), made by decision of 17 May 2005, received at the Court on 27 July 2005, in the proceedings

**Hauptzollamt Hamburg-Jonas**

v

**ZVK Zuchtvieh-Kontor GmbH,**

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen, P. Kúris, J. Klučka (Rapporteur) and L. Bay Larsen, Judges,

\* Language of the case: German.

Advocate General: P. Mengozzi,  
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 5 October 2006,

after considering the observations submitted on behalf of:

- ZVK Zuchtvieh-Kontor GmbH, by K. Landry, Rechtsanwalt,
  
- the Danish Government, by J. Molde, acting as Agent,
  
- the Swedish Government, by A. Kruse, acting as Agent,
  
- the Commission of the European Communities, by M. Nolin and F. Erlbacher, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation of 'travel' referred to 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 by Council Directive 95/29/EC of 29 June 1995 (OJ 1995 L 148, p. 52) ('Directive 91/628').
  
- 2 The reference was made in the course of proceedings between the Hauptzollamt Hamburg-Jonas (Principal Customs Office, Hamburg-Jonas, 'the Hauptzollamt') and ZVK Zuchtvieh-Kontor GmbH ('ZVK') regarding the advance payment of an export refund in respect of the export of live bovine animals to Egypt.

### **Legal context**

- 3 The second and eighth recitals in the preamble to Directive 91/628 in its initial version are worded as follows:

'... in order to eliminate technical barriers to trade in live animals and to allow the market organisations in question to operate smoothly, while ensuring a satisfactory level of protection for the animals concerned, the Community has adopted rules in this field;

...

... for reasons of animal welfare the transport over long distances of animals, including animals for slaughter, should be reduced as far as possible’.

4 Under Article 2(2) of Directive 91/628, the following definitions apply:

(a) “means of transport”, those parts of road vehicles, rail vehicles, ships and aircraft used for loading and carrying animals, as well as containers for land, sea or air transport;

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

...

(e) “place of departure”, the place at which, without prejudice to the provisions of Article 1(2)(b), the animal is first loaded on to a means of transport, or any place where the animals have been unloaded and accommodated for 24 hours, watered, fed and, if necessary, cared for, but excluding any staging or transfer point.

...

(f) “place of destination”, the place at which an animal is finally unloaded from a means of transport, but excluding a staging point or a transfer point;

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

5 In Chapter VII of the Annex to Directive 91/628, point 48, entitled ‘Watering and feeding intervals, journey times and resting periods’, states:

‘...

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

...

(d) All other animals of the species referred to in point 1 must, after 14 hours of travel, be given a rest period of at least one hour sufficient for them in particular to be given liquid and if necessary fed. After this rest period, they may be transported for a further 14 hours.

5. After the journey time laid down, animals must be unloaded, fed and watered and be rested for at least 24 hours.

...'

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

- 6 ZVK exported 28 live bovine animals to Egypt in autumn 2000 and received an export refund advance.
  
- 7 However, the Hauptzollamt demanded repayment of that advance payment plus 10%, on the ground that ZVK had not complied with the maximum travel time permitted without rest as laid down in point 48(4)(d) of the Annex to the directive. It was apparent from the route plan that the transport of the bovine animals by lorry, which had begun on 6 November at 10.00 a.m., had been interrupted only at 1.00 a.m. the following morning, that is to say, after 15 hours.
  
- 8 ZVK and the Hauptzollamt are in dispute in that regard. ZVK maintains that the length of the journey has to be calculated from the time when the transport vehicle left the place of departure so that the journey at issue in the main proceedings lasted only 13.5 hours. Conversely, according to the Hauptzollamt, that travel time also includes the time taken to load and unload, which means it lasted more than 14 hours.
  
- 9 The Finanzgericht Hamburg (Finance Court, Hamburg) allowed the action brought by ZVK against the Hauptzollamt's decision.
  
- 10 The Hauptzollamt then brought an appeal on a point of law against the judgment of the Finanzgericht before the Bundesfinanzhof (Federal Finance Court).

- 11 The Bundesfinanzhof considers that the outcome of the case in the main proceedings depends on whether the time taken to load the bovine animals onto the lorry is part of travel for the purposes of point 48(4)(d) of the Annex to Directive 91/628. If that question were answered in the affirmative, the maximum permissible journey time of 14 hours under that provision would have been exceeded. That maximum duration of travel time would, on the other hand, have been complied with if loading time did not count as part of travel for the purposes of that provision.
- 12 The national court states in that regard that, although it is clear from Article 2(2)(b) of Directive 91/628 that transport includes the loading and unloading of the animals, point 48(5) of the annex to that directive and the divergences which appear on reading the different language versions of point 48(4) of that annex lead to uncertainty as regards the precise definition of travel.
- 13 Accordingly, the Bundesfinanzhof decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

‘Is the time taken to load and unload part of “travel” within the meaning of point 48(4)(d) of the Annex to [Directive 91/628]?’

### **The question referred for a preliminary ruling**

- 14 By its question, the national court, in essence, wishes to obtain an interpretation of ‘travel’ within the meaning of point 48(4)(d) of the Annex to Directive 91/628, in the light of the uncertainties which could arise from the wording of point 48(5) of that annex and the divergences between the different language versions of point 48(4) of that annex.

- 15 First of all, it must be borne in mind that, according to settled case-law, in interpreting a provision of Community law it is necessary to consider not only its wording, but also the context in which it occurs and the objective pursued by the rules of which it is part (see, inter alia, Case C-301/98 *KVS International* [2000] ECR I-3583, paragraph 21; Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraph 50; and Case C-53/05 *Commission v Portugal* [2006] ECR I-6215, paragraph 20).
- 16 Furthermore, as regards possible linguistic divergences, the Court has already held, firstly, that the need for a uniform interpretation of Community law means that a particular provision should not be considered in isolation but in cases of doubt should be interpreted and applied in the light of the other language versions and, secondly, that the different language versions of a Community text must be given a uniform interpretation and hence, in the case of divergence between the language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part (see, to that effect, Case C-372/88 *Cricket St Thomas* [1990] ECR I-1345, paragraph 19, and Case C-174/05 *Zuid-Hollandse Milieufederatie and Natuur en Milieu* [2006] ECR I-2443, paragraph 20 and the case-law cited).
- 17 As regards ‘travel’ referred to in point 48(4)(d) of the Annex to Directive 91/628, it must be pointed out that that provision gives no indication that makes it possible to establish whether loading and unloading time should be included.
- 18 However, from the definition of ‘transport’ in Article 2(2)(b) of Directive 91/628 it is clear that transport includes the loading and unloading of the animals.



- 19 That definition of transport corresponds to the objectives of Directive 91/628 as evidenced by, inter alia, the second and eighth recitals in the preamble to the directive in its initial version, which are to ensure a satisfactory level of protection for the animals and, for reasons connected with their welfare, to reduce their transport over long distances as far as possible.
- 20 Since the directive contains no restriction on the time taken for loading and unloading the animals as such, it follows that, if point 48(4)(d) of the Annex to Directive 91/628 were interpreted as meaning that that time is not included in travel time, the duration of those loading and unloading operations would not be taken into consideration in any way, which would render that provision ineffective.
- 21 Accordingly, 'travel' must be interpreted as including the time taken to load and unload the animals.
- 22 Moreover, such an interpretation is borne out by a comparison of the different language versions of point 48(4) of the Annex to Directive 91/628. It is apparent from the majority of those versions that travel is to be understood as including the time taken to load and unload the animals.
- 23 In any event, that interpretation of 'travel', which must be applied to all the provisions of the directive cannot be called in question on the sole ground that point 48(5) of the Annex to Directive 91/628 states that the animals must be unloaded after the journey time laid down.

- 24 In the light of the foregoing, the answer to the question referred must be that ‘travel’ referred to in point 48(4)(d) of the Annex to Directive 91/628 is to be interpreted as including the time taken to load and unload the animals.

### **Costs**

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

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

**‘Travel’, referred to 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, as amended by Council Directive 95/29/EC of 29 June 1995, is to be interpreted as including the time taken to load and unload the animals.**

[Signatures]