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**EU Regulation 1/2005 and Its Loopholes in  
General and Regarding Animal Transport  
by Sea in Special**

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# European Union Law Working Papers

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## **Abstract**

The transport of live animals has become somewhat of a hot topic in the field of animal welfare, since one minor inconvenience in the transport process can be detrimental to the wellbeing of the animals concerned. This paper identifies the weaknesses in European animal transport law based on the recommendations of the European Parliament to the European Commission and general criticism, each “loophole” building a subchapter. This thesis is divided into three main chapters. The first chapter serves as an overview, explaining the regulatory facts, the scope of application of Regulation (EC) No 1/2005 and recent legal developments in this field. In the second chapter, the general loopholes found will be discussed in detail by first stating the problem and elaborating possible means for improvement, especially the recommendations by the European Parliament and the regulatory changes foreseen in the new legislative proposal of the European Commission. The last chapter will study the weaknesses of animal transport by sea, and the recommendations of the European Parliament and the proposal of the European Commission will be dealt with here as well. In its recommendations, the European Parliament dealt with the problems in detail to find solutions, but the European Commission did not always address these in the proposal. In particular, the proposals regarding the transport by sea are rather unsatisfactory when compared to the solutions suggested by the European Parliament.

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# 1 Definition of the actors involved

Before going into further detail about the Regulation (EC) No 1/2005, there will be provided an overview on the actors involved in the animal transportation process.

## 1.1 Transporter

A natural or legal person transporting animals on their own account or on behalf of a third party is a transporter.<sup>1</sup> The presence of an attendant (i.e. a person that accompanies the animals during the voyage that is directly responsible for their wellbeing) for every transport is to be ensured by the transporter.<sup>2</sup> A natural person responsible for transportation must be designated by the transporter as well.<sup>3</sup> The transporter is referred to as organiser if they assign transportation orders to a subcontractor who is a licensed transporter.<sup>4</sup>

## 1.2 Keeper

The term keeper refers to a natural or legal person that is not the transporter, temporarily or permanently responsible for or handling animals.<sup>5</sup> At the point of departure, transfer or destination, compliance with the provisions of the Regulation regarding transport capability of

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<sup>1</sup> 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 2005 (OJ L 3/1) art 2(x); Patricia Patsch, 'Analyse des Europäischen und Österreichischen Tiertransportrechts - Erarbeitung von rechtlichen Verbesserungsvorschlägen und Anregungen' (Dissertation, Universität Innsbruck 2020) 46.

<sup>2</sup> 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 art 2(c); *ibid* 6(6); Patsch (n 1) 47.

<sup>3</sup> 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 art 5(2); Patsch (n 1) 47.

<sup>4</sup> 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 art 2(q); Patsch (n 1) 47.

<sup>5</sup> 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 art 2(k); Patsch (n 1) 50.

the animals and transport practices during loading and unloading as well as handling animals (Chapter I and III, section I of Annex I) must be ensured by the keeper. Animals arriving at the place of transit or destination shall be inspected by the keeper to assess whether the animals have been or are transported over long journeys within or outside of the EU.<sup>6</sup>

### **1.3 Organiser**

Organiser refers to a transporter subcontracted to one other transporter at minimum for a leg of a journey, a natural or legal person contracted to multiple transporters for a journey, or an individual who has signed Section 1 of the journey log as specified in Annex II.<sup>7</sup>

### **1.4 Competent authority**

Competent authority refers to a competent Member States' central authority that has the competence to conduct animal welfare checks or to any authority that it has granted that authority.<sup>8</sup>

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<sup>6</sup> 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 art 8; Patsch (n 1) 50.

<sup>7</sup> 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 art 2(q).

<sup>8</sup> *ibid* 2(f).

## 2 Introduction

Millions of live animals are being transported via extensive journeys within the European Union (EU) and to countries outside of the EU yearly, for different purposes, such as breeding, rearing, further fattening and slaughter.<sup>9</sup> The animals are transported with different means of transports such as road vehicles, livestock vessels or air vessels, and a large number of animals can be transported at once, this results in the transport of live animals being a critical area, where even a small mistake is enough to decide the fate of many animals. The wellbeing of live animals during transportation has become a matter of great interest for EU citizens over the past years, this interest of the EU population was a great incentive for the European Parliament to initiate a committee of inquiry to handle *“alleged contraventions and maladministration in the application of Union law in relation to the protection of animals during transport within and outside the Union”*.<sup>10</sup> In the following chapters, loopholes of the Regulation (EC) No 1/2005<sup>11</sup> will be elaborated and the recommendations for improvement of the European Parliament to the European Commission and the Council and the proposal of the European Commission will be addressed as well. The aim of this paper is to spread awareness on the need of good systems to protect the welfare of the EU’s farm animals during their transport and to show the negative impact that deficiencies in the law can have on the wellbeing of the animals. Furthermore, by highlighting the weaknesses of the Regulation, possible areas for improvement will be explored.

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<sup>9</sup> European Parliament, ‘European Parliament Recommendation of 20 January 2022 to the Council and the Commission Following the Investigation of Alleged Contraventions and Maladministration in the Application of Union Law in Relation to the Protection of Animals during Transport within and Outside the Union (2021/2736(RSP))’ (European Parliament 2022) 2021/2736 (RSP) para 4 <[https://www.europarl.europa.eu/doceo/document/TA-9-2022-0015\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0015_EN.html)>.

<sup>10</sup> *ibid* 5.

<sup>11</sup> Will be referred to as “Regulation” in this paper

### 3 The EU Regulation (EC) No 1/2005 in general

The Regulation is the central legal basis for the transportation of vertebrates within and from the EU.<sup>12</sup> The Regulation has been binding and directly applicable to all Member States of the EU since the 5<sup>th</sup> of January 2007.<sup>13</sup>

The scope of application of the Regulation includes the transportation of live vertebrates in relation with economic activity within the EU as well as the import and export from and to countries outside of the EU.<sup>14</sup> The transport has to take place in connection with economic activity for the Regulation to be applicable, the existence of such a connection is to be affirmed, when either there is a direct exchange of money, goods or service, or a direct or indirect profit is sought or generated.<sup>15</sup> Therefore, the Regulation does not apply to the transport of animals in relation to leisure, the transport of domestic animals to or from a veterinary practice, the transport of riding horses, taking pets on vacation or the transport of domestic animals to animal exhibitions.<sup>16</sup>

Member States may adopt stricter measures to improve the protection of animals during transports taking place exclusively on their territory or from their territory by sea.<sup>17</sup> To bring about an improvement in the protection and species-appropriate treatment of animals during

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<sup>12</sup> Erika M Wagner and others (eds), *Tier- und Artenschutzrecht: Jahrbuch 2022*, vol JB 22 (Verlag Österreich 2022) 103.

<sup>13</sup> 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 art 37; Patsch (n 1) 33.

<sup>14</sup> 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 art 1(1); Patsch (n 1) 33.

<sup>15</sup> 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 Recital 12; Patsch (n 1) 33.

<sup>16</sup> Patsch (n 1) 33.

<sup>17</sup> 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 art 1(3); Patsch (n 1) 34.

transportation is the primary objective of the Regulation.<sup>18</sup> Hence, Art 3 stipulates that animals are not to be transported in a manner that is probable to get them injured or cause them undue suffering.<sup>19</sup> This provision serves as an orientation for all other provisions of the Regulation, as these general terms build the foundation of the Regulation. The suffering of animals during transport is to be considered undue if the purpose of the transportation can also be achieved through other means that do not cause the animals to suffer, whereas economic or time-related aspects do not justify undue suffering.<sup>20</sup>

Furthermore, Art 3 lit a of the Regulation requires that all measures to minimise the duration of transportation as much as possible and to meet the animals' needs during the trip must have been taken in advance.<sup>21</sup> Moreover, to avoid injury and suffering and ensure the safety of the animals, the animals need to be fit for transport, the means of transport must be suitable and all persons involved in the transportation must be trained and competent.<sup>22</sup> Art 3 lit f requires that the transport to the place of destination is carried out without delay and that regular check-ups on the wellbeing of the animals are carried out.<sup>23</sup> The animals must be provided with water, feed and rest at suitable intervals and sufficient floor area and height appropriate to their size and the duration of the journey.<sup>24</sup>

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<sup>18</sup> 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 Recital 8; Patsch (n 1) 34.

<sup>19</sup> 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 art 3; Patsch (n 1) 34.

<sup>20</sup> Patsch (n 1) 34.

<sup>21</sup> 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 Art 3(a); Patsch (n 1) 35.

<sup>22</sup> 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 art 3(b); *ibid* 3(c); Patsch (n 1) 35.

<sup>23</sup> 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 art 3(f); Patsch (n 1) 35.

<sup>24</sup> 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 art 3(g); *ibid* 3(h); Patsch (n 1) 35.

It is up to the Member States to establish rules on penalties applicable to infringements of the provisions of the Regulation and to take appropriate measures to ensure the implementation of such penalties. According to Art 25, the penalties established by the Member States shall be effective, proportionate and dissuasive.<sup>25</sup>

The EP (European Parliament) established a committee of inquiry to investigate “*alleged breaches and maladministration in the application of Union law in relation to the protection of animals during transport within and outside the Union*” (ANIT). The ANIT-Committee was mandated by the EP to investigate 22 specific alleged failures and to make any recommendations it deems necessary in this matter and the EC (European Commission) and the Member States of the EU were accused of not effectively applying and enforcing individual provisions of the Regulation.<sup>26</sup> When the Committee of inquiry completed its work, it submitted a report and recommendations to the EC.<sup>27</sup> The committee approved the report by a major majority.<sup>28</sup>

As part of the “Farm to Fork Strategy”, the EC has announced numerous new legal provisions, including a revision of the Regulation, which was presented by the EC in December 2023.<sup>29</sup> The revision of the Regulation aims to facilitate the enforcement of provisions, align animal welfare requirements with the most recent scientific findings, lessen animal welfare issues caused by long journeys and frequent unloading and re-loading during rest periods, make sure that animals are provided with more space during transport, better the circumstances concerning

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<sup>25</sup> 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 art 25; Patsch (n 1) 58.

<sup>26</sup> Clara Schweighofer, ‘Gegen das Tierleid auf Rädern’ (2024) 1 Juridikum zeitschrift für kritik | recht | gesellschaft 116, 118.

<sup>27</sup> *ibid* 118–119.

<sup>28</sup> *ibid* 119.

<sup>29</sup> *ibid* 124–125.

transport of vulnerable animals and prevent animals from being exposed to extreme temperatures.<sup>30</sup>

Transition periods are included in the proposal to enable actors to adapt to the new provisions. The transitional period is set at five years for the new provisions on maximum journey duration, which covers maximum journey times for unweaned calves, space allowances, exports, imports, minimum age and weight of unweaned calves. The transition period regarding the transportation of dogs and cats is set at three years.<sup>31</sup>

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<sup>30</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of animals during transport and related operations, amending Council Regulation (EC) No 1255/97 and repealing Council Regulation (EC) No 1/2005 2023 [COM(2023) 770 final] 2.

<sup>31</sup> *ibid* 5.

## 4 Loopholes of the EU Regulation 1/2005 in general

### 4.1 Complex terms and too general formulations

The lack of implementing provisions and the use of undefined legal terms cause difficulties regarding the enforcement of parts of the Regulation. The differing interpretations of the Regulation within the Member States are a result of the general wording of the Regulation and provisions that are both flexible and too complex, leading to significant enforcement deficiencies. Certain countries are bypassed because control activities and sanction mechanisms are regulated differently within the Member States, this contradicts the acceleration principle, stating that transportation should be kept as short as possible.<sup>32</sup>

Terms such as *sufficient* or *appropriate* can frequently be found in the Regulation, however, these terms are neither further explained nor defined in more detail. A clear formulation of broad provisions such as “*sufficient lighting*” or “*sufficient bedding*” would enable a uniform application of the Regulation.<sup>33</sup> The Regulation provides for watering devices that they shall be ‘*appropriately designed and positioned for the categories of animals to be watered on board the vehicle*’, however, it is not possible to determine therefrom which watering devices are best suited for the different animal species.<sup>34</sup> This results in authorities, who lack the practical knowledge, approving numerous means of transport, which are not suitable for the animals in question.<sup>35</sup>

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<sup>32</sup> 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 art 3(a); Wagner and others (n 12) 3.

<sup>33</sup> Patsch (n 1) 67.

<sup>34</sup> 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 app Annex I Chapter VI; Patsch (n 1) 67.

<sup>35</sup> Patsch (n 1) 67.

The EP found that the reason for the inadequate enforcement of the Regulation lies in the different interpretations of the Regulation. In order to facilitate the enforcement of the provisions of the Regulation, the EP recommends for the revision of the Regulation to bring the Regulation in line with the latest scientific findings, recommendations and practical experience.<sup>36</sup> In addition, the report states that the Regulation is outdated and that its requirements do not correspond to the latest scientific studies and findings on the physiology and needs of animals, and therefore recommends a revision and improvement of the Regulation, particularly with regard to the needs of the transported animals and technical aspects. Hence, improvements regarding monitoring logbooks, the imposition and proportionality of sanctions, training for drivers, certification of road transport vehicles and livestock vessels, and binding provisions for the approval of vehicles and vessels are demanded in the report.<sup>37</sup>

## **4.2 Transport of unfit animals**

An animal is fit for transport if it can move without pain and assistance, has no large open wounds or severe organ prolapse, is not in an advanced pregnancy stage and also has not given birth within the last seven days and is not a newborn mammal with an unhealed umbilical wound. Piglets less than three weeks old, lambs younger than one week old and calves younger than ten days old shall not be transported over a distance of 100 km.<sup>38</sup> In case that an animal is only slightly injured or slightly ill and the transportation would not cause them any additional suffering, they may be transported as an exception. However, in case of doubt, this must be decided by a veterinarian. Provided that the transport takes place in connection with an

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<sup>36</sup> Schweighofer (n 26) 121.

<sup>37</sup> *ibid* 120.

<sup>38</sup> 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 app Annex I Chapter I; *ibid* Annex I Chapter VI; Patsch (n 1) 35.

approved animal experiment or a standard veterinary procedure in which the wounds have already healed, unfit animals may be transported. An animal that falls ill or gets injured during transport must be separated from the other animals and a vet must be contacted immediately to examine and treat the animal, and, if required, kill it to prevent unnecessary suffering.<sup>39</sup>

According to the EP, the largest share of infringements of the Regulation results from disregards of the animals' fitness concerning their transportation.<sup>40</sup> Numerous transports of unfit animals (even over long distances) are a consequence of varying interpretations of the provisions of the Regulation on the transport capability of the animals, absent controls and untrained staff that is unable to assess the fitness for transport of the animals.<sup>41</sup> A further shortcoming is the common unclarity among those involved in the transport process on what measures to take in the event that animals are unfit for transport. Furthermore, many births still occur during transportation since most people in charge of the transport are unable to assess the gestational age of the animals.<sup>42</sup>

In its recommendation the EP appeals to the Member States to advocate mobile slaughterhouses in remote areas, as these would ameliorate the wellbeing of animals that are injured and therefore cannot be transported to slaughterhouses.<sup>43</sup> It is recommended to the EC to establish a mandate to develop common mandatory EU guidelines for evaluating whether animals are fit for transport to guarantee a unified approach across the EU as well. Furthermore, the EP stipulates that the use of these guidelines must be verified and sanctioned.<sup>44</sup>

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<sup>39</sup> 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 app Annex I Chapter I; Patsch (n 1) 36.

<sup>40</sup> Patsch (n 1) 71.

<sup>41</sup> *ibid* 71–72.

<sup>42</sup> *ibid* 72.

<sup>43</sup> European Parliament (n 9) para 105.

<sup>44</sup> *ibid* 106.

In its recommendation to the EC the EP underlines the vulnerability of pregnant females, since the transportation of gestating females may result in miscarriages or birthing during the transport or might even lead to the death of the mother or young animal. Hence, the transport of pregnant animals should be avoided and pregnant animals in the last third of pregnancy should only be transported for a period of up to four hours. Furthermore, the EP calls for more research to establish more precise methods for identifying gestational age and evaluating fitness for transport according to the stage of gestation.

The authorities of the Member States should be more attentive to make sure that unfit animals are not transported.<sup>45</sup> Along with avoiding long-distance transports of vulnerable animals, the provisions should take into account the risks that vulnerable animals having less economic value, especially those at the end of their productive lives, are less protected during transport. The EP considers the transport of end-of-career animals to be only permissible if it is to the nearest slaughterhouse suitable for the animal species in question.<sup>46</sup> In the event of animals getting ill or injured in the course of transportation, the EP insist for the drivers to instantly notify a veterinarian and that the animal affected must be labelled “unfit” for transport, isolated from the other animals and provided with first aid care.<sup>47</sup>

According to the proposal of the EC the keeper at the point of departure is in charge of verifying that the animals are fit for transport. The date of insemination or the presumptive date of natural service of pregnant animals are to be given in the journey log by the keeper at the departing point. A veterinarian shall supervise the boarding of the animals on the vehicle.<sup>48</sup> The transporter is in charge of ensuring that the animals are fit for transport from the boarding of

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<sup>45</sup> *ibid* 110.

<sup>46</sup> *ibid* 111.

<sup>47</sup> *ibid* 112.

<sup>48</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of animals during transport and related operations, amending Council Regulation (EC) No 1255/97 and repealing Council Regulation (EC) No 1/2005 (n 30) art 17.

the animals at the departing point to the unloading at the point of destination. Road or rail consignments transporting animals shall be accompanied by an attendant with a certificate of competence, the handling of the animals is to be entrusted to the driver and the attendant by the transporter. However, no presence of an attendant is foreseen for animals transported in secured and adequately vented containers equipped with sufficient feed and water in dispensers that cannot be tilted for a voyage of twice the projected journey time and when the driver assumes the role of attendant.<sup>49</sup> The animals are to be inspected at least every 4.5 hours by the driver or attendant to evaluate their wellbeing and whether they are fit for transport. The transporter and organiser are to be informed without delay of any severe incident with possible negative effect on the wellbeing of the animals. If an animal becomes unfit during the voyage due to improper performance by the attendant or driver, the transporter is responsible for it.<sup>50</sup>

### **4.3 Long-distance transport of unweaned calves**

Unweaned calves are frequently transported for too long, which goes against the acceleration requirement of the Regulation stated in Art 3 lit a, which requires that all necessary arrangements have been made in advance to shorten the length of the journey and to accommodate the animals' needs during transportation.<sup>51</sup>

The probability of disease is increased by the long transport of many immunocompetent calves with different origins over great distances and for extended periods of time, leading to the clinical picture known as “crowding disease” or “shipping fever”.

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<sup>49</sup> *ibid* 18.

<sup>50</sup> *ibid* 19.

<sup>51</sup> 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 art 3(a); Wagner and others (n 12) 97.

There is a systematic approach to the trade in unweaned calves to extend the distance and duration of transportation.<sup>52</sup> Such systems also exist in Austria, where calves from various origins are transported to a central “hub”, where they are loaded and given a feeding trough and where their final destination -which could be within the country or in another Member State- is determined.<sup>53</sup> The approach of such a “hub” often results in a considerable extension of the transport route and the transportation time when it comes to transports within Austria.<sup>54</sup>

Domestic Equidae (except registered Equidae), domestic animals of bovine, ovine, caprine and porcine species may be transported for eight hours at most, however, the maximum journey time may be extended if the additional requirements of Annex I of Chapter VI are met (i.e. if the additional requirements for long journeys for the animals are fulfilled).<sup>55</sup> This means that unweaned calves, lambs, kids and foals, which are still on a milk diet and unweaned piglets can be transported for up to 19 hours, taking loading and unloading times into account.<sup>56</sup> These animals must be rested for at least one hour for them to be given liquid and to be fed if needed after nine hours of travel. They may be transported for additional nine hours after the rest period.<sup>57</sup> The period begins with the start of loading at the place of dispatch, provided that the animals have been accommodated at this place for at least 48 hours prior to departure, the “place of departure” is the location where the animals are first loaded onto a means of transport. However, assembly centres are not covered by this definition, they are considered as “place of departure” if the animals have been housed with sufficient bedding, unbound if possible, and provided with water for at least six hours prior to the time of departure from the assembly centre

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<sup>52</sup> Wagner and others (n 12) 98.

<sup>53</sup> *ibid* 101–102.

<sup>54</sup> *ibid* 102.

<sup>55</sup> 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 app Annex I Chapter V Point 1.1; *ibid* Annex I Chapter V Point 1.2; Wagner and others (n 12) 103.

<sup>56</sup> Wagner and others (n 12) 103–104.

<sup>57</sup> *ibid* 104.

or if the distance of travel between the first place of loading and the assembly centre is less than 100 km.<sup>58</sup>

This implies that the maximum permissible transportation time can be doubled when the transport is realised in an assembly centre. The assembly centre being considered as the place of loading results in two transports, which must be assessed separately in terms of time for their compatibility with the provisions of the Regulation.<sup>59</sup>

The permissibility of “detour” via an assembly centre is to be denied with regard to the acceleration requirement of Art 3 lit a of the Regulation, especially if the last place of unloading is already known at the first place of loading or should have been known with sufficiently careful planning, and a detour via an assembly centre cannot be objectively justified.<sup>60</sup> This must be proved by the keeper prior to the first loading, the transporter, or the organiser. Economic interests must be weighed up against those of animal welfare, and there must be disproportionately high additional efforts and costs. Irrespective of whether the maximum transportation time has been met or not, if the requirements for a detour via an assembly centre are not fulfilled, the transportation via the assembly centre is not in conformity with the Regulation and thus, is illegal.<sup>61</sup>

Another problematic aspect of the long-distance transport of unweaned calves or unweaned animals in general is their supply of milk during transport. As mentioned above, these animals need to be provided with milk during a one hour resting period after nine hours of transport. However, their supply with milk during transport is not possible because the animals are not

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<sup>58</sup> 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 art 2(r); Wagner and others (n 12) 104.

<sup>59</sup> Wagner and others (n 12) 104.

<sup>60</sup> 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 art 3(a); Wagner and others (n 12) 105.

<sup>61</sup> Wagner and others (n 12) 106.

familiar with the drinking facilities, only water can be channeled through the devices as milk would clog the tubes and the milk cannot be heated to the animals' body temperature on the means of transport, these technical impossibilities of supplying the animals with milk have been known since 2008.<sup>62</sup> Therefore the transport over long distances of unweaned animals leads to infringements of Art 3 of the Regulation.<sup>63</sup>

The EP is of the opinion that more research is needed to improve knowledge of the particular and specific transport needs of young and unweaned animals, in particular with regard to the optimal transport duration depending on the means of transport, the optimal space available, the right age, appropriate drinking devices, milk replacers and feeding management at assembly centres, feeding schedules during transportation and optimal conditions for rearing animals on the farm of origin, as well as the evaluation of the animals' fitness for transport, which must be adequately ensured.<sup>64</sup>

The EP also recognises the need for the definition of unweaned animals to be clarified to specify those animals that are incapable of taking on sufficient solid feed and water on their own and with a transparent minimum age in weeks, depending on the species, and considering the latest scientific findings on the immune system and feeding habits of this group of animals.<sup>65</sup> In its recommendations the EP advised to only permit the transport of calves younger than four weeks, with an exception of transport carried out by farmers, for a travel route less than 50 km.<sup>66</sup> However, the EP did not make such a recommendation for other unweaned animals.<sup>67</sup>

The new proposal of the EC stipulates that unweaned calves, piglets, lambs, kids and foals shall not be transported by road for longer than eight hours. If the means of transport provides for a

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<sup>62</sup> Patsch (n 1) 72.

<sup>63</sup> *ibid* 72–73.

<sup>64</sup> European Parliament (n 9) para 102.

<sup>65</sup> *ibid* 103.

<sup>66</sup> *ibid* 104; Schweighofer (n 26) 123.

<sup>67</sup> Schweighofer (n 26) 123.

feeding system approved by the EC, allowing said group of animals to be fed during transport with milk or milk replacers at body temperature and adequate hygiene standard, these animals may be transported for nine hours at the most, after which an obligatory rest period of minimum one hour without unloading shall take place before transport may continue for a maximum of further nine hours. Unweaned calves, lambs, kids, piglets and foals should have access to water at all times and be provided with species-specific milk or adequate milk replacement every nine hours from the beginning of the journey, irrespective of the means of transport used.<sup>68</sup> However, the sea leg of the journey of unweaned calves, piglets, foals, kids and lambs is not to be included in the journey time and the proposal also does not entail a definition of “unweaned”.<sup>69</sup>

#### **4.4 Duration of the journey**

The water supply of animals during long transports has proven to be particularly deficient in practice as there are no provisions on whether the animals must be unloaded or brought to a special location for this purpose, only the intervals at which the water supply shall take place are regulated. The animals are often not provided with sufficient water or no water at all, since they are not familiar with the drinking devices used on the vehicles and the Regulation itself does not require the water supply of the animals on board to be inspected by the competent authorities or by an official veterinarian. Other factors contributing to the dehydration of the animals on board are that numerous vehicles are equipped with the wrong drinking facilities, the devices are incorrectly installed or that the animals are unable to reach the devices due to the high loading density.<sup>70</sup>

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<sup>68</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of animals during transport and related operations, amending Council Regulation (EC) No 1255/97 and repealing Council Regulation (EC) No 1/2005 (n 30) art 29.

<sup>69</sup> *ibid* 3; *ibid* 29(3).

<sup>70</sup> Patsch (n 1) 72.

In its recommendations to the EC and the Council, the EP recommends the creation of an EU-wide species-based methodology for monitoring feeding and watering intervals from the last feed before loading at the farm of origin through to the end of the journey, either during stops or loading or unloading. In the case of excess of journey periods, the EP demands the EC to take action to make certain that Member States properly sanction this violation.<sup>71</sup>

The Member States are called to inspect transports within the EU at the time of the animals being loaded onto vehicles to check compliance with the requirements of the Regulation.<sup>72</sup> Furthermore, the Member States are also required to verify that the animals on board have access to operable, cleaned and sufficient drinking devices and are provided with enough fresh litter.<sup>73</sup>

The transport of domestic animals headed for slaughter should not exceed eight hours, this maximum transportation time should be stipulated in future legislation and must apply to all means of transport, with the exception of the transport by sea.<sup>74</sup> The provisions on the maximum duration of the transport should be reviewed and consider animal-based evidence and requirements according to species, age and category.<sup>75</sup>

Small-scale local and collective mobile slaughterhouses should receive financial support from existing EU funds to enable the slaughter of animals on farms or near to their place of rearing. Moreover, the construction of local slaughterhouses and processing facilities in more locations and legislative initiatives in the Member States to facilitate slaughter on site are listed and strongly advocated by the EP as alternatives to transport over long distances. In case that an animal is unfit for transport, its emergency slaughter on livestock and fattening farms should

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<sup>71</sup> European Parliament (n 9) para 84.

<sup>72</sup> *ibid* 85.

<sup>73</sup> *ibid* 86.

<sup>74</sup> *ibid* 87.

<sup>75</sup> *ibid* 88.

be permitted by the Member State.<sup>76</sup> The establishment of fast lanes for animal transport at borders within the EU by Member States would contribute to reduce transport times and is therefore recommended by the EP.<sup>77</sup>

The EP recognises the need for a definition of “journey time” as the entirety of movement without the time of loading into a means of transport and unloading therefrom upon arrival at the final destination. The authority in charge should verify if the projected loading or unloading schedule is doable, proportionate to the number of animals to be transferred, and correctly indicated in the journey log. Furthermore, “assembly centre hopping” must be prevented, since it is used to conveniently avoid journey time limits to the final destination.<sup>78</sup> The EC is urged to implement provisions on the choice of the shortest and most appropriate route to the final destination in the revision of the Regulation.<sup>79</sup>

Following the proposal of the EC, lengthy road or rail transport of terrestrial animals (except for domestic birds and rabbits) for other purpose than slaughter shall consist of two legs at most, each leg shall not surpass 21 hours. Following the first 21 hours the animals are to be unloaded to rest for a minimum of 24 hours at a control post before continuing the journey. Each leg of the journey includes a rest period of minimum one hour after a maximum of ten hours, during the rest period, the animals shall stay on the stationary vehicle. Furthermore, the animals shall be regularly provided with water and feed.<sup>80</sup> The transportation of terrestrial animals (except for domestic animals and rabbits) to slaughter by road or rail is to be executed in short journeys. In the event that there is no species-specific slaughterhouse reachable with short journeys, an

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<sup>76</sup> *ibid* 89.

<sup>77</sup> *ibid* 90.

<sup>78</sup> *ibid* 91.

<sup>79</sup> *ibid* 93.

<sup>80</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of animals during transport and related operations, amending Council Regulation (EC) No 1255/97 and repealing Council Regulation (EC) No 1/2005 (n 30) art 27.

authorisation for a long journey to the nearest species-appropriate slaughterhouse may be granted by the authority in charge at the departing point.<sup>81</sup>

## 4.5 Temperature during transport

Temperature limits for long distance journeys are stipulated in the Regulation, accordingly, ventilation systems should maintain a temperature between 5 °C and 30 °C, however, deviations of +/- 5 degrees are permitted. The use of fans in the vehicles that are unable to lower the temperature inside of the vehicle has been uncovered several times by animal welfare organisations, therefore, the animals on board often have to endure temperatures reaching over 35 °C in the vehicles. Most animals are not used to the hot weather conditions of the southern parts of Europe, where temperatures can reach over 35 °C, therefore, these animals endure immense stress and agony.<sup>82</sup>

Following the recommendation of the EP, the Member States have to make sure that the species on board have the best-suited temperature inside the vehicles at all times during transportation, regardless of the means of transport being stationary or moving and irrespective of the outside temperature. The compliance with the provisions of the Regulation on the minimum and maximum temperature limits inside the vehicles must be ensured by the Member States. According to the EP, journeys, journey logs and travel plans are only to be authorised by the Member States if the weather forecast states a temperature range within 5 °C and 30 °C for the length of the entire transport, irrespective of the means of transport used (except for a type of

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<sup>81</sup> *ibid* 28.

<sup>82</sup> Patsch (n 1) 73.

transport having climate control systems able to keep the temperatures within the suitable frame).<sup>83</sup>

It is to be noted that the body heat of the animals may lead to an increase of the temperature within a vehicle, which may result in higher inside than outside temperatures.<sup>84</sup> The EP asks the Member States to carry out additional and appropriate controls during heat waves.<sup>85</sup> The EC has to clarify that the provisions on vehicle temperature apply for the whole journey until the journey end point, therefore the EC should verify that these provisions are complied with by the Member States.<sup>86</sup> To simplify the plausibility check by official veterinarians, a uniform weather forecasting system should be established by the EC.<sup>87</sup> According to the EP, the creation of more specific provisions in the future on the best-suited temperature frame in transport vehicles, which consider the different species, age and category-specific needs, the physiological status of the animal, sex etc., is substantial.<sup>88</sup>

The new proposal of the EC stipulates that the temperature forecast at the point of departure, destination and of the control post at the time animals are scheduled to be at those places are to be considered by the organiser upon submission of the journey log and by the competent authority upon approval of the journey log. In the case of journeys to third countries, the temperature forecast at the exit point or the border control post are to be considered by the organiser as well. In the event that terrestrial animals (except for cats and dogs) are transported by road and the temperature forecast calls for temperatures below 0°C, the means of transport must be covered and air circulation within the animal compartment controlled to shield the animals from windchill. If the temperature is expected to be below -5°C the duration of the

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<sup>83</sup> European Parliament (n 9) para 94.

<sup>84</sup> *ibid* 95.

<sup>85</sup> *ibid* 96.

<sup>86</sup> *ibid* 97.

<sup>87</sup> *ibid* 98.

<sup>88</sup> *ibid* 100.

journey shall not surpass nine hours. For temperature forecasts indicating temperatures between 25°C and 30°C, the journey duration between 10h00 and 21h00 shall not surpass nine hours. Only journeys taking place between 10h00 and 21h00 are to be authorised if the temperatures are expected to be above 30°C. If the temperature between 10h00 and 21h00 is forecasted to be above 30°C, in addition, the space allowance for the animals shall be augmented by 20%.<sup>89</sup>

## **4.6 Non-compliance with the provisions of the Regulation in third countries**

The European Court of Justice (ECJ) decided in the *Zuchtvieh-Export GmbH* case (C-424/13) that the provisions of the Regulation must be complied with not only within the territory of the EU, but also until reaching the point of destination, even if it is in a third country.<sup>90</sup>

Therefore, the provisions of the Regulation apply in third countries until the first unloading of the animals in the third country. As a consequence the resting periods and breaks for supply must be adhered to outside of the EU and transports to a third country are not to be approved by authorities if it is obvious that the provisions of the Regulation will be infringed.<sup>91</sup> A very present criticism of the judgment is that the EC has no means to enforce or even prove compliance with the provisions of the Regulation outside the EU.<sup>92</sup> The judgment of the ECJ is largely disregarded, multiple transports are still approved, even though the authorities are aware of the non-compliance with the provisions of the Regulation outside of the EU. Plenty of non-

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<sup>89</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of animals during transport and related operations, amending Council Regulation (EC) No 1255/97 and repealing Council Regulation (EC) No 1/2005 (n 30) art 31.

<sup>90</sup> *Zuchtvieh-Export GmbH v Landeshauptstadt Kiel (Case C-424/13)* [2015] European Court of Justice C-424/13 para 56; Schweighofer (n 26) 117.

<sup>91</sup> *Zuchtvieh-Export GmbH v Landeshauptstadt Kiel (Case C-424/13)* (n 90) para 56; Patsch (n 1) 83.

<sup>92</sup> Schweighofer (n 26) 117.

governmental organisations as well as Commission reports have called out the malpractices in third countries.<sup>93</sup>

The members of the committee of inquiry established the regular disregard of the judgment of the ECJ in the case C-424/13 and the Commissions failure to enforce this ruling.<sup>94</sup> Therefore, for the development of inspection methodology on the amount of feed and water for the length of the transport, the space and headroom for the animals on board, of the quality of the bedding and to make sure that no unfit animals are being transported, the Member States are demanded to examine every consignment during loading and when reaching the final destination for long transports to third countries in the recommendations of the EP. In the event that transports of live animals to countries, where the enforcement of the judgment of the ECJ in Case C-424/13 cannot be assured, are approved by Member States, the EC shall intervene against these Member States.<sup>95</sup> The revision of the Regulation shall include an obligation to establish reports on the health status of the animals and their mortality rate when they arrive at the place of destination.<sup>96</sup>

Consignments of live animals moved to non-EU countries are only to be permitted once the competent authority has been assured that the completed journey log filed is realistic due to backed-up evidence and that implementation of the Regulation will be guaranteed until final destination in accordance with the judgment mentioned above.

The EP highlighted the fact that due to the lack of control posts in third countries some countries have restricted the export of live animals over long distances and the transport of specific categories of animals.<sup>97</sup> The EP requires the EC to establish official lists of third countries,

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<sup>93</sup> Patsch (n 1) 83.

<sup>94</sup> Schweighofer (n 26) 123.

<sup>95</sup> European Parliament (n 9) para 127.

<sup>96</sup> *ibid* 128.

<sup>97</sup> *ibid* 130.

whose rules on the protection of animals are at least as strict as those in the EU, where, on the basis of an international agreement, the export of live animals may be directly approved. However, the fact that third countries abuse their certification to act as a transit hub for transporting animals towards non-EU countries that are not certified needs to be addressed by the EC. To ensure traceability and welfare during journeys to countries outside of the EU, the EC shall assess examples of best practice concerning certification and audit instruments, a certified control system that warrants compliance with EU law in any part of the transport shall be established as well.<sup>98</sup> In bilateral trade negotiations the EC should also aim for consistent animal welfare standards for transportation between the EU and third countries, otherwise European farmers might face unfair competition.<sup>99</sup>

The establishment of a list of facilities where animals can be rested in non-EU countries that meet the requirements set in the Regulation is recommended to the EC by the EP and Member States should only authorise journey logs in future when it has been confirmed that the rest facilities provided in the third country are actually listed.<sup>100</sup>

The proposal of the EC clarifies that the Regulation also applies to the transport of animals where the place of departure lies in a third country and the place of destination is in the EU and where the place of departure lies in the EU and the point of destination is a third country.<sup>101</sup> A transport to a third country may only be arranged by the organiser if they hold an authorisation to transport animals for long journeys.<sup>102</sup> Organisers are to submit an application for authorisation with only one competent authority within only one Member State. When applying for the authorisation, the organiser must prove to be established or represented (when

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<sup>98</sup> *ibid* 131.

<sup>99</sup> *ibid* 133; Schweighofer (n 26) 124.

<sup>100</sup> European Parliament (n 9) para 135.

<sup>101</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of animals during transport and related operations, amending Council Regulation (EC) No 1255/97 and repealing Council Regulation (EC) No 1/2005 (n 30) art 2(1).

<sup>102</sup> *ibid* 32(1).

established in a non-EU country) in the Member State of the relevant competent authority and that they fulfil the requirements of Art 14, then the authorisation shall be granted by the competent authority for a period of maximum five years.<sup>103</sup> The permit shall identify the species and categories of animals and type of transport covered and whether it includes transportation outside of the EU.<sup>104</sup> In the event that these requirements are no longer met by the organiser, the competent authority shall suspend the authorisation or the part of the authorisation concerning transport to third countries. If the organiser proves that the deficiencies have been rectified, the authority in charge shall lift the suspension. If the organiser has not rectified the deficits within three months of the suspension, their authorisation shall be withdrawn by the authority in charge.<sup>105</sup>

To receive a certificate for transport to third countries, the organiser shall order a certification body to assess the first journey to a country outside of the EU organised by them. The certification body shall assess if the journey log corresponds to the maximum journey duration, special requirements for transport in extreme temperatures and rest times foreseen by the Regulation if the animals are treated conforming to the Regulation etc. If these requirements are met, the certification body shall grant a certificate for transports to third countries to the organiser, which is valid for five years. The certification body shall notify the organiser and the competent authority if the conditions are not fulfilled, the competent authority then shall annul the organiser's authorisation for transports to third countries. At minimum two unscheduled assessments of journeys of the organiser shall be carried out by the competent authority within the period of validity of the certificate to ensure compliance with the requirements of paragraph 2.<sup>106</sup>

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<sup>103</sup> *ibid* 5.

<sup>104</sup> *ibid* 6(2).

<sup>105</sup> *ibid* 6(4).

<sup>106</sup> *ibid* 33.

Animals may only be rested in control posts of third countries with standards at minimum equivalent to those of the Regulation (EC) No 1255/97 and that are on the list of control posts fulfilling requirements equivalent to those of the Regulation (EC) No 1255/97 approved by the EC. A list of control posts fulfilling requirements equivalent to those of Regulation 1255/97 shall be approved by the EC. A control post shall be excluded from the list if the certification body has assessed or the EC audited that the control post does not fulfil these standards anymore.<sup>107</sup>

Regarding animals transported from non-EU countries to the EU, transporters shall make sure that the transport proceeds in accordance with the Regulation or under conditions considered by the EU as equivalent to those in the Regulation, from the point of departure outside of the EU until the point of destination in the EU.<sup>108</sup>

As regards animals transiting EU territory, meaning that they are transported from a place of origin outside of the EU to a place of destination in the same or other non-EU country, operators shall make sure that the provisions of the Regulation are adhered to for the leg of the journey occurring within the EU, except for the rules on maximum journey times.<sup>109</sup>

## **4.7 Insufficiently covered animal species**

The EP came to the conclusion that many animal species are insufficiently covered or not covered at all by the Regulation.<sup>110</sup> Therefore, legislative proposals based on the most recent scientific findings on the needs of fish and other aquatic animals and on transport strategies to diminish their suffering during transportation shall be developed by the Commission.

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<sup>107</sup> *ibid* 34.

<sup>108</sup> *ibid* 35(a).

<sup>109</sup> *ibid* 36.

<sup>110</sup> Schweighofer (n 26) 123.

A checklist for the planning and preparation prior to transport as well as specific provisions regarding water quality parameters, density and handling in the course of loading and unloading should be entailed in the new provisions.<sup>111</sup> In regard to animal species not yet covered by the legislation in an adequate manner, the EC shall establish provisions within the Regulation to properly protect these species, such as rabbits and poultry.

In view of the fact that the absence of provisions in the Regulation regarding rabbits leads to the occasional inadequate utilisation of poultry containers for their transportation, species-specific provisions for poultry and rabbits should be established. The transport of rabbits is only to be considered permissible if it is to the nearest accessible species-appropriate slaughterhouse and initiatives to enlarge the network of mobile, local and regional slaughterhouses are to be supported by the EC.<sup>112</sup>

In regard to companion animals, the latest scientific knowledge on their wellbeing during transportation needs to be assessed and detailed provisions on the transport for commercial reasons based thereon shall be initiated by the EC.<sup>113</sup> Horses should be taken into account by the EC by way of species-specific requirements for their transport being proposed in the revised Regulation.<sup>114</sup>

The proposal of the EC includes a provision regarding the transport of aquatic animals in its general provisions on the transport of animals, stating that aquatic animals are to be provided with water sufficient in regard to volume and quality.<sup>115</sup> Furthermore, the proposal stipulates

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<sup>111</sup> European Parliament (n 9) para 113.

<sup>112</sup> *ibid* 114.

<sup>113</sup> *ibid* 115.

<sup>114</sup> *ibid* 116.

<sup>115</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of animals during transport and related operations, amending Council Regulation (EC) No 1255/97 and repealing Council Regulation (EC) No 1/2005 (n 30) art 4(2)(j).

minimum standards for the commercial transport of other animal species, such as aquatic animals, dogs and cats that were not yet covered by the Regulation.<sup>116</sup>

## 4.8 Penalties

As mentioned before, according to the Regulation it is up to the Member States to determine a penalty, as a consequence of which there exist numerous different penalty systems within the EU for infringements of the Regulation. Art 25 of the Regulation stipulates for penalties that they shall be effective, proportionate and dissuasive.<sup>117</sup> However, there are great discrepancies within the penal systems among the Member States for infringements of provisions of the Regulation, meaning that the amount of the penalties varies greatly within the Member States, this results in unfair competition, which can lead to competition in terms of undercutting animal welfare standards during transportation. Moreover, most of the sanctions are set too low to be effective and penalties are hardly imposed.<sup>118</sup>

According to the proposal of the EC it is a matter of the Member States to guarantee that a legal person held liable for or a natural person having committed a violation of the Regulation faces administrative sanctions in line with the Regulation and national law. The proposal also allows for Member States to apply criminal sanctions. The sanctions are to be issued proportionately to the seriousness of the violation and adequately in severity to effectively penalise and prohibit further violations.

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<sup>116</sup> Schweighofer (n 26) 125.

<sup>117</sup> 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 art 25; Patsch (n 1) 83.

<sup>118</sup> Patsch (n 1) 83.

Certain factors such as nature, gravity and the extent of the violation, the harm to the wellbeing of the animals, their number, type age or vulnerability are to be considered by the Member State when determining penalty. Examples of aggravating circumstances are given in the proposal, such as violations maintained through fraudulent or deceptive practices or the use of falsified or invalid documents/certificates or deliberate false or deceptive statements in journey logs.

Serious violations are to be punished with administrative financial penalties amounting to at least the value of the consignment.<sup>119</sup> If a serious infringement has been repeated within three years, the financial sanction shall be at minimum twice the value of the consignment. Examples of serious violations are mentioned in the proposal, such as the transport of animals that are too young for transport or severely wounded.<sup>120</sup> Other sanctions that may be applied by the Member States are mentioned as well, such as the confiscation of the means of transport or the animals transported or the immobilisation of the means of transport concerned.<sup>121</sup>

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<sup>119</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of animals during transport and related operations, amending Council Regulation (EC) No 1255/97 and repealing Council Regulation (EC) No 1/2005 (n 30) art 43.

<sup>120</sup> *ibid* 44.

<sup>121</sup> *ibid* 45.

# 5 Loopholes of the EU Regulation regarding the transport of animals on ships

## 5.1 Substandard vessels

When transported from the EU to third countries by sea, animals often endure severe suffering due to the poor conditions of the ships they are embarked on.<sup>122</sup> Livestock vessels are ships that are either built for the sole purpose of animal transport by sea, or (as it is often the case) ships that were formerly used for the transport of vehicles and were converted to livestock vessels.<sup>123</sup>

The vessels the animals are transported with often do not meet the minimum legal requirements for animal welfare.<sup>124</sup> The largest livestock vessel approved in the EU can carry up to 18,000 cattle or 75,000 sheep, although capacities may vary. The length of transportation by ship can vary greatly as well, sometimes reaching multiple weeks.<sup>125</sup>

It is common for these vessels to have the pens for the animals located inside the ships, below decks, so that the animals are protected from the weather. For this reason, there is a need for appropriate mechanical ventilation for the welfare of the animals.<sup>126</sup>

Article 20 paragraph 1 of the Regulation regulates the requirements that need to be met for transportation vessels as follows:

*Livestock vessel inspection on loading and unloading*

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<sup>122</sup> Four Paws, 'Live Animal Transport by Sea The Long and Torturous Journeys as Animals Are Shipped to Their Death' (*FOUR PAWS International*, 27 September 2023) <<https://www.four-paws.org/campaigns-topics/campaigns/live-animal-transport/live-animal-transport-by-sea>>.

<sup>123</sup> European Commission. Directorate General for Health and Food Safety., *Welfare of Animals Exported by Sea: Overview Report*. (Publications Office 2020) 7 <<https://data.europa.eu/doi/10.2875/47273>> accessed 15 December 2024.

<sup>124</sup> Four Paws (n 122).

<sup>125</sup> European Commission. Directorate General for Health and Food Safety. (n 123) 3.

<sup>126</sup> *ibid* 7.

*1. The competent authority shall inspect livestock vessels before any loading of animals in order to verify in particular that:*

*(a) the livestock vessel is built and equipped for the number and the type of animals to be transported; L 3/10 Official Journal of the European Union EN 5.1.2005*

*(b) compartments where animals are to be accommodated remain in a good state of repair;*

*(c) the equipment referred to in Chapter IV of Annex I remains in good working order.<sup>127</sup>*

More detailed provisions on the construction and equipment of livestock vessels are provided in Chapter IV of Annex I of the Regulation. The cargo spaces in which the animals are transported must be equipped with a ventilation system to guarantee a complete exchange of air, the strength of the pen grids and decks must be appropriate for the animals that are being transported, and all animals must have unhindered access to sufficient fresh water in every animal pen. For the event that the main pump fails, an alternative pump system must be available to ensure the water supply of the animals. Adequate fire extinguishing systems are required to be present in all animal pens and the wastewater must be drained away. For journeys over 24 hours, the livestock vessel must carry sufficient bedding, feed and water so that the minimum daily food and water ration plus 25% is covered.<sup>128</sup>

In order for a livestock vessel to operate within the EU, it is required to have been admitted a certificate of approval from a competent authority of a Member State or body designated by a Member State. This approval should be renewed after a maximum of five years, or it becomes invalid. The permit loses its validity as soon as the vessel has been modified in a way that compromises the wellbeing of the animals.<sup>129</sup>

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<sup>127</sup> 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 art 20.

<sup>128</sup> Patsch (n 1) 43.

<sup>129</sup> European Commission. Directorate General for Health and Food Safety. (n 123) 7.

During the second half of 2019, 74 livestock vessels were authorised in the EU. Following a report issued by an NGO in the year of 2017, 54% of the livestock vessels exporting animals from the EU ports were licensed in countries that were black-listed in 2015 for poor performance under the Paris Memorandum of Understanding, meaning that they present a high to very high risk regarding maritime safety. Just 24% of the vessels listed were part of the “white-listed” group. There is proof that in a minimum of four Member States the use of substandard vessels that were not in conformity with EU provisions regarding animal welfare was permitted or approved in the years from 2017 to 2018.

Inspection results from other countries are not accessible to the authorities of a Member State. Furthermore, there is a lack of a publicly available list of all approved livestock vessels in the EU, hence each Member State has its own list and authorities have no other choice than to work with and trust in the certificate presented by the organiser.

The Irish authorities go beyond the minimum standard required by EU law and, hence, set up a good example with their system for approval and examination before loading. The Irish system includes detailed regulations and procedures. The Irish authorities demand a livestock vessel to fly the flag of a white-listed country and to show the statutory certificates issued by a Recognised Organisation with a “performance level” recorded as “High” in the “Recognised Organisation performance table”, and it must not be operated by a company having a “performance level” listed as “low or very low” in order to be approved.

Most competent authorities inspecting animal transport vessels do not have available appropriate procedures or access to specific technical expertise in order to examine water pumping, ventilation and drainage systems of the vessels, which are all essential to the welfare and wellbeing of animals during transport on the vessel.<sup>130</sup>

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<sup>130</sup> *ibid* 8.

Ireland is also exemplary in this aspect, as the approval and pre-loading inspections in Ireland are conducted by marine engineers. The authorities in Ireland require the operator to pay a deposit of funds prior to the inspection of the vessel, which covers the costs for the services of the engineers and the official inspection. The excess money is reimbursed to the operator when the inspection is completed and the result is state of the art, this works as a great incentive for the operator to provide a vessel in good condition.

The approval authority should determine during the preloading inspections that the entire equipment on the vessel is in working order. It is common for Member States' authorities to task their veterinarians with this decision without giving them sufficient time and without providing them with adequate procedures and technical knowledge to evaluate these requirements. It is often the case that Member States supply their personnel with checklists repeating legal requirements, but they do not offer them means to assess these requirements. Even though it is best when engineering expertise is there for support, it is possible to develop strategies to enable the competent authority staff to assess some of the specifications. The competent authority staff could assess the drainage system during a pre-loading examination, for example by checking if slurry tanks are empty to demonstrate that the drainage pumps were fully functional during the former journey. Other areas should also be included in the pre-loading inspections, such as whether there is sufficient food and water on board for the length of the trip and the animals.

According to the majority of the pre-loading examinations reports, the vessels met all the requirements. In the case of deficiencies indicated in the reports, the vessel was still permitted to carry animals, even though deficits were not always corrected prior to departure.

Veterinarians at EU exit ports are under a lot of pressure to permit loadings since they understand the possible logistical and animal welfare issues that could arise if they delay a loading. They receive little to no support from their hierarchy to refuse a loading and they are

pressured by exporters to approve shipments and fear potential legal action if an export is stopped or delayed. According to the Commission services there has been no proof that authorities have ever denied any loading, hence loadings are always permitted. In addition to the inspections mandate by the Regulation, livestock vessels are subject to other examinations, the Port State Control authorities in every Member State examine livestock vessels for maritime safety.<sup>131</sup>

Events such as the sinking livestock vessel Queen Hind in 2019 bear witness to the use of substandard vessels for the transport of animals by sea; this vessel overturned to its side after leaving the port in Romania. The Queen Hind had more than 14,000 sheep on board, of which only 180 survived.<sup>132</sup>

## **5.2 Incomplete or incorrect documentation**

Many authorities in charge approve the transport at the point of departure with inadequate or inaccurate documentation and they omit to take into account the meteorological conditions at the EU exit port and during the route. When the animals reach the port, this raises the possibility of issues with animal welfare. These administrative shortcomings are frequently left unfixed since neither the authorities at the point of departure nor the authorities at the EU exit port detect and report these.<sup>133</sup>

The animals exported by livestock vessels start their journey with a transport by road, taking them from their place of origin to the EU exit point.<sup>134</sup> According to Art 2 lit j of the Regulation, journey refers to the entire transportation process from the place of departure to the place of

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<sup>131</sup> *ibid* 9.

<sup>132</sup> *ibid* 10.

<sup>133</sup> *ibid* 1.

<sup>134</sup> *ibid* 4.

destination, entailing any unloading, accommodation and loading that takes place at intermediate points in the journey.<sup>135</sup>

The main legal or natural person responsible for the animals' welfare during the journey is the journey's organiser. The journey's organiser must ensure that the contracted transporters have proper authorisation; the vehicles (both road and livestock vessel) are suitable for the requested types of animals; the driver and attendants of the road vehicle have a certificate of competence; the journey is as short as possible; preparations for the needs of the animals to be met during the journey have been made and that the weather conditions have been considered when planning each trip.

The competent authority at the place of departure is mainly in charge of verifying journey plans and has to ensure that the journey will be conducted in accordance with the provisions of the Regulation and as a result to reduce the risk for the wellbeing of the animals.

Evidence shows that approved journey plans for the majority of journeys incorrectly list the EU exit port as the final destination. This implies that authorities do not view the road and the sea legs as parts of a single journey and that organisers do not take sea transport into consideration. Additionally, approved journey plans are submitted by organisers or road transporters who typically do not provide contingency plans to ensure the welfare of the animals in case of delay of the loading of the vessel.<sup>136</sup> Furthermore, neither an approved livestock vessel nor the responsible authorised transporter for the sea part of the trip are identified in the approved journey plans, the only Member State making sure that these are both mentioned in the documents is Romania, and also the weather conditions are not taken into account in the journey plans. These deficiencies remain undetected by the competent authority at the exit point,

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<sup>135</sup> 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 art 2(j); European Commission. Directorate General for Health and Food Safety. (n 123) 4.

<sup>136</sup> European Commission. Directorate General for Health and Food Safety. (n 123) 4.

meaning no mechanism to prevent the reappearance and perseverance of these shortcomings currently exists.

It is not unusual for temperatures to rise over 30 °C in the southern parts of Europe during the summertime, which is often overlooked at the departure by the authorities when approving the journey to take place. Vehicles arriving to ports where animals had to endure temperatures over 35 °C were documented by Members of the EP in 2018. The cause for these high temperatures lies in the vehicles' ventilation systems being unable to keep the adequate range of temperatures. According to inspections conducted by veterinary authorities at the EU exit ports, for one sea consignment temperature records in more than 35% of the vehicles that arrived at the port surpassed 35 °C.<sup>137</sup>

### **5.3 Legal uncertainty**

Every road consignment is a component of a much larger consignment loaded onto a livestock vessel and has a journey log. It is not always a given that the organiser who signed every individual journey log is the same organiser who arranged transport by sea. This causes logistical difficulties since there is no one who is in charge of organising the arrival of the road vehicles at the EU exit port and ensuring that animals are cared for in case of delay with the loading of the vessel. The lack of an authorised transporter for the sea part of the journey raises the question of who is legally responsible for or can be held accountable for the animals' wellbeing during the transport by sea.<sup>138</sup>

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<sup>137</sup> *ibid* 5.

<sup>138</sup> *ibid*.

## **5.4 Lack of animal facilities in ports/lack of contingency plans in case of delay**

Since up to multiple thousands of animals are transported by a livestock vessel, there are numerous vehicles loaded with animals arriving at the EU exit port at once. It is crucial for the wellbeing of the animals that the logistics are well-coordinated. Typically, there is only one exporter, who may be a different party than the organiser. Their responsibilities include the arrangement of the transfer of the animals from the vehicles directly onto the vessel; the coordination of the arrival of the trucks to the port in order to prevent significant delays in transferring the animals from the road vehicles to the vessel and making sure that the animals reach the port of destination within the journey time limits, otherwise the animals will need to be rested before being loaded onto the vessel.

Prior to being loaded onto the vessel, animals must be rested and taken care of if the arrival of the vessel at the destination port will have a delay, if the arrival of the vehicles is not gradual or the loading is delayed or refused by veterinary authorities. In Member States such as Spain, France, Portugal, Ireland and Romania, the coordination of logistics has proven to be more complicated when the animals come from different Member States. There are existent thirteen EU exit ports where animal loading takes place, of which only six provide facilities in the port or arrangements in the vicinity where unloading, resting, watering and feeding the animals may be executed, if required. The capacity of the arrangements of those ports is often very limited and are not fit to provide accommodation for all the animals that are intended for a livestock vessel. Hence, it is hardly possible in most of the ports to unload all the animals from the vehicles, water and feed them in case of delays in the loading of the vessel. Only few competent authorities, road transporters and transport organisers supply contingency plans for these circumstances. Even if such situations do not occur often, in the times it does happen, the

animals have to endure extended periods of time in the vehicles, which can have a detrimental effect on their wellbeing, these conditions being worsened by hot weather.<sup>139</sup>

Spain may be mentioned as an example of good practice, since the competent authorities demand organisers to arrange the gradual arrival of the vehicles and submit it in writing prior to shipment. Additionally, organisers are also required to submit a contingency plan for each shipment, this plan must entail solutions for the case of delay or refusal of the loading of animals. Furthermore, the operator of one of the exit ports has an agreement with a farm that can house 5,600 cattle or 15,000 sheep which is part of its contingency plan.<sup>140</sup>

## **5.5 Transport of unfit animals**

Article 3 of the Regulation imposes general conditions for the transport of animals. Article 3 lit b states in particular that animals must not be transported in a way that is likely to cause injury or undue suffering to them.<sup>141</sup>

The verification of the health of the animals is typically a weak point since the veterinarians at the EU exit ports have to examine the animals whether they are fit to take on the journey while being loaded in the vessel. In most cases the animals are not rested in the ports, hence, the veterinary staff examines the health status when the animals are moving from the vehicle onto the vessel or while the animals are still on the trucks. Checking on the health of the animals while they are moving from the road vehicles to the vessel can be challenging since the loading process can be very time consuming and require up to several hours and numerous animals are

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<sup>139</sup> *ibid* 6.

<sup>140</sup> *ibid* 7.

<sup>141</sup> 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 art 3; *ibid* 3(b).

moving at once. Furthermore, it can be quite hard to see the animals on the ramps and typically a veterinarian authority is not permanently present during the entire duration of the loading. The attestation of the health condition of the animals while they are still in the vehicle can lead to difficulties due to most ports not providing appropriate facilities allowing the veterinarians to inspect all animals.

The official records on the health state of the animals at EU exit ports are frequently inadequate or nonexistent. The audits revealed that not all of the unfit animals were reported, after finishing their administrative tasks the officials identified and euthanised some of these animals but omitted to record these cases. The animals that arrive at an exit point were approved for transportation by an official veterinarian at the time of departure, hence, there should be only very few animals that happen to become sick or injured along the road journey. However, the Member State of departure cannot be aware of such possible incorrect certification or problems during those transports if the authorities at the port fail to notify the former of all incidents.<sup>142</sup>

The occurrence of the 18<sup>th</sup> of December 2020, where two livestock vessels, the Karim Allah and the Elbeik, were sent on a 3-month long odyssey starting from Spain due to the transported Spanish bulls being feared to have been infected with a bovine disease called Bluetongue Disease, underlines the importance of efficient health checks. This resulted in many of the animals dying on board and the remaining surviving bulls being slaughtered in Spain. Spain's agriculture ministry stated that the facts given in the veterinary report of the case could constitute indications of a possible infringement regarding the current legislation on animal welfare.<sup>143</sup>

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<sup>142</sup> European Commission. Directorate General for Health and Food Safety. (n 123) 7.

<sup>143</sup> Sophie Kevany, 'How Nearly 3,000 Cattle Came to Be Stranded at Sea for Three Months' (The Guardian, 31 March 2021) <<https://www.theguardian.com/environment/2021/mar/31/how-nearly-3000-cattle-came-to-be-stranded-at-sea-for-three-months>>.

## **5.6 Lack of transparency**

It is common for most Member States to not obtain any information from the country of destination regarding the condition of the animals on arrival. Furthermore, they do not receive information from the transporter, ship's Master or vessel operator. Ireland has found a way to avoid this deficit by requiring an official veterinarian to be present on the first journey of a newly permitted vessel and to issue a report on the animal wellbeing outcome. At present, neither the Commission nor the Member States are provided with any information or statistics regarding the health and wellbeing of animals during their transportation by sea.<sup>144</sup>

## **5.7 The European Parliament's recommendations of the 20<sup>th</sup> of January 2022 regarding the transport by sea**

The committee of inquiry has revealed that the transportation of animals on livestock vessels is particularly deficient.<sup>145</sup> The EP wants to work towards a shift to a meat, carcasses and genetic material trade where such a trade is suitable to replace the need for transport by sea.

In order to implement a clear chain of responsibility, the provisions on sea transport should be improved and clarified, especially the provisions regarding the authorisation process, the definition and identification of organisers and transporters and their duties. Furthermore, dissuasive measures should be introduced as a means to keep dead animals from being discarded in the sea.<sup>146</sup>

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<sup>144</sup> European Commission. Directorate General for Health and Food Safety. (n 123) 10.

<sup>145</sup> Schweighofer (n 26) 123.

<sup>146</sup> European Parliament (n 9) para 117.

The Member States are called upon to verify that there are adequate facilities for unloading, feeding, watering and resting the animals within 30 km of borders or ports and that these facilities are actually used if unloading is necessary and that animals must not stay on the road vehicles over long periods. In the event that such facilities are not accessible, transports are not to be approved by the Member States.<sup>147</sup> A list of ports that provide appropriate animal inspection facilities should be drafted by the EC as well.<sup>148</sup>

Any violations of EU law are to be penalised by the border or port Member States, which are in charge of inspecting road vehicles and vessels destined for third countries.<sup>149</sup> The EP views the mandatory presence of a veterinarian throughout the loading and unloading process as well as during rest periods at official lairage facilities as crucial. The EP calls upon the Member States to implement mandatory provisions for sea transports that require the presence of veterinarians or a certified professional with the necessary skills on board for the entire transport by sea. The mandatory presence of such a professional or veterinarian on board would facilitate the verification of the implementation of the relevant animal health and welfare standards and allow the treatment of injured or sick animals on site.<sup>150</sup> Furthermore, the presence of an independent veterinarian at loading and at the final destination of long transports outside of the EU is deemed necessary, since this will make possible the re-evaluation of the fitness for transport and can help to guarantee compliance with EU law.<sup>151</sup>

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<sup>147</sup> *ibid* 118.

<sup>148</sup> *ibid* 119.

<sup>149</sup> *ibid* 123.

<sup>150</sup> *ibid* 124.

<sup>151</sup> *ibid* 126.

## **5.8 The proposal of the European Commission**

The transporter may apply for a certificate of approval of a livestock vessel for the transport of animals to the authority in charge, the application shall contain documents on the applicant and details of the livestock vessel such as the date of conversion, plan of the vessel including lighting, water drainage, firefighting and ventilation systems, and on the operation of the systems and the capacity of the power sources providing them with sufficient energy for their support.

The certificate is to be granted when the first journey of the vessel is planned to start from the Member State where the application was submitted and when no other competent authority in the same Member State has been applied to, has issued a certificate of approval or rejected an application for the vessel. Furthermore, the vessel must have been inspected by the authority in charge and found to comply with the provisions of Chapter II and Chapter IV of Annex I regarding the construction and equipment of livestock vessels and the vessel must fly a flag with a white or grey flag performance pursuant the Paris Memorandum of Understanding on port State control.

An official veterinarian shall perform official controls on board of the vessel for the entire duration of the first journey and the results must show that the construction and equipment of the vessel is not harmful to the wellbeing of the animals or corrective actions have been taken, otherwise the approval of the vessel is to be suspended.

The certificate is valid for a maximum of five years, starting from the date of issue. The competent authority is to be notified within five days by the transporter if the vessel has been modified, refitted or impaired and this may impact the wellbeing of the animals on board or if the vessel does not fly a flag with a white or grey listed flag performance anymore. If the vessel no longer fulfils the requirements for the grant of a certificate of approval, the certificate is to

be suspended by the competent authority and the transporter shall receive the reasons for the suspension and suggestions to correct the defaults in form of a written statement. The suspension is to be lifted if the transporter proves that the defaults have been rectified. The competent authority shall withdraw the certificate if the transporter fails to rectify the defaults within one month.<sup>152</sup>

The proposal provides for the presence of a trained and certified animal welfare officer designated by the transporter on the vessel. Regarding issues concerning animal welfare, the animal welfare officer will report these directly to the organiser and the transporter, under whose direct authority they operate. The animal welfare officer is in charge of taking care of the animals and performing at least two check-ups a day to evaluate their wellbeing and fitness for transportation and taking necessary steps to preserve their wellbeing. The competent authority at the point of departure and the organiser are to be informed by the animal welfare officer of any serious matter with possible negative effect on the wellbeing of the animals. The animal welfare officer shall also verify that killing of animals at sea to end their suffering takes place in conformity with Regulation No 1099/2009. The captain of the vessel is to be educated on these responsibilities of the animal welfare officer by the organiser.<sup>153</sup>

For voyages of terrestrial animals (except for domestic birds and rabbits) with a sea leg, where consignments of different origins are transported, the journey time is calculated from the boarding of the animals at the point of departure the farthest away regarding driving time from the loading port. The time from when the last animal is boarded onto the vessel until the first animal is unloaded at the port of arrival is not included in the official journey time.<sup>154</sup>

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<sup>152</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of animals during transport and related operations, amending Council Regulation (EC) No 1255/97 and repealing Council Regulation (EC) No 1/2005 (n 30) art 13.

<sup>153</sup> *ibid* 21.

<sup>154</sup> *ibid* 30.

## Conclusion

In this thesis the weaknesses of the Regulation (EC) No 1/2005 have been pointed out and the importance of the great interest of EU citizens in improving the situation of live animals during transport has been highlighted.

As already mentioned in this paper, disregards of the animals' fitness concerning their transport constitute the largest share of infringements of the Regulation, the Commission's attempt to counteract this with provisions that provide for the supervision of the loading by a veterinarian and the date of insemination or natural service of pregnant animals to be stated in the journey log and the performance of check-ups on the animals' health every 4.5 hours, is plausible to improve this situation.

This paper deals with the loopholes of the Regulation (EC) No 1/2005 and ways to improve the situation of animals transported, a look at the Commission's proposal reveals that progress in the field of animal welfare during transport is not always linear. On the one hand, the Commission greatly improved the Regulation when it comes to sanctions, enabling Member States to apply criminal sanctions but, on the other hand, the implementation of the recommendations of the Parliament regarding unweaned animals remains rather unsatisfactory, as the proposal does not provide for a species-specific definition of the term "unweaned animal" with a transparent minimum age in weeks.

The Parliament's recommendations concerning transport during high temperatures were largely implemented by the Commission in the proposal, clarifying how to proceed when transporting animals at certain temperatures and that temperatures must be considered when applying for and approving the journey log.

Regarding the transport by sea, the proposal of the EC falls short of the EP's recommendations and does not provide for the permanent presence of a veterinarian during the journey by ship,

however, the presence of an animal welfare officer on the vessel during the journey by sea is now possible.

In conclusion, it can be said that although the European Parliament's recommendations to the Council and the European Commission are a step in the right direction, it is safe to state that there is still room for improvement, especially with regard to the transport by sea. However, the efforts of some Member States such as Ireland, Portugal and Spain to ensure better compliance with the Regulation by adopting stricter provisions and the improved provisions of the Regulation regarding transport duration, temperature limits and sanctions are not to be neglected.

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