

On compliance with driving times and rest periods for drivers in connection with the long-distance transport of animals¹

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Keywords

Social legislation, driving and rest periods, live animal transport, animal transport regulation, animal welfare.

Summary

The mandatory application of social legislation governing drivers significantly affects the transport of animals by road. With the exception of the (shorter distance) transportation of unweaned calves, lambs, kids, foals and piglets, only multi-manning with three drivers permits a journey compliant with the regulations whilst being close to the maximum permitted journey times. The organiser is responsible for making appropriate arrangements for the journey, whilst the official veterinarian is responsible for checking the suitability of the journey arrangements.

Zusammenfassung

Die verpflichtende Anwendung der Sozialgesetzgebung der Lenker beeinträchtigt in erheblichem Masse den Transport von Tieren auf der Strasse. Ausser beim (kuerzeren) Transport von nicht abgesetzten Kaelbern, Laemmern, Zickeln, Fohlen und Ferkeln ermoeglicht nur eine Dreifahrerbesetzung des Transportfahrzeuges die verordnungskonforme Befoerderung im Ausmass der moeglichen Hoechstbefoerderungszeiten. Verantwortlich fuer eine entsprechende Planung ist der Organisator; dem amtlichen Tierarzt kommt die Plausibilitaetspruefung der Planung zu.

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1 Introduction

In Regulation (EC) 561/2006², Union legislators (as previously in Regulation [EEC] 3820/85¹) harmonised certain social provisions concerning road traffic, in particular the longest permissible driving times and the minimum requirement for driver rest periods.

Since 5 January 2007, the essential parts of Regulation (EC) 1/2005¹ have regulated the transport of live vertebrate animals within the Union in connection with economic activity, namely the maximum permissible journey times for the animals as well as official checks within and at the external borders of the European Union.

The aim of this paper is to draw focus on the common areas between the two Regulations and thereby primarily to fully examine the time limits for animal transportation arising from the breadth of all applicable Regulations. In addition, this paper pursues the issue of the scope and level of control as set out in Article 14 Reg (EC) 1/2005 as well as issues concerning the responsibility of the official veterinarian acting in the case of any shortcomings which may arise in this regard. We first present an overview of the provisions of the aforementioned Regulations which are significant for the subsequent considerations, namely the respective legal definitions.

2 Regulation (EC) 561/2006

2.1 Scope

Reg (EC) 561/2006 concerns amongst other things the transportation of goods using vehicles with a maximum weight, including trailer or semi-trailer, exceeding 3.5 tonnes and applies irrespective of the country of registration of the vehicle for road journeys within the Union or between the Union, Switzerland and signatory countries to the Agreement on the European Economic Area (Art 2 [1] and [2] of the Regulation).

For road journeys taking place in part or in whole outside of the aforementioned areas, the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) applies insofar as this concerns signatory states to this agreement.

The provisions of the AETR are similar to those of Reg (EC) 561/2006 (see <http://treaties.un.org>; <http://beck-online.beck.de>).

² see Literature > Legislation

2.2 Responsibility of the Transporter

The Regulation in question concerns on the one hand the vehicle crew (Chapter II). On the other hand, the law also places a duty upon the transporter (Chapter III) to organise the work of the vehicle crew in such a way that they are able to comply with the social provisions. The drivers must duly be instructed to comply with the provisions of this Regulation and of Reg (EEC) No. 3821/85¹ and regular checks must be carried out to ensure that this is the case (Art 10 [2]).

As a final step, the Regulation expands the circle of responsibility to include certain participants in the journey process to a certain degree. According to Art 10 [4], undertakings, consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies shall ensure that contractually agreed transport time schedules respect this Regulation.

2.3 Definition of Terms

2.3.1 Driving Times

The permissible daily driving time^{3, 4} is 9 hours, but may (no more than twice per week) be extended to 10 hours (Art 6 [1]). This 'daily driving time' is the total accumulated driving time in one day. It begins at the end of one daily rest period and ends at the beginning of the following daily rest period. The complete period for the calculation is 24 hours (Art 4 [k]). The provisions regarding driving times apply within the Union area and in the territory of third countries.

2.3.2 Breaks

The driving time allowed "in one block" is 4½ hours. After this time there must be a break of at least 45 min. A break (driving break) is not the same as a rest period (Art 7).

During the break the driver may not carry out any driving-related activity and may not carry out any other work; the driving break may only be used for rest (Art 4 [d])⁵.

³ Driving times are, according to Art 4 (j) Reg (EC) No. 561/2006, driving activities recorded by either fully automatic or semi-automatic control devices or recorded by hand during any malfunction of the control device (POMPLUN, 2007).

⁴ All time actually taken up with driving activities counts as driving time. This also includes in particular waiting times in traffic, at traffic lights, at railway crossings, at junctions or in traffic jams. Waiting times at border crossings must be counted as time at the wheel if the vehicle must be moved forward every few minutes, i.e. if the driver must be in the vehicle and paying attention (THOMANN, 2010).

⁵ Breaks serve to break up the monotonous driving of the vehicle by the driver in order that he or she may rest for at least a short time. The driver may not carry out any other work during breaks (THOMANN, 2008).

2.3.3 Daily Rest Periods

The prescribed daily rest period is 11 hours; it may (no more than 3 times per week) be shortened to a minimum of 9 hours. A rest period is an uninterrupted period in which a driver is free to do as he wishes (Art 4 [g]).

Rest periods may not be taken in a moving vehicle driven by another driver.

2.3.4 Multi-Manning

Multi-manning takes place if, during a journey between two rest periods, at least two drivers are in the vehicle to do the driving. In this case the second driver must be present after the first hour of multi-man operation (Art 4 [o]).

In the case of multi-manning, the aforementioned Regulation regarding driving times and breaks applies. Each driver's daily rest period must last for at least 9 hours and the complete period for the calculation of the rest period for both drivers together is 30 hours (Art 8 [5]).

Where a second driver is present in the vehicle, the time spent by the non-driving person sitting next to the person actually driving the vehicle counts as availability for duty (THOMANN, 2008) and not as rest period.

2.3.5 Other Work

"Other work" is all other activities (according to Directive 2002/15/EC)¹ that are not driving activities, as well as any work for the same or a different employer whether it be within or outside of the transport sector, for example watering, feeding or other animal care activities⁶.

2.3.6 Travel to Take over the Vehicle

If the driver travels in his own private vehicle to a goods vehicle which is not situated at the company premises in order to take on a driving job, this journey counts as working hours which must be entered on the tachograph chart or on the driver card (POMPLUN, 2007).

⁶ The driver must consider as other work all time spent on "other work" and all driving time in a vehicle which is used for commercial purposes outside of the area of application of Reg (EC) 561/2006. These times must either be recorded by hand on a tachograph chart or printout or entered manually into the control device (THOMANN, 2010).

2.3.7 Graphic Representation (Intermediate Results)

The above results in the following maximum possible driving times and the associated rest periods and driver breaks:

1. Within a 24-hour period, a single person may serve as driver for a maximum of 11 ½ hours including breaks (fig. 1), whereby "other work" done during this 24-hour period must not be included (fig. 2).

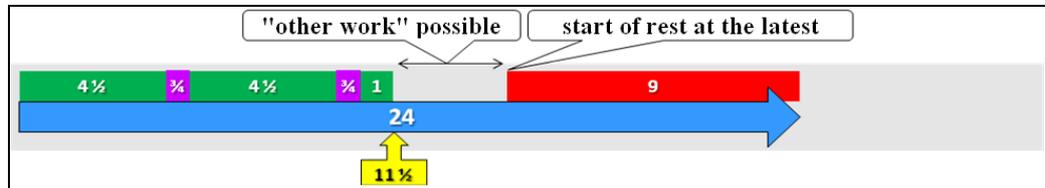


Fig. 1: Representation of 1-driver operation in accordance with Reg (EC)

561/2006. All figures are times in hours;

- Green = driving time
- Purple = break
- Red = rest period
- Blue = complete calculation period
- Yellow = maximum possible working time as driver

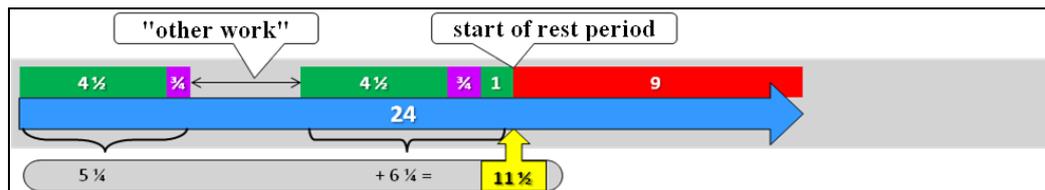


Fig. 2: Representation of 1-driver operation in accordance with Reg (EC)

561/2006 with "other work" in between (key as in fig.1).

2. In the case of multi-manning with two people, the total driving time within a 30 hour period must not exceed 20 hours (fig. 3).

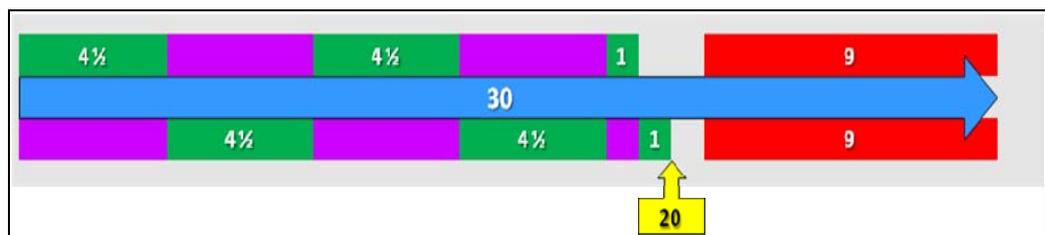


Fig. 3: Representation of 2-driver operation in accordance with Reg (EC)

561/2006 . (Key as in fig. 1).

3 Regulation (EC) 1/2005

3.1 Journey Time and Rest Periods

Reg (EC) 1/2005 sets out in Annex I, Chapter V the following maximum journey times for the transport of certain domestic animals in vehicles equipped in accordance with Annex I, Chapter VI; after this maximum journey time the animals must be unloaded, fed and watered and a rest period of at least 24 hours must be observed.

Pigs may be transported for a maximum period of 24 hours. The animals must have access to water throughout the journey (fig. 4). Due to the obligatory constant access to water in the case of pig transport lasting more than 8 hours, no watering break is required.

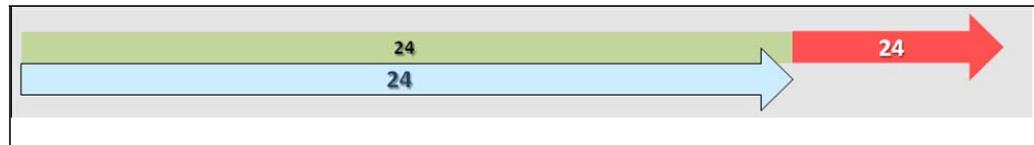


Fig. 4: Journey times for pigs in accordance with Reg (EC) 1/2005.

All figures are times in hours

 Light green = journey time

 Light red = 24-hour rest period after unloading

 Light blue = maximum journey time according to Annex I, Chap. V.

Domestic Equidae may be transported for a maximum period of 24 hours. During this time the animals must be watered every 8 hours and, if necessary, fed. The duration of watering and (if necessary also) feeding breaks in the transport of Equidae is not specified (fig. 5).

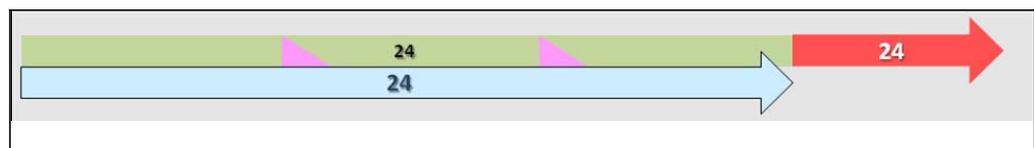


Fig. 5: Journey times for domestic Equidae in accordance with Reg (EC) 1/2005.

 Pink = watering break

(Key continues as in fig. 3).

After a journey time of 9 hours, unweaned **calves, lambs, kids and foals** which are still on a milk diet and unweaned **piglets** must be given an adequate break of at least 1 hour, in particular so that they can be watered and, if necessary, fed. After this break the journey may continue for a further 9 hours (fig. 6).

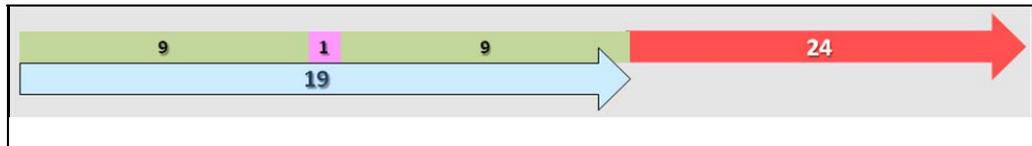


Fig. 6: Journey times for unweaned calves, lambs, kids and foals (key as in fig. 4, the break period given is a minimum time).

So long as they are weaned, **domestic cattle, sheep, goats and pigs** must be given an adequate break of at least 1 hour after a journey time of 14 hours, in particular so that they can be watered and, if necessary, fed. After this break the journey may continue for a further 14 hours (fig. 7).

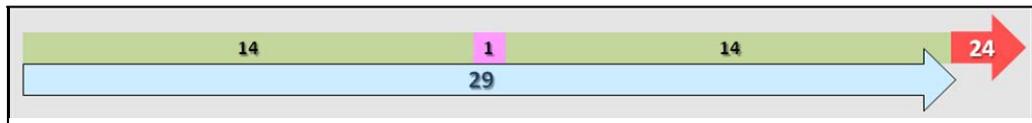


Fig. 7: Journey times for (weaned) domestic cattle, sheep and goats (key as in fig. 4, the break period given is a minimum time).

For unweaned calves, lambs, kids and foals and for (weaned) domestic cattle, sheep and goats there are no specified maximum journey times, especially as the 1-hour break between journey blocks can be extended according to need. This means that the total journey time may be longer than 19 or 29 hours.

3.2 Transport Arrangements

Article 5 paragraph 4 regulates the use of the journey log in long journeys with domestic Equidae (other than registered Equidae), cattle, sheep, goats and pigs between member states as well as from and to third countries.

In Section 1 of the journey log (= "Planning") the following entries, amongst others, must be made by the organiser:

- Place of departure with date and time of planned loading
- Place of destination with date and time of planned unloading
- Total expected journey duration in hours and days
- Names of places where the animals are to be rested or transferred with date and time of planned arrival and planned time taken in hours.

The organiser or livestock keeper must enter the actual time (date and time) of loading at the place of departure in Section 2 of the journey log (= "Place of Departure"), amongst other things.

The remaining parts of the journey log are concerned with checks at the place of destination (Section 3), the actual route taken (Section 4) and the entry and communication of anomalies (Section 5).

3.3 Monitoring Obligations of the Competent Authority

3.3.1 General

At the place of departure of domestic Equidae, cattle, sheep, goats and pigs before long journeys between member states and from⁷ and to third countries, Art 14 requires the competent authority to check whether the journey log submitted by the organiser contains realistic information and whether this information leads to the conclusion that the journey complies with the provisions of this Regulation.

The authority's representative stamps the journey log if satisfied with the results of this check and if the other documents (transporter authorisations, certificates of approval for means of transport, certificates of competence of drivers and attendants) are present and valid. There is no need to stamp the journey log if a navigation system is in use.

In addition, in accordance with Art 6 (5), the certificate of competence of the drivers and attendants must be submitted to the competent authority at the time when the animals are transported.

While the latter provision speaks for itself, in several regards Art 14 essentially gives rise to two questions with which the authority's representative and the official veterinarian find themselves confronted when carrying out the journey log check. First of all, the question of the effect of loading and unloading activities with regard to the time limitations in forwarding animals, and secondly the question of the parameters to be considered in the plausibility check.

3.3.2 Consideration of Loading and Unloading Times

In considering the first question, one is unavoidably struck by the judgement of the European Court of 23rd November 2006, case C-300/05 ([Hamburg-Jonas main customs office] curia.europa.eu).

In this preliminary ruling, the Court approached the Federal Fiscal Court (Germany) and established – against the background of the Regulations then in force (Directive 91/628/EEC¹) - that the time taken to load and unload should be included in the travel time.

Whilst this at first provided clarity for all concerned, European Union legislators reopened the discussion with Reg (EC) 1/2005 because it set the term travel (Art 4 lit w) against the term journey (Art 4 lit w). Whilst the former term includes loading and unloading, the latter describes the entire transportation process from the place of departure to the place of destination and thus only a part of all that is involved in the transportation (DÖRFLINGER, 2007).

⁷ The duty also imposed on third country authorities (!) from this wording seems in this context to be problematic with regard to international law, especially as the Union evidently has no authority to regulate the activities of, for example, Russian authorities. This duty can therefore – according to international law – only become binding if the third country concerned undertakes to comply (for example in an agreement).

If we take the Union legislators at their word, then linking Annex I, Chapter V to the term 'journey' can be understood in no other way than that, in a deviation from the legal position thus far, loading and unloading times should not be considered in the assessment. However, as with numerous items of Union legislation, there is a stronger argument for not adhering too strictly to the letter of the Regulation, which is flawed in many respects. The reasoning for the finding quoted provides an approach to the solution: "Since the directive contains no restriction on the time taken for loading and unloading the animals as such, it follows that, if point 48(4)(d) of the Annex to Directive 91/628 were interpreted as meaning that that time is not included in travel, the duration of those loading and unloading operations would not be taken into consideration in any way, which would render that provision ineffective."

Point 48 (4)(d) of the Annex to Directive 91/628/EEC contains provisions regarding feeding and watering intervals as well as journey time and rest periods for (weaned) domestic cattle, sheep and goats. It was incorporated into Annex I, Chapter V without changes.

Keeping the unchanged ratio legis in mind, it seems that in reading the judgement quoted, the time constraints for feeding and watering as well as the journey time and rest periods are to be calculated from the loading of the first animal and not from the departure of the transport vehicle. The transport of the animals therefore begins with the loading of the first animal and ends with the unloading of the last animal (www.aaa.comwww.bmg.gv.at, 2010; www.aaa.comwww.bmelv.de, 2007).

3.3.3 Plausibility Check

Based on the considerations above, it is necessary to clarify the plausibility check required by the authority. The term "realistic information" used includes two overlapping aspects: what is technically possible on the one hand and what is legally permissible on the other. Therefore information can only be considered to be realistic if the arrangements actually appear achievable (on the basis of technical limits and taking experience into account) and do not conflict with the legal conditions.

The time to be taken for **loading and unloading** must first of all be considered in the assessment. Taking into account the space allowances set out in Annex I, Chapter VII, the following approximate numbers of animals are usually loaded into heavy goods vehicles, trailers or semi-trailers; 20 horses, 35 cattle, 200 pigs, 400 sheep, 600 lambs or kids.

The primary author was present at the regular loading of cattle at the auction hall in St. Veit an der Glan and at the unloading and reloading of various species of animals at the emergency centre of the Austrian province of Carinthia in Lind ob Velden and anticipates the following loading times (table 1):

Loading and unloading times	
20 horses	½ - 1 hour
35 cattle	+/- 1 hour
200 pigs, 400 sheep	+/- 1 ½ hours
600 lambs/600 kids	1 ½ - 2 hours

Table 1: Time required for loading and unloading.

The numerous factors involved, such as for example the number of animals, group size, herd composition, tolerance, ease of handling, ground and ramp characteristics, type and amount of litter, qualifications and experience of the attendant and many more factors besides may considerably extend or shorten the stated times.

To simplify the representation and to make it easier to understand, in the following a duration of 1 hour has been assumed in each case for loading and unloading.

A further pivotal factor is the **possible average speed**. In all the practical experience of the primary author and veterinary and police colleagues, an average speed in long-distance transport of less than 70 km/h must be anticipated – even on motorways. The maximum permitted speed on motorways is 80 km/h, on federal and state roads this is 70 km/h. The vehicles are usually restricted to a maximum speed of 90 km/h. At the same time the imponderabilities of the road, in particular on lower category roads (country roads), and the traffic situation rarely permit a speed higher than 70 km/h.

The following calculations were based on a realistic average speed of 65 km/h and a second and unrealistically high, but “industry-friendly” average speed of 70 km/h.

The aforementioned constraints derived from Reg (EC) 1/2005 and 561/2006 must also be considered in addition to these speeds. The following possibilities and incompatibilities may be concluded from these factors:

- **Long-distance single driver transport**

It is possible to move weaned **domestic Equidae, cattle, sheep, goats** and **pigs** in long-distance transport. The animals' entire journey process including loading and unloading will however be limited to approximately **13 ½** hours, whereby driving may take place for only a maximum of 10 hours (fig. 8).

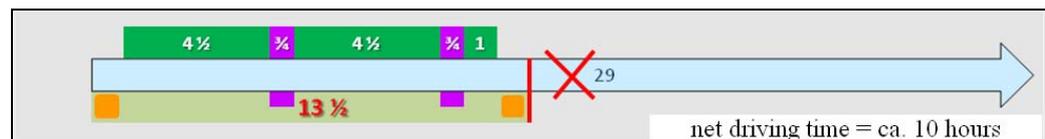


Fig. 8: Fastest possible single driver journey process for (weaned) domestic cattle, sheep and goats as well as domestic Equidae and pigs.

Orange = loading and unloading times

(Key continues as in fig. 1 to 6).

The long-distance transport of **unweaned calves, lambs, kids, foals** and **piglets** is equally possible. The actual travel time however is limited to only approximately 10 hours – even where the driver break and watering break for the animals are coordinated to maximise efficiency – whereby the entire journey process for the animals, including loading and unloading, may take up to **14 ½** hours (fig. 9 to 11). A significant factor here is that the driver break (break in journey of 45 min) serves only to give the driver a rest and may not be taken up with other work such as watering the animals.

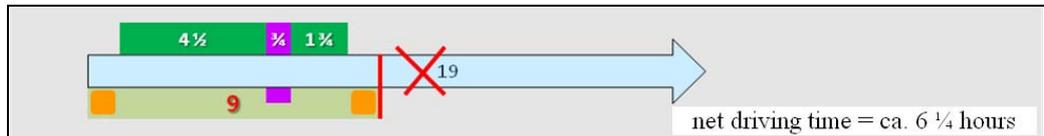


Fig. 9: Possible journey process for unweaned calves, lambs, kids, foals and piglets in single driver operation. (Key as in fig. 1 to 6).

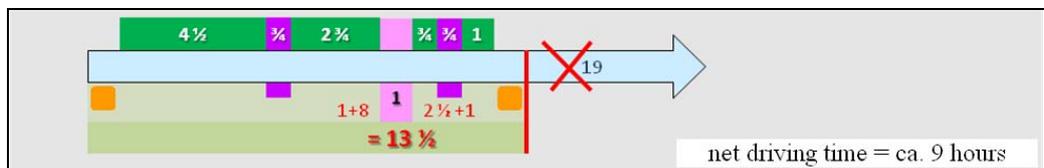


Fig. 10: Possible journey process for unweaned calves, lambs, kids, foals and piglets with watering break in single driver operation. (Key as in fig. 1 to 6).

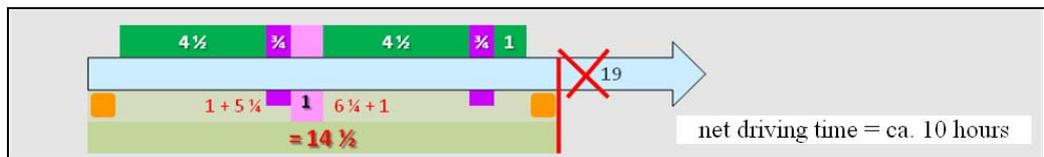


Fig. 11: Possible journey process for unweaned calves, lambs, kids, foals and piglets with watering break and longest possible journey in single driver operation. (Key as in fig. 1 to 6).

– Long-distance 2-driver transport

The long-distance transportation of **unweaned calves, lambs, kids, foals** and **piglets** appears to be easily possible with two drivers with regard to travel times. Pure travel time is approximately 16 hours, the journey process takes approximately 19 hours (fig. 12). The drivers' driving times can be altered as long as neither driver exceeds **4 ½** hours of uninterrupted driving time.

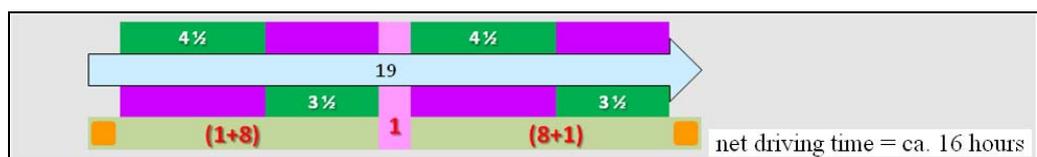


Fig. 12: Possible journey process for unweaned calves, lambs, kids, foals and piglets in 2-driver operation. (Key as in fig. 1 to 6).

When transporting animals other than unweaned calves, lambs, kids and foals over long distances it is not possible to exploit the maximum permissible journey times under Reg (EC) 1/2005 with 2-driver operation.

In addition, it must absolutely be taken into account that at least the driver who finishes his driving time last may participate in only one of the two processes – loading or unloading – or that the combined time for loading and unloading does not exceed one hour since otherwise it is not possible to complete the daily rest period of 9 hours within the complete calculation period of 30 hours.

In the transport of **pigs**, the only way to avoid breaking the law in 2-driver operation is a journey of 22 hours. By exploiting the possibility of extending daily driving times to 10 hours twice a week for both drivers it is possible to drive for a total of 20 hours (fig. 13).

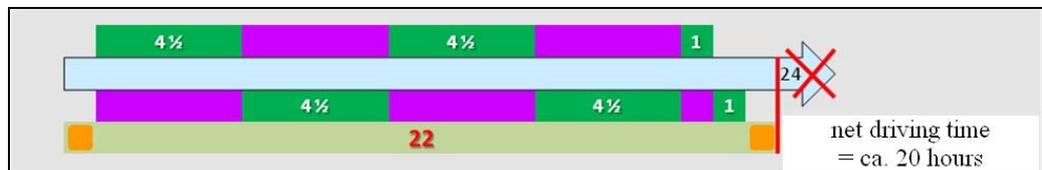


Fig. 13: Journey process for domestic pigs in 2-driver operation.

(Key as in fig. 1 to 6).

In the long-distance transport of **Equidae** the total time is similar; the net driving time however is shortened to approximately 18 hours by the (unregulated) length of the two watering breaks (fig. 14).

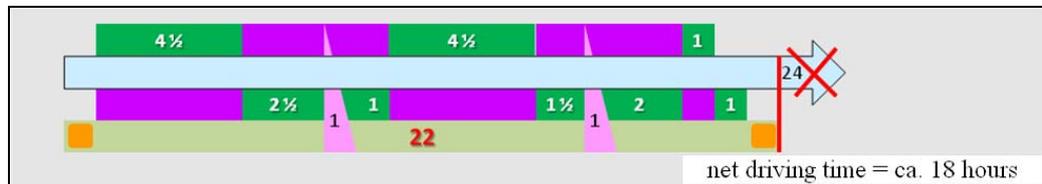


Fig. 14: Journey process for domestic Equidae in 2-driver operation.

(Key as in fig. 1 to 6).

The duration of these two watering breaks for the Equidae, which must each take place at the latest after 8 hours, could be considerably shortened – to approximately 15 minutes – through the installation and use of watering systems which comply with the requirements of Annex I, Chapter VI, 2.3. If in fact automatic water drinkers connected to the water supply tank were permanently installed in the individual boxes (fig. 15), then all the animals being transported could drink at the same time once the water flow has been turned on and could take on the required volume of water within approximately one quarter of an hour, whereupon the plumbing system could quickly be emptied and the journey continued (fig. 16).

This is not currently the case. At the moment, according to the experience of the primary author (RABITSCH, 2008), and contrary to the text of the Regulation, in the transport of horses for slaughter or otherwise hook-on plastic watering bags are used in insufficient number in each vehicle (fig. 17);

watering is thus essentially similar in process to the lengthy watering of an individual animal.

Taking in water in this way, which is often insufficient, can lead to considerable physical harm to the horses (SCAHAW, 2002).

The primary author wishes to point out here the inadequate fittings in a significant proportion of long distance transport vehicles (in particular), using unsuitable watering systems which make it difficult if not impossible for the animals to take in sufficient water. Personal experiences (RABITSCH, 2002; RABITSCH, 2003; RABITSCH, 2005a; RABITSCH, 2005b; RABITSCH, 2010; RABITSCH, 2011) and numerous inspection reports by the European Commission Food and Veterinary Office⁸ concerning officially authorised and nevertheless unsuitable means of transport indicate poor compliance by the responsible authorities (e.g. FVO, 2009a; FVO, 2009f; FVO, 2010a; FVO, 2010b; FVO, 2010d; FVO, 2010f; FVO, 2010g; FVO, 2011a; FVO, 2011b; FVO, 2011c).



Fig. 15: Regulation compliant [Reg (EC) 1/2005], integral trough with direct connection to the water tank in the transport of horses in individual stalls. The watering trough shown here can also be used for storing feed outside of watering times.

⁸ http://ec.europa.eu/food/fvo/index_en.cfm

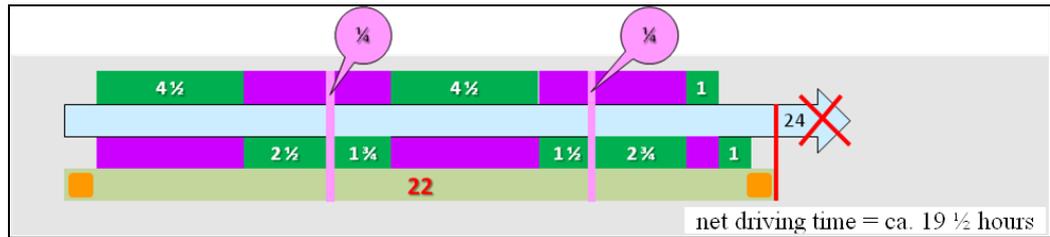


Fig. 16: Journey process for domestic Equidae when using regulation compliant watering systems in 2-driver operation.
(Key as in fig. 1 to 6).



Fig. 17: These frequently-used hook-on watering troughs for horses are unsuitable for quickly taking in the required volume of drinking water (30 to 60 litres per adult horse within a 24 hour period) and when used as the sole water container are in breach of the Regulation [Reg (EC) 1/2005].

The maximum possible long-distance transportation of **weaned domestic cattle, sheep and goats** with 2 drivers is 22½ hours. The net travel time here is a maximum of 19½ hours (fig. 18).

The sum of the driving times and breaks and feeding and watering the animals in the transport of livestock in this category is 20½ hours, so that by the time the prescribed daily rest period of 9 hours begins only half an hour remains. This makes it impossible for the drivers to participate in loading and unloading processes; the loading and unloading of the animals must be carried out by other workers.

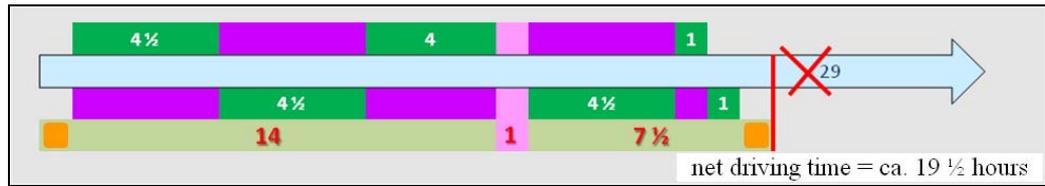


Fig. 18: Journey process for (weaned) domestic cattle, sheep and goats in 2-driver operation.
(Key as in fig. 1 to 6).

Keeping in mind the generally shortened "net" driving time here, in this category of animals it is possible to drive for an extra half hour by having an early watering break for the animals (fig. 19).

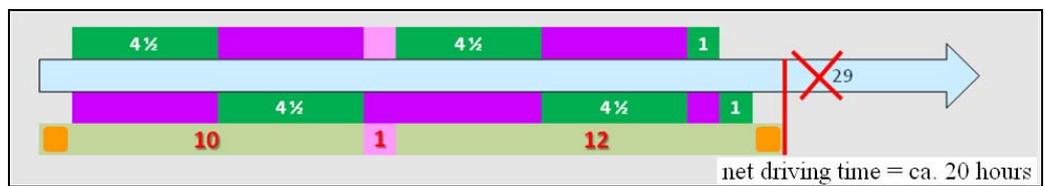


Fig. 19: Journey process for (weaned) domestic cattle, sheep and goats in 2-driver operation with an early watering break.
(Key as in fig. 1 to 6).

To summarise, the journey process and net driving times in long-distance transport can be shown as follows (Table 2):

	Reg (EC) 1/2005		taking into account Reg (EC) 561/2006		
	Journey	Journey Process	(maximum values)		
			Net Driving Time	Distances	
(hours)	(hours)	(hours)	at 65 km/h	at 70 km/h	(kilometres)
1- driver operation					
Pigs	24	13.5	10	650	700
Equidae	24	13.5	10	650	700
	(inc. 2 watering breaks)				
unweaned calves, lambs, kids and foals (weaned)	9+21+9	14.5	10	650	700
cattle, sheep and goats	14+21+14	13.5	10	650	700
2- driver operation					
Pigs	24	22	20	1300	1400
Equidae	24	22	19.5	1267	1365
	(inc. 2 watering breaks)				
unweaned calves, lambs, kids and foals (weaned)	9+21+9	19	16	1040	1120
cattle, sheep and goats	14+21+14	23	20	1300	1400
3- driver operation					
Pigs	24	24	22	1430	1540
Equidae	24	24	21.5	1397	1505
	(inc. 2 watering breaks)				
unweaned calves, lambs, kids and foals (weaned)	9+21+9	19	16	1040	1120
cattle, sheep and goats	14+21+14	29	25.25	1641	1767
In the case of calves, lambs kids and foals and domestic cattle, sheep and goats it is assumed here that the break between the 2 journey sections actually lasts 1 hour and is not extended.					

Table 2: Duration of the journey (maximum values), net driving times (maximum values) and possible achievable distances (maximum values) depending on the animal category and number of drivers.

When transporting unweaned calves, lambs, kids and foals only, the maximum journey duration for long-distance transport is shortened by the time required for loading and unloading; the two journey blocks are reduced here from a maximum of 2 times 9 to approximately 2 times 8 hours.

For all other animals referred to here, it is simply not possible to transport the animals in the maximum journey times set out in the Regulation without contravening at least one of the two Regulations.

Depending on the animals' species, age and feeding requirements the realistically possible driving times are significantly below the maximum permitted journey times - in single driver operation by 10 to 18 hours, in 2-driver operation by 2 to 8½ hours.

This situation affects the distance which it is possible to travel, which appears to be significantly reduced.

The driving and thus the journey times achievable under actual conditions as well as the resultant shortened distance travelled must be entered into the transport planning document.

If transports are carried out making best use of the maximum journey times set out in Reg (EEC) 1/2005, then a third driver is required in all circumstances.

- Long-distance 3-driver transport

Since the daily driving time commences at the end of a daily rest period and ends at the start of the following daily rest period, which in 2-driver operation must last at least 9 hours and may not be interrupted, and since the complete period for calculation is 30 hours, the first two drivers must begin the daily rest period at the latest 9 hours before this total period for calculation ends. In order to be able to do this, they must both leave the vehicle driven by the third driver as the daily rest period may only be taken in a stationary vehicle or outside of the vehicle.

Equally the third person must begin his/her driving duty following a rest period. He/she must not have been present as a second co-driver for the whole of the transport process thus far. The third driver must join the vehicle in such a way that within the specific complete calculation period of 24 hours as a single driver from now on, the aforementioned driving times are not exceeded and the breaks and rest periods are not shortened and the next daily rest period of 11 hours – this may be shortened to 9 hours 3 times per week – can be taken.

The third driver is free to relieve the first two drivers at an earlier point in time whilst still complying with Reg (EC) 561/2006.

The following (fig. 20 to 23) are examples of the transport processes now possible:

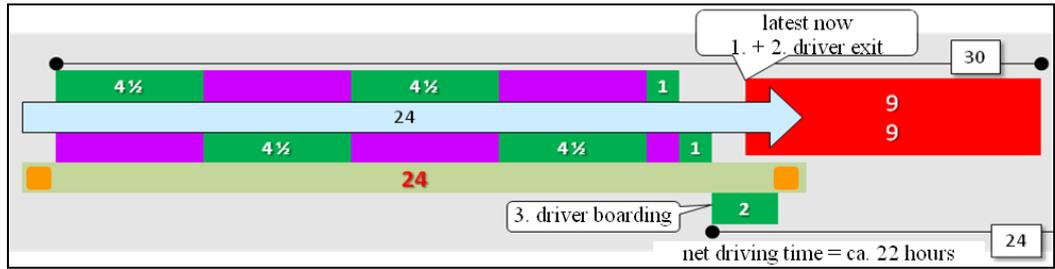


Fig. 20: Journey process for domestic pigs in 3-driver operation.
(Key as in fig. 1 to 6).

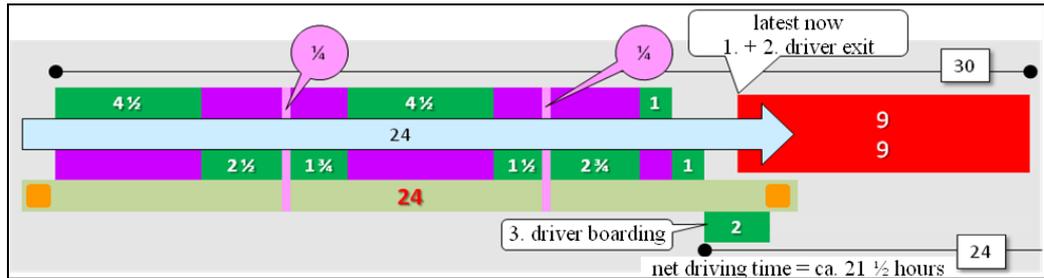


Fig. 21: Journey process for domestic Equidae in vehicles equipped with regulation-compliant watering systems in 3-driver operation.
(Key as in fig. 1 to 6).

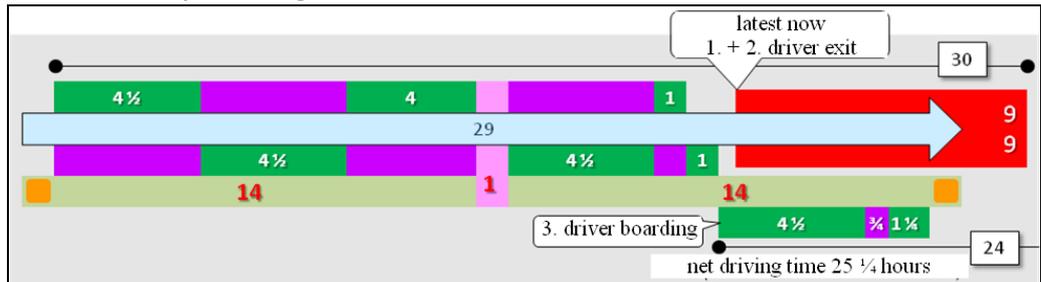


Fig. 22: Journey process for (weaned) domestic cattle, sheep and goats in 3-driver operation.
(Key as in fig. 1 to 6).

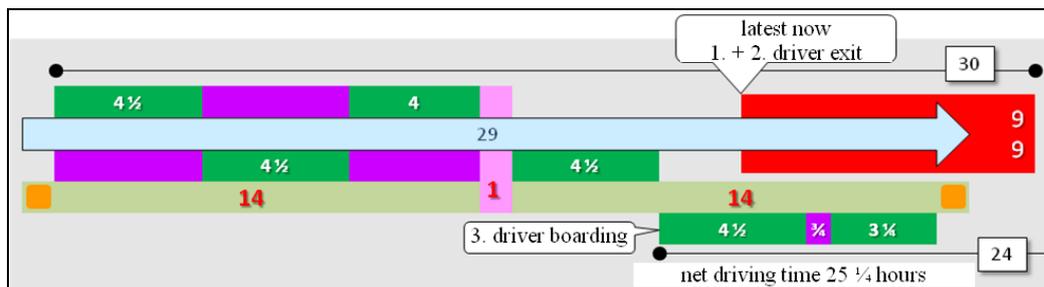


Fig. 23: Journey process for (weaned) domestic cattle, sheep and goats in 3-driver operation.
(Key as in fig. 1 to 6).

Two drivers are sufficient for transporting unweaned calves, lambs, kids, foals and piglets in compliance with the regulations in 2-driver operation.

- Transport processes in which the attendant is not also a driver

If we now theoretically consider to what extent an independent attendant undertaking no driving duties would enable a live animal transport to be carried out over a longer period of time then we see that – irrespective of employment law and pecuniary implications – this would be of little advantage, particularly as the gain in possible additional driving time is extremely modest.

In single driver operation with an additional attendant there would be changes only in the transport of young animals: in the case of unweaned calves, lambs, kids, piglets and foals in the best possible situation the journey process would be reduced by three quarters of an hour to 13¾ hours to the benefit of the animals, the maximum possible net driving time would however remain unchanged at 10 hours (fig. 24).

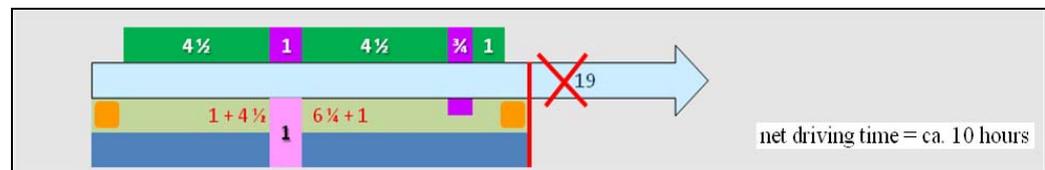


Fig. 24 (see also fig. 11): Possible journey process for unweaned calves, lambs, kids, foals and piglets with watering break and longest possible journey in single driver operation with additional non-driving attendant.

Additional attendant who does no driving
(Key continues as in fig. 1 to 6).

Only in the transport of domestic Equidae and only if journey breaks are optimised by using regulation-compliant watering systems, **in 2-driver operation an additional non-driving attendant** would provide an additional half hour of driving time whereby the total journey process would also be increased by half an hour (fig. 25).



Fig. 25 (see also fig. 16): Possible journey process for domestic Equidae with watering breaks 2-driver operation with additional non-driving attendant.

(Key as in fig. 24).

4 Transport Planning and Responsibility

4.1 Aspects of Planning

The following considerations and parameters must be taken into account in the planning of transport (not complete):

- Species
 - Number of animals
 - Category of animals to be transported
 - Health condition of animals to be transported (veterinary certificates)
 - Suitability of animals for transport
 - Size (height) of animals
 - Group size
 - Type, suitability and approval of means of transport
 - Suitability, number, type and distribution of watering equipment
 - Type, suitability and amount of litter
 - Type, suitability and amount of feed
 - Loading and unloading times
 - Route selection and character (road categories)
 - Route distances
 - Average possible speed on individual journey legs
 - Coordination of the various journey legs
 - Ambient temperatures and climate variations to be expected
 - Quality and evaluation of the route-specific emergency plan
 - Qualification of driver and attendant (evidence of competence)
- and
- Number of drivers and attendants
- as well as
- The chosen checkpoint (= staging point⁹) (or rest locations in third countries) with proof of agreement and acceptance of unloading at that place (if necessary)
 - The timetables of connecting ferries (ro-ro) (where appropriate)
 - Departure times for any connecting transport by ship (where appropriate).

⁹ The use of checkpoints is limited ex lege to species susceptible to foot and mouth disease (cloven-hoofed animals)

4.2 Responsibility for Route Planning

4.2.1 General

Responsibility for making the arrangements for a transport journey rests in the first instance with the **organiser** as in Art 2 (q) Reg (EC) 1/2005¹⁰. Irrespective of the intrinsic logic, this is elucidated by Art 14 1. (b) according to which the organiser can, where necessary, be obliged by the authority to make changes to the arrangements.

The Regulation quoted states that "*the competent authority of the place of departure shall, where the outcome of the checks [...] is not satisfactory, require the organiser to change the arrangements for the intended long journey so that it complies with this Regulation,*" thus clarifying that the authority is obliged to oversee the arrangements. However, to date it must be doubted whether the authorities are in fact fulfilling this duty of oversight in any meaningful way. The **Food and Veterinary Office**, FVO, <http://ec.europa.eu/food/fvo> has found many serious failings on the part of the authorities in their checking of the journey logs submitted to the official veterinarians (FVO, 2008; FVO, 2009a; FVO, 2009b; FVO, 2009c; FVO, 2009d; FVO, 2009e; FVO, 2009f; FVO, 2009g; FVO, 2010c; FVO, 2010d; FVO, 2010e; FVO, 2010f). In particular they criticised the frequent absence of any check of the journey duration and they pointed out that the "loading veterinarian" accepted planned journey times which were unrealistically short as well as speeds which were unrealistically high.

It is striking that in none of the (retrospective) check reports is any reference made to the social legislation (in particular Reg (EC) 561/2006) or to compliance with the regulations contained within it. This suggests the conclusion that the Food and Veterinary Office also merely checked that the transports were compatible with the provisions of Reg (EC) 1/2005 but did not also check whether the transport should have been permitted to go ahead in the light of the provisions of the social legislation, i.e. with the planned driver manning levels.

Certainly it is the responsibility of the Food and Veterinary Office primarily to check compliance with Reg (EC) 1/2005, whereas checking compliance with the social legislation in connection with animal transport is not part of the FVO's original area of responsibility. At the same time it is worth asking whether the applicable social legislation must indeed be taken into account in the evaluation.

¹⁰ It should also be noted that this definition fails completely as in all cases in which the transport is carried out by just *one* transporter, strictly speaking there would be no organiser who *must* sign Section 1 of the journey log. Here it must be assumed that the (one single) transporter is responsible for signing and that he thus becomes the organiser as in Art 2 (q) (iii); in the regulation this is clearly not mentioned.

One answer may be drawn from the central provision of Art 14 1. (b). According to this provision, the competent authority at the place of departure may only require the organiser to change the arrangements for the planned journey if "*the outcome of the checks provided for in point a)*" of Art 14 1. is not satisfactory, i.e. only if

- The transporter does not have authorisation
- There are no valid certificates of approval for means of transport
- The drivers and attendants have no valid certificates of competence and/or
- If the journey log submitted by the organiser contains no realistic information and indicates that the journey does not comply with this Regulation.

The passage quoted in the last point needs further clarification. The authority is required to check two things: firstly, they must check whether the journey log submitted by the organiser contains realistic information; secondly, they must check whether the journey log submitted by the organiser indicates that the journey complies with this Regulation.

Checking the provision of realistic details consequently serves not only to elicit information with regard to compliance with the Regulation in question but is more comprehensive than that. If this were not the case the provision would read, "*The authority must check by means of appropriate controls whether the journey log submitted by the organiser contains realistic information which indicates that the journey complies with this Regulation.*"

This is not the case.

From a legal perspective even in the German language version of the Regulation the two criteria can be seen. It says: „*Die Behörde am Versandort [...] ueberprueft durch geeignete Kontrollen, ob [...] das vom Organisator vorgelegte Fahrtenbuch wirklichkeitsnahe Angaben enthaelt und darauf schliessen laesst, dass die Befoerderung den Vorschriften dieser Verordnung entspricht.*“

The authority is not restricted with regard to the selection of the means by which they gain the information, this is made clear by the phrasing "*by appropriate checks*".

Coming back to the second check criterion of Art 14 1. (a) (ii) there is no doubt that the journey only complies with this Regulation [(EC) 1/2005] if transport journeys are carried out with disregard for the provisions of Reg (EC) 561/2006, if for example only two drivers transport pigs for slaughter over a period of 24 hours with no breaks.

Close examination of the first, considerably more rigorous and comprehensive check criterion of Art 14 1. (a) (ii) shows that it may be an European reality that in contravention of Reg (EC) 561/2006, for example, only two drivers transport pigs for slaughter over a period of 24 hours with no breaks. However, this may not be regarded as realistic as per this Regulation (as set out above), otherwise one would allege that the legislators are essentially assuming that the Regulations which they have passed will not be observed anyway. If we assume this, however, then arrangements which are necessarily and obviously based on a breach of the Regulations may neither be permitted nor tolerated by the authorities. Thus, for example, information contained in the journey log concerning 2-driver multi-manning on a 24-hour journey is not realistic when seen against the background of Reg (EC) 561/2006 quoted above.

This could clearly be countered – at least at first glance – by saying that it is not the task of the competent authority of the place of loading, i.e. the veterinary authority, to check observation of the drivers' driving and rest times in the case of a long journey (see also CASSIDY, 2011, for a lively discussion). Should the veterinary authority perhaps be obliged when carrying out checks to work on behalf of agencies responsible for overseeing the roads or the Labour Inspectorate for Transport <http://www.bmvit.gv.at/verkehr/vai/index.html> for example? It is not only that such an approach would be impracticable and unreasonable, it would not be apparent what these agencies should be checking. In contrast to Reg (EC) 1/2005, social and road traffic Regulations do not foresee ex-ante checks in relation to transport planning. Here is the central difference between this and the EU transport Regulations in which an ex-post check is not sufficient but – at least insofar as long journeys are concerned – foresee a specific authorisation or accreditation process. The criteria for this are found only in Art 14 (1), although the interests (especially animal welfare interests) pursued by Reg (EC) 1/2005 and aspects from other regimes by virtue of express legal requirements also indirectly become criteria.

Based on this we can turn in conclusion to the following questions arising in practice:

What is the significance of official approval in the case of a transport plan which specifically breaches the aforementioned social provisions?

Does the authorising person lay himself open to prosecution if he approves transport journeys which can only be carried out in breach of the law (a law which does not fall under his area of responsibility)?

Turning to the first question, one can firstly only conclude from approval as in Art 14 1. (c) of Reg (EC) 1/2005 that the transport arrangements agree with point (a) of this provision. Accordingly, however, the significance of the aforementioned declaration only extends to the field of animal transport law and outside of this has no effect as justification or excuse. It can lead neither to the conclusion that authority has been given not to have to observe the Regulation driving and rest times nor to the conclusion that, for example, permissible maximum speeds may be exceeded. The more difficult question to answer on the other hand is what the organiser stands to gain from such an approval from an animal transport law point of view. It seems for one thing that

it must be assumed here that the information in the journey log will agree without exception with the timing provisions in Reg (EC) 1/2005. For another the Regulation makes it clear that all non-compliant arrangements or official approvals (excepting where this is expressly foreseen, e.g. Art 23 [3]) cannot make any changes (in the way of exceptional approval) to the timing-related transport parameters. Inaccurate estimates in planning are attributed to the organiser, especially as the provisions of Annex I, Chapter V remain applicable even after taking into account Art 14 1¹¹. The approval therefore has no impact as justification or excuse in this respect. An infringement under § 21. (1) 10. TTG [*Tiertransportgesetz/Animal Transport Act*] 2007^{1, 12} is the only thing with which the organiser cannot be charged.

If we bear this in mind when considering the second question then we must differentiate: first of all it is true that the approval itself, granted where the legally required conditions have not been met and therefore granted unlawfully – presuming the necessary deliberate intention¹³ – is grounds in Austria for the charge of misuse of power as in § 302 StGB [*Strafgesetzbuch/Criminal Law Code*]¹. In addition, the (unlawful) approval could be considered as an act contributing to offences against animal transport law by the organiser, transporter or driver. An administrative penal law decision based on § 7 of the VStG [*Verwaltungsstrafgesetz/Administrative Penal Act*]^{1, 14} compared with § 21. (1) 21. TTG [*Tiertransportgesetz/Animal Transport Act*] 2007¹⁵ would be considered in the same way as one based on § 222 (2) StGB [*Strafgesetzbuch/Criminal Law Code*]¹⁶ (in this instance as the direct

¹¹ See § 21. (1) 21. TTG 2007.

¹² The provision reads: Anyone who [...] as an organiser or transporter in contravention of Art 5 (4) or as a keeper in contravention of Art 8 (2) sentence 2 and in each case in connection with Annex II of Regulation (EC) No.1/2005 does not comply with the requirements concerning the journey log relevant to him in each case [...] is committing a regulatory offence and shall be penalised by being made to pay a fine of up to 4,360 euros where the offence or non-compliance is deliberate, and in the case of negligence a fine of up to 1,450 euros.

¹³ The knowing misuse of power required by Austrian law is indicated in particular by lengthy service in a particular position (e.g. OGH [Austrian High Court] 14.12.1999, 14 Os 149/99).

¹⁴ The provision reads: § 7. Anyone who deliberately causes another person to commit a regulatory offence or who deliberately makes it easier for another person to commit a regulatory offence is subject to the penalty set out for this offence and this also applies if the direct perpetrator can himself not be penalised.

¹⁵ The provision reads: Anyone who [...] as a transporter does not comply with the rest periods or the regulations on journey times as in Annex I, Chapter V of Regulation (EC) No. 1/2005 or, [...] or who commits a regulatory offence shall be penalised by being made to pay a fine of up to 4,360 euros where the offence or non-compliance is deliberate, and in the case of negligence a fine of up to 1,450 euros.

¹⁶ The provision reads: "Anyone who, even if through negligence, in connection with the transport of several animals subjects said animals to suffering over a lengthy period by failing to provide food or water or in any other way shall be similarly penalised [note: by imprisonment of up to one year or by a fine of up to 360 days' pay]." This primarily addresses those inflicting suffering by exceeding transport times (i.e. in the sense of this law "in any other way").

perpetrator).

A prosecution on the grounds of endangering road safety on the other hand can be ruled out in view of the limited impact of the declaration as in Art 14 1., as can participation in offences connected with social provisions.

5 Summary and Conclusion

Reg (EC) 561/2006 (on the harmonisation of certain social provisions for road traffic) obliges the drivers of live animal transport vehicles to observe driving times and rest periods. The long-distance transport of animals is only possible to a limited extent if these social provisions are complied with. Thus the still common transport of cattle right across Europe by two drivers over a period of 29 hours in most cases must now be reduced to a maximum of 20 hours' net driving time.

Far more than the Animal Transport Regulation (EC) 1/2005, the limiting factor in the transport of animals is the driving time and rest period regulation (EC) 561/2006. Knowledge of the drivers' maximum possible driving times must influence the plausibility check carried out by official veterinarians before loading the animals and if necessary must result in a requirement to improve as in Art 14 1. (b) Reg (EC) 1/2005.

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	VERORDNUNG (EWG) Nr. 3821/85 DES RATES ueber das Kontrollgeraet im Strassenverkehr vom 20. Dezember 1985 (ABl. L 370 vom 31. 12. 1985). REGULATION (EEC) number 3821/85 OF THE COUNCIL concerning the control device in road transport of 20th of December 1985 (Official Journal L 370 of 31.12.1985)
1991	RICHTLINIE 91/628/EWG DES RATES vom 19. November 1991 ueber den Schutz von Tieren beim Transport sowie zur Aenderung der Richtlinien 90/425/EWG und 91/496/EWG (ABl. L 340 vom 11. 12. 1991). [COUNCIL DIRECTIVE 91/628/EEC of 19th of November 1991 on the protection of animals during transport and on amending Directives 90/425/EEC and 91/496/EEC (Official Journal L 340 of 11.12.1991)]
	VStG = Verwaltungsstrafgesetz [Administrative Penal Act], BGBl. No.

	52/1991, last amended by BGBl. I. No. 100/2011, Austria.
1995	RICHTLINIE 95/29/EG DES RATES vom 29. Juni 1995 zur Aenderung der Richtlinie 91/628/EWG ueber den Schutz von Tieren beim Transport (ABl. L 148 vom 30. 6. 1995) [COUNCIL DIRECTIVE 95/29/EC of 29 June 1995 on amending Directive 91/628/EEC on the protection of animals during transport (Official Journal L 148 of 30.06.1995)]
1997	VERORDNUNG (EG) Nr. 1255/97 DES RATES vom 25. Juni 1997 zur Festlegung gemeinschaftlicher Kriterien fuer Aufenthaltsorte und zur Anpassung des im Anhang der Richtlinie 91/628/EWG vorgesehenen Transportplans (ABl. L 174 vom 2.7.1997) [COUNCIL REGULATION (EC) No. 1255/97 of 25 June 1997 concerning Community criteria for staging posts and amending the transport plan as set out in the Annex to Directive 91/628/EEC (Official Journal L 174 of 2.7. 1997)].
2002	RICHTLINIE 2002/15/EG DES EUROPAEISCHEN PARLAMENTS UND DES RATES vom 11. 3. 2002 zur Regelung der Arbeitszeit von Personen, die Fahrtaetigkeiten im Bereich des Strassentransports ausueben (ABl. L 80 vom 23. 3. 2002) [DIRECTIVE 2002/15/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11th March 2002 on the organisation of the working time of persons performing mobile road transport activities (Official Journal L 80 of 23.3.2002)].
2005	VERORDNUNG (EG) Nr. 1/2005 DES RATES vom 22. Dezember 2004 ueber den Schutz von Tieren beim Transport und damit zusammenhaengenden Vorgaengen sowie zur Aenderung der Richtlinien 64/432/EWG und 93/119/EG und der Verordnung (EG) Nr. 1255/97 (ABl. L 003 vom 5. 1. 2005) [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 (Official Journal L 003 of 5.1.2005)].
2006	VERORDNUNG (EG) Nr. 561/2006 DES EUROPAEISCHEN PARLAMENTS UND DES RATES vom 15. 3. 2006 zur Harmonisierung bestimmter Sozialvorschriften im Strassenverkehr und zur Aenderung der Verordnungen (EWG) Nr. 3821/85 und (EG) Nr. 2135/98 des Rates sowie zur Aufhebung der Verordnung (EWG) Nr. 3820/85 des Rates (ABl. L 102 vom 11. 4. 2006) [REGULATION (EC) No 561/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No2135/98 and repealing Council Regulation (EEC) No 3820/85

	(Official Journal L 102 , 11/04/2006)]. http://curia.europa.eu/juris/showPdf.jsf?text=&docid=65422&pageIndex=0&doclang=DE&mode=doc&dir=&occ=first&part=1&cid=956225
2007	TTG = Tiertransportgesetz 2007 (54. Bundesgesetz, mit dem ein Tiertransportgesetz erlassen wird, und das Tierschutzgesetz und das Tierseuchengesetz geändert werden, BGBl. I Nr. 54/2007) [Federal law passing an animal transport act and amending the animal welfare act and animal diseases act], Austria.

Abbreviations

Art	Article
BGBI.	Bundesgesetzblatt (Austrian Federal Law Gazette)
EC	European Community
EEC	European Economic Community
EU	European Union
lit	litera
Ro-Ro	Roll-on-roll-off (= ship transports where loaded heavy-goods vehicles drive onto the ferry)
StGB	Strafgesetzbuch (Austrian Criminal Code)
TTG	Tiertransportgesetz (Austrian Animal Transportation Act)
REG	Regulation
VStG	Verwaltungsstrafgesetz (Austrian Administrative Penalties Law)

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