

RECOMMENDATIONS TO IMPROVE THE DEVELOPMENT AND EXCHANGE OF COORDINATED ACTIONS REGARDING CATTLE EXPORTS TO NON-EU COUNTRIES

1. *Exports involving several Member States: importance of effective communication between Member States*

Most cattle export journeys involve several Member States (MS). Regulation 1/2005 has helpful provisions designed to address enforcement where several MS are involved. However, these provisions are not always well used by the MS.¹

Article 26 (2) of 1/2005 requires that when a MS of transit or destination find breaches of the Regulation they must notify these to the MSs that:

- (i) authorised the transporter,
- (ii) granted the vehicle's certificate of approval and
- (iii) where the driver is involved in the failure to observe the Regulation, to the MS that issued the driver's certificate of competence.

The purpose of this provision is to prevent recurrence of these breaches.

Article 26 (3) provides that when the MS of destination find breaches of the Regulation it must notify these to the MS of departure. Again, the purpose is to prevent recurrence of these breaches.

The notifications required by Article 26(2) & (3) can be made in a systematic way (i.e. there is a network of National Contact Points (NCPs) who have produced relevant network documents, as well as the TRACES system or IMSOC in future); however not all Member States notify breaches as required, or the information provided is often insufficient and the reaction to notifications is not always known.²

According to the OIE Terrestrial Code "The receiving Competent Authority should report back to the sending Competent Authority on significant animal welfare problems which occurred during the journey". However, there are very few notifications from Authorities in these non EU countries.

THEREFORE THE SUBGROUP RECOMMENDS THAT:

MS Competent Authorities (CA) should provide notifications under Article 26 in a sufficiently clear and detailed manner so that the CA receiving the information is able to take actions to prevent recurrence. CAs should use the template produced for Article 26 notifications by the MS National Contact Points (NCPs); this is in Annex 6 of the Network Document "Checks before journeys when live animals are destined for export by road". The Commission should ensure that the system for notifications according to Article 26 is maintained after Regulation 2017/625 repeals certain points in this Article.

MS Competent Authorities (CA) should put in place adequate procedures ensuring that notifications are provided systematically whenever breaches are detected, that these are acted on and responded to.

MS Competent Authorities (CA) as well as the Commission should incentivise and provide a framework/common understanding for third countries to act accordingly to Article 7.3.3, point 8 of the OIE Terrestrial Code, meaning “The receiving Competent Authority should report back to the sending Competent Authority on significant animal welfare problems which occurred during the journey”.

The Commission should seek agreements with non EU countries so that relevant OIE and EU requirements are implemented in relation to the export of live animals. Other possibilities to ensure these requirements are met should be explored through multi-lateral or bilateral agreements.

2. Need for effective use by the Member States of their enforcement powers

Article 26.4 gives MS who are informed of breaches a number of strong powers which, if they were properly used, could prevent recurrence of these breaches. Regrettably, these powers are rarely used in an effective manner. As a result the same breaches (often by the same transporters) are repeated year after year.

Article 26.4 provides that competent authorities “shall, if appropriate

- (a) require the transporter concerned to remedy the breaches observed and establish systems to prevent their recurrence;
- (b) subject the transporter concerned to additional checks, in particular requiring the presence of a veterinarian at loading of the animals;
- (c) suspend or withdraw the authorisation of the transporter or the certificate of approval of the means of transport concerned.”

There is a lot of variation between EU Member States in relation to implementation of powers under Article 26 and the resultant level of enforcement. The variation in Member State authorities' use of compliance criteria to assess open norms in the Regulation also contributes to the variation in enforcement.

THEREFORE THE SUBGROUP RECOMMENDS THAT:

When they establish that an infringement has taken place or when they receive a notification under Article 26(2) or (3), MS CAs should use one or more of the powers set out in Article 26(4) unless they are of the view that recurrence of the infringement can be prevented without the use of one of these powers. The power of MS to require the transporter concerned to “establish systems” to prevent the recurrence of breaches is particularly helpful and should be used more often.

When a MS CA receives a notification under Article 26(2) or (3), it should inform the CA that sent the notification what steps they have taken to address the problem set out in the notification.

If repeated attempts and possibilities given by Article 24, on the cooperation between MS CA, have been exhausted then it is reminded that Article 26(6) allows for the temporary prohibition of the transporter or means of transport concerned from transporting animals on its territory, even if

the transporter or the means of transport is authorised by another Member State.

Animal welfare platform members representing the transport industry should inform the MS CAs and the Commission as to the best practices in place in the industry in order to achieve regular compliance with Regulation 1/2005 during the export of cattle. This will guide MS CAs when using their powers under Article 26(4)(a).

The Commission should map out the application of these powers by EU Member States. The Member State authorities should work together to achieve a more harmonised level of enforcement and adopt procedures which clarify minimum legal requirements.

The Commission should also map out the Member State authorities use of open norms in Regulation 1/2005. The Animal Transport Guides/the handbook on high quality control posts/Network documents provide additional information on such requirements. The authorities should ensure that their procedures for controls take these into account.

3. *Benefits of checks at loading of cattle being exported to non-EU countries*

As indicated above, competent authorities may, in the event of breaches, require the presence of a veterinarian at loading of the animals. However, the Commission has recently said that it is good practice for competent authorities to inspect all consignments destined for non-EU countries at loading.³

It is at loading that many of the common problems can be detected and remedied before the start of the journey. At loading the authorities could check that the Regulation's requirements on floor space and headroom are being observed, that the ventilation and water systems are operating properly and that the drinking devices are working properly and are appropriate for the category and age of animal being carried, that no unfit animals are loaded, and that sufficient feed and bedding are being carried. In addition, the authorities could check that the animals are handled in accordance with Regulation 1/2005 at loading and that the vehicle is in good condition (e.g. there are no gaps between the bottom of partitions and the floor in which animal's legs could be trapped).

THEREFORE THE SUBGROUP RECOMMENDS THAT:

It would be good practice for the MS to check all loadings of cattle exports to non-EU countries. This is likely to lead to an improved level of compliance with Regulation 1/2005.

4. *The implications of Court of Justice ruling in the Zuchtvieh case C-424/13*

In Case C-424/13, the Court of Justice of the EU ruled that the provisions of Regulation 1/2005 continue to apply even when a consignment has left the EU; they apply until the destination is reached.

Journey logs

Where the journey time (including likely border delays) will exceed that permitted by Regulation 1/2005 during the stage of the journey in a non-EU country, the journey log must specify where the animals will be unloaded for a 24 hour rest. That place must be a control post or a place that provides facilities equivalent to those of a control post.⁴

Before approving the journey log the competent authority must be satisfied that the proposed resting place does indeed provide facilities equivalent to those of a control post. It could, for example, request to see the post's technical specifications and photos and films that show the post's facilities in operation. In addition, it could ask the competent authorities of the non-EU country or an approved international control and supervisory agency (as referred to in Commission Regulation 817/2010) for a report on the facilities and services provided by the post.

This point is referred to in the European Parliament's recent report.⁵ Paragraph 73 of the report "Stresses that when animals are required to be unloaded for a 24-hour rest period in third countries, the organiser must identify a place for rest with facilities equivalent to those of an EU control post; calls on the competent authorities to regularly inspect these facilities and not to approve journey logs if the proposed place for rest has not been confirmed to have EU-equivalent facilities".

Checks at exit points

Paragraph 43 of the Court's judgment states: "although Article 21(1) [checks at exit points from EU] of Regulation No 1/2005 provides for a specific check in which the competent authorities are responsible for checking, inter alia, compliance with a certain number of specific requirements thereunder, the fact remains that that provision also obliges the authorities to ensure 'that the animals are transported in compliance with [that regulation]', without restricting the scope of that check to compliance with certain provisions thereof."

The key factors (in addition to those specifically referred to in Article 21(1)) that should be checked by official veterinarians at exit points include verification of compliance with the Regulation's requirements which should have been in compliance already at departure, such as floor space, headroom, ventilation and temperature, water supply and partitions but also to focus on conditions which may have varied during the journey such as fitness of the animals as well as ensuring that sufficient feed and bedding are carried for the remainder of the journey. There should be facilities to unload all animals to deal with non-compliances.

This aspect too is reflected in the Parliament's report. Paragraph 57 "Calls on the competent authorities of the Member States to ensure that official veterinarians are present at Union exit points, tasked with verifying that animals are fit to continue their journey and that vehicles and/or vessels meet the requirements of the Regulation; notes in particular that Article 21 of the Regulation specifies that veterinarians shall check vehicles before they leave the EU, to ensure that they are not overcrowded, provide sufficient headroom, provide bedding, and are carrying sufficient feed and water, and that the ventilation and water devices are functioning correctly".⁶

Paragraphs 45 and 46 of the Court's judgment state:

"45 Similarly, nor do the provisions setting out the essential obligations to be complied with for a long journey, laid down in Articles 5(4), 6(3) and (4) and 8(2) of Regulation No 1/2005, draw a distinction between transport of animals taking place within the European Union and transport with a destination in a third country.

46 Lastly, regarding the obligation transporters have under Article 6(3) and (4) of Regulation No 1/2005 to transport animals in accordance with the technical rules set out in Annex I thereto and to entrust the handling of the animals to personnel who have received training on the relevant provisions of Annexes I and II thereto, it must be taken as established that those provisions refer generally to the transport of animals without drawing any distinction according to place of destination."

Article 6(3) and (4) states:

"3. Transporters shall transport animals in accordance with the technical rules set out in Annex I.

4. Transporters shall entrust the handling of the animals to personnel who have received training on the relevant provisions of Annexes I and II."

Annex I contains many of the Regulation's detailed provisions including, for example, those on water, feed, bedding, space allowance, height of animal compartments, fitness to travel, temperature and ventilation. The Court's judgment makes it clear that the Annex I provisions must continue to be respected during the non-EU stage of the journey.

THEREFORE THE SUBGROUP RECOMMENDS THAT THE PRACTICAL IMPLICATIONS OF THE COURT'S JUDGMENT FOR MS, ORGANISERS AND TRANSPORTERS INCLUDE THE FOLLOWING POINTS:

❖ **Organisers of journeys:**

Must submit a journey log which is realistic and indicates that the provisions of Regulation 1/2005 will be complied with, including for the stages of the journey which are to take place in the territory of non-EU countries (see final paragraph of the Court's judgment). The organiser must demonstrate that they have taken the weather conditions into account.

Where, under Regulation 1/2005, the transport needs to stop at a control post in a non-EU country to enable cattle to be given feed, water and 24 hours rest, the organiser must identify a place for the stop which either is a control post or provides facilities equivalent to those of an approved control post (see paragraph 54 of the Court's judgment). Where the organiser has not previously used that place, he or his representative must visit the place before submitting a journey log to ensure that it provides facilities equivalent to those required by Council Regulation (EC) 1255/97 and in particular that:

- it has suitable equipment and facilities available for the purpose of loading and unloading animals
- it is able to provide sufficient clean water and sufficient and appropriate feed
- the staff are competent to care for the welfare of the cattle and are able to load and unload them in a calm, unhurried and skilful manner and in compliance with Chapter III of Annex I to Regulation 1/2005

- a veterinarian will be available to check that the animals are fit to continue their journey before being reloaded at the end of their stay at the premises.

Organisers must ensure that unloading at the final destination will be carried out in a calm, unhurried and skilful manner and in compliance with Chapter III of Annex I to Regulation 1/2005.

It can be good practice to have transporters take photos of the time of loading and unloading to provide further assurance on the compliance of the operations of loading and unloading.

❖ **The CA at the place of departure**

Must check that submitted journey logs are realistic and indicate that the provisions of Regulation 1/2005 will be complied with, including for the stages of the journey which are to take place in the territory of non-EU countries. Where that is not the case, the CA should require changes to the arrangements for the journey to ensure compliance with the provisions of Regulation 1/2005 throughout the journey (see final paragraph of the Court's judgment).

Where the transport needs to stop at a control post in a non-EU country to enable cattle to be given feed, water and 24 hours rest, the CA must check that the place for the stop identified in the journey log provides facilities equivalent to those of an approved control post (see paragraph 54 of the Court's judgment). Organisers should be able to demonstrate to the CA that the facilities exist. The CA needs to request and verify contact details of authority, address, map, that the post's technical specifications meet the needs of the animals and photos and films that show the post's facilities in operation. In addition, it could ask an approved international control and supervisory agency (as referred to in Commission Regulation 817/2010) for a report on the facilities and services provided by the post.

When a CA is satisfied that premises in a non-EU country provide facilities equivalent to those of an approved control post, it should notify other MS so that a list of suitable premises can be built up.

When the CA is not satisfied with arrangements for the journey and is not convinced that the indicated premises in the non-EU country provide facilities equivalent to those of an approved control post, the CA will not stamp the journey log and thus authorize the transport.

❖ **Civil society**

Animal welfare organisations could continue to provide reports for the Commission, MS CAs, organisers and transporters on the problems that arise during the export of cattle to non-EU countries.

❖ **Organisers, transporters and official veterinarians at exit points**

In light of paragraphs 43, 45 and 46 of the Court's judgment, organisers and transporters must ensure, and official veterinarians at exit points must check, that the transport of cattle

in the non-EU stage of the journey complies with Annex I to Regulation 1/2005 e.g. it must respect the Regulation's requirements on stocking density, headroom, breaks for rest, feed and water, the provision of water, ventilation and temperatures, bedding and partitions. CAs at the exit point should not permit a vehicle to continue its journey if it does not comply with Annex I to Regulation 1/2005 and if it does not carry sufficient water, feed and bedding to remain in compliance with these aspects of Annex I during the rest of the journey.

5. *Good practice for Member States identified by Commission audit reports on live exports*

The Commission has recently produced a number of audit reports on exports to non-EU countries that identify good practice already being carried out by some MS.

❖ The good practice highlighted by the audit reports includes:

- Require transporters, when submitting journey logs, to provide updated and detailed contingency plans that drivers must have with them during the journey. These plans should include adequate arrangements to meet the animals' needs in the case of unexpected long delays at the border including how to obtain and provide bedding, feed and water for the animals. The plans should also include information on what to do in case of emergencies such as vehicle breakdown, sick or injured animals, traffic accidents, etc;⁷
- Require transporters, when submitting journey logs, to provide declarations concerning how the provision of food, water and bedding throughout the journey will be achieved;⁸
- Check the plausibility of the proposed journey plan using an online route planner, with proper consideration of the speeds achievable by a heavy vehicle;⁹
- The timing of the journey should be organised in order to have the animals rested and present for the border controls before the opening time of the Turkish controls (as indicated in the letter to the CVOs of June 2016). The Commission considers this to be a good practice that provides for more time for these checks and attempts to avoid the hottest part of the day;¹⁰ An increasing number of MS prevent the transport of animals over long distance when temperatures are forecast above 30°C at any point of the journey up to the final destination in the non EU country.
- Require transporters, when submitting journey logs, to provide proof of reservations at control post(s) to unload and rest the animals;¹¹
- Take drivers social hours requirements into account by requiring organisers to provide certificates of competence for two drivers when journeys exceed 8 hours;¹²
- Vehicles should carry additional portable drinkers;¹³
- The official in charge of the Bulgarian exit point considered that insufficient driver training was actually the root cause of many of the problems detected. This indicates that competent authorities need to be more thorough in ensuring that drivers are properly trained before granting a certificate of competence;¹⁴
- Competent authorities should require stocking densities to be reduced by 30% if temperatures are high at the point of departure or are forecast to be high during the course of the journey;¹⁵
- Put in place a system to ensure transporters return the completed journey logs and carry out retrospective checks on returned journey logs.¹⁶

THEREFORE TO ASSIST THE COMMISSION THE SUBGROUP RECOMMENDS THAT:

❖ COMMISSION

It would be helpful for the Commission to produce concise guidance for MSs that brought together the above points of good practice and the points made in DG Sante's letter of 28 July 2016 to the MS CVOs and Commissioner Andruikaitis' letter of 26 April 2018 to the MS Agriculture Ministers. This would helpfully bring together all these constructive points in one document.

It would be important to have constant communication and cooperation with third countries, including a contact point, in order to avoid the recurrence of problems. Also there should be cooperation in order to establish systems that allow a smoother process.

There should be help, including financial help, to MSs and industry in order to build better infrastructures at exit points in order to allow for better conditions for animals in case of undue delays.

The Commission, along with all other members of the Animal Transport subgroup, should continue to foment activities in order to disseminate the Animal Transport Guides.

❖ ORGANISERS

When submitting journey logs, organisers should provide updated and ensure transporters have detailed contingency plans that drivers must have with them during the journey. These plans should include adequate arrangements to meet the animals' needs in the case of unexpected long delays at the border including how to obtain and provide bedding, feed and water for the animals. The plans should also include information on what to do in case of emergencies such as vehicle breakdown, sick or injured animals, traffic accidents, etc. Organisers should use the Journey-Specific Contingency Plan Template provided in Annex 4 of the Network Document "Checks before journeys when live animals are destined for export by road".

Organisers should provide certificates of competence for all drivers they intend to use for journeys which exceed 8 hours, and to meet the requirements of both regulations for social hours and Regulation 1/2005¹⁷.

When submitting journey logs, organisers should provide proof of reservations at control post(s) to unload and rest the animals.

When submitting journey logs, organisers should provide declarations concerning how the provision of food, water and bedding throughout the journey will be achieved.

The timing of the journey should be organised in order to have the animals rested and present for the border controls before the opening time of the border controls.

❖ **TRANSPORTERS**

Vehicles should carry additional portable drinkers.

❖ **CA'S AT THE PLACE OF DEPARTURE**

CAs should check the plausibility of the proposed journey log using an online route planner, with proper consideration of the speeds achievable by a heavy vehicle.

CAs should require stocking densities to be reduced, according to official veterinary's advice, if temperatures are high (see graph of animal welfare risk versus temperature/humidity) at the point of departure or are forecast to be high during the course of the journey. Organisers should demonstrate long distance transport is planned so that it takes place when temperatures are not forecasted to be above 30°C or so low that, even allowing for the heat generated by the animals, temperatures inside the truck will be below 5 °C. 30°C is the maximum and 5°C the minimum temperature which must be maintained inside the truck. The majority of vehicles in use cannot control the temperature and therefore cannot be used for long distance transport when the outside temperature is above 30°C

Further guidance (e.g. network document on exports or animal transport guides on position of sensors) is needed in relation to meeting the requirements for temperatures inside the truck especially when outside temperatures are below 5 °C and with regard to registering the temperature on board the vehicle and the tolerance of +/- 5°C.

CAs should put in place a system to ensure transporters return the completed journey logs and carry out retrospective checks on returned journey logs.

CAs at the place of exit

MS CA should implement priority lanes and other actions that can speed up the process of exiting the EU, especially in cases where recurrent delays are seen.

CAs that grant drivers' certificate of competence and review of their skills

The NCPs should review and validate the inventory on driver training which they compiled several years ago. BTSF contractor also can provide information on the content of these driver training courses and review of driver competence. CAs need to be more thorough in ensuring that drivers are properly trained before granting a certificate of competence, and subsequently verifying that those holding a certificate of competence continue to carry out their tasks in compliance with regulation 1/2005.

Other live animals

The recommendations in this document were made by the Cattle exports working group and focused on that species. However, there is no reason not to apply the recommendations to other species of terrestrial animals exported to non-EU countries.

¹ See for example, Final report of an audit carried out in Bulgaria from 06 June 2017 to 09 June 2017 in order to evaluate animal welfare during transport to non-EU countries; DG(SANTE) 2017-6109, paragraphs 9 & 12.

² See, for example, Final report of an audit carried out in Hungary from 19 June 2017 to 23 June 2017 in order to evaluate animal welfare during transport to non-EU countries; DG(SANTE) 2017-6099, paragraph 29

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- ³ Final report of an audit carried out in Germany from 26 June 2017 to 30 June 2017 in order to evaluate animal welfare during transport to non-EU countries; DG(SANTE) 2017-6107
- ⁴ Court of Justice ruling in the Zuchtvieh case, ruling in final paragraph and paragraph 54
- ⁵ Op. Cit. European Parliament, 2019
- ⁶ The Animal Transport Guides provide good and better practices in relation to what is considered sufficient headroom, bedding etc.
- ⁷ Final report of an audit carried out in the Czech Republic from 20 November 2017 to 24 November 2017 in order to evaluate animal welfare during transport to non-EU countries; DG(SANTE) 2017-6217
- ⁸ Op. Cit. Final report of an audit carried out in Hungary
- ⁹ Op. Cit. Final report of an audit carried out in Germany
- ¹⁰ Ibid
- ¹¹ Ibid
- ¹² Final report of an audit carried out in France from 09 October 2017 to 13 October 2017 in order to evaluate animal welfare during transport to non-EU countries; DG(SANTE) 2017-6108
- ¹³ Op. Cit. Final report of an audit carried out in Hungary
- ¹⁴ Final report of an audit carried out in Bulgaria from 06 June 2017 to 09 June 2017 in order to evaluate animal welfare during transport to non-EU countries; DG(SANTE) 2017-6109
- ¹⁵ Op. Cit. Final report of an audit carried out in Czech Republic
- ¹⁶ Op. Cit. Final reports of audits carried out in Czech Republic, Germany and France
- ¹⁷ Judgement of the Court of Justice of 28 July 2016, case C-469/14