Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

28 July 2016*

(Reference for a preliminary ruling — Agriculture — Regulation (EC) No 1/2005 — Protection of animals during transport — Long journeys — Annex I, Chapter V, point 1.4(d) — Journey times and animal resting periods during transport — Transport of cattle — Concept of 'rest period of at least one hour' — Possibility of interrupting the transport several times — Article 22 — Delays during transport — Regulation (EC) No 1234/2007 and Regulation (EU) No 817/2010 — Export refunds — Requirements of the welfare of live bovine animals during transport — Regulation No 817/2010 — Article 2(2) to (4) of Regulation No 817/2010 — Official veterinarian at the exit point — Report and entry on the document evidencing the exit of the animals from the customs territory of the European Union regarding compliance or non-compliance with the relevant provisions of Regulation No 1/2005 — Unsatisfactory result of the checks carried out — Article 5(1)(c) of Regulation No 817/2010 — Whether or not that entry is binding on the national authority competent for the export refund)

In Case C-469/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), made by decision of 29 August 2014, received at the Court on 14 October 2014, in the proceedings

Masterrind GmbH

v

Hauptzollamt Hamburg-Jonas,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, D. Šváby (Rapporteur), J. Malenovský, M. Safjan and M. Vilaras, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— the Hauptzollamt Hamburg-Jonas, by S. Heise, acting as Agent,

— the French Government, by S. Ghiandoni and D. Colas, acting as Agents,

— the European Commission, by B. Eggers and B. Schima, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 21 January 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation, first, of Annex I, Chapter V, point 1.4(d) of 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 (OJ 2005 L 3, p. 1, corrigendum OJ 2011 L 336, p. 86) and, second, of Commission Regulation (EU) No 817/2010 of 16 September 2010 laying down detailed rules pursuant to Council Regulation (EC) No 1234/2007 as regards requirements for the granting of export refunds related to the welfare of live bovine animals during transport (OJ 2010 L 245, p. 16).

2 The request has been made in the context of an action brought by Masterrind GmbH challenging the lawfulness of a decision of the Haptzollamt Hamburg-Jonas (Principal Customs Office, Hamburg-Jonas) relating to the total recovery of export refunds paid in advance to Masterrind for the export of a consignment of six breeding cattle to Morocco.

Legal context

EU law

Regulation No 1/2005

3 Recitals 11 and 19 of Regulation No 1/2005 are worded as follows:

‘11. In order to ensure a consistent and effective application of this Regulation across the Community in the light of its basic principle according to which animals must not be transported in a way likely to cause injury or undue suffering to them, it is appropriate to set out detailed provisions addressing the specific needs arising in relation to the various types of transport. Such detailed provisions should be interpreted and applied in accordance with the aforesaid principle and should be timely updated whenever, in particular in the light of new scientific advice, they appear no longer to ensure compliance with the above principle for particular species or types of transport.

…

19. Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport [(OJ 1985 L 370, p.1)] provides for maximum driving periods and minimum rest periods for road drivers. It is appropriate that journeys for animals are similarly regulated. Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport [(OJ 1985 L 370, p. 8)] provides for recording equipment to be installed and used to ensure effective checking on compliance with social legislation concerning road transport. It is necessary that such record data be made available and checked so as to enforce travelling time limits under animal welfare legislation.’

4 Under Article 3 of that regulation, entitled ‘General conditions for the transport of animals’:

‘No person shall transport animals or cause animals to be transported in a way likely to cause injury or undue suffering to them.

In addition, the following conditions shall be complied with:

(a) all necessary arrangements have been made in advance to minimise the length of the journey and meet animals' needs during the journey;

…

(f) the transport is carried out without delay to the place of destination and the welfare conditions of the animals are regularly checked and appropriately maintained;

…

(h) water, feed and rest are offered to the animals at suitable intervals and are appropriate in quality and quantity to their species and size.'

5 Pursuant to Article 6(3) of Regulation No 1/2005, transporters must transport animals in accordance with the technical rules set out in Annex I to that regulation.

6 Chapter V of Annex I contains the rules relating to watering and feeding intervals, journey times and resting periods. Point 1.4 of that chapter concerns the transport, inter alia, of live bovine animals by road, other than unweaned calves, for long journeys, which are defined in Article 2(m) of Regulation No 1/2005 as journeys exceeding eight hours starting from when the first animal of the consignment is moved. Section 1 of that chapter is worded as follows:

'1.1. The requirements laid down in this Section apply to the movement of domestic Equidae, except registered Equidae, domestic animals of bovine, ovine, caprine and porcine species, except in the case of air transport.

1.2. Journey times for animals belonging to the species referred to in point 1.1. shall not exceed eight hours.

1.3. The maximum journey time in point 1.2. may be extended if the additional requirements of Chapter VI are met.

1.4. The watering and feeding intervals, journey times and rest periods when using road vehicles which meet the requirements in point 1.3. are defined as follows:
(a) Unweaned calves …
(b) Pigs …
(c) Domestic Equidae …
(d) All other animals of the species referred to in point 1.1. must, after 14 hours of travel, be given a rest period of at least one hour sufficient for them in particular to be given liquid and if necessary fed. After this rest period, they may be transported for a further 14 hours.

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

…

1.8. In the interests of the animals, the journey times in points 1.3, 1.4. and 1.7(b) may be extended by two hours, taking account in particular of proximity to the place of destination.

…'

7 Article 22 of Regulation No 1/2005, entitled ‘Delay during transport’, provides:

‘1 The competent authority shall take the necessary measures to prevent or reduce to a minimum any delay during transport or suffering by animals when unforeseeable circumstances impede the application of this Regulation. The competent authority shall ensure that special arrangements are made at the place of transfers, exit points and border inspection posts to give priority to the transport of animals.

2 No consignment of animals shall be detained during transport unless it is strictly necessary for the welfare of the animals or reasons of public safety. No undue delay shall occur between the completion of the loading and departure. If any consignment of animals has to be detained during transport for more than two hours, the competent authority shall ensure that appropriate arrangements are made for the care of the animals and, where necessary, their feeding, watering, unloading and accommodation.’

Regulations (EC) No 1234/2007 and (EU) No 817/2010

8 Under Article 168 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (‘Single CMO Regulation’) (OJ 2007 L 299, p. 1), the granting and the payment of the refund for exports of live bovine animals are to be subject to compliance with the provisions established in EU legislation concerning animal welfare and, in particular, the protection of animals during transport.

9 That provision is implemented by Regulation No 817/2010.

10 Recital 5 of that regulation states that ‘the assessment of the physical condition and state of health of animals requires specific expertise and experience. Checks should therefore be carried out by a veterinarian. Moreover, the extent of those checks should be clarified and a model report set out in order to make those checks accurate and harmonised’.

11 It is stated, in particular, in recital 7 of that regulation that ‘without prejudice to cases of force majeure recognised by the case-law of the Court … a violation of those animal welfare provisions does not trigger a reduction but the loss of the export refund, related to the number of animals for which the welfare requirements were not respected’.

12 Article 1 of Regulation No 817/2010 provides that, the payment of the export refund is subject to compliance with Articles 3 to 9 of Regulation No 1/2005 and the Annexes referred to therein during the transport of live bovine animals to the first place of unloading in the third country final destination.

13 Under Article 2(2) of Regulation No 817/2010:

‘The official veterinarian at the exit point shall verify in accordance with Council Directive 96/93/EC [of 17 December 1996 on the certification of animals and animal products (OJ 1997 L 13, p. 28)] for those animals for which an export declaration is accepted whether:

(a) the requirements laid down in Regulation (EC) No 1/2005 have been complied with from the place of departure, as defined in Article 2(r) of that Regulation, until the exit point;

…

The official veterinarian who has conducted the checks shall complete a report in accordance with the model set out in Annex I certifying whether the results of the checks performed in accordance with the first subparagraph are satisfactory or not satisfactory.

… A copy of this report shall be sent to the paying agency.'

14 In accordance with Article 2(3) and (4), where that veterinarian is satisfied that the requirements of paragraph 2 are met, he shall certify this on the document designed to constitute evidence of exit from the customs territory of the European Union by excepting, if necessary, the animals for which the requirements of Regulation No 1/2005 were not complied with.

15 Articles 4 and 5 of Regulation No 817/2010 provide:

'Article 4

Procedure for payment of export refunds

…

2. Applications for the payment of export refunds … shall be supplemented … by:

(a) the document referred to in Article 2(3) of this Regulation duly completed;

…

Article 5

Non-payment of export refunds

1. The total sum of the export refund per animal calculated in accordance with the second subparagraph shall not be paid for:

…

(c) animals for which, in the light of the documents referred to in Article 4(2) and/or all other elements at its disposal concerning compliance with this Regulation, the competent authority considers that Articles 3 to 9 of Regulation (EC) No 1/2005 and the Annexes referred to therein have not been complied with.

…'

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

16 In June 2011 Masterrind declared the export of six breeding cattle to Morocco and obtained an advance payment of the refunds linked to that export by decision of the Principal Customs Office of Hamburg-Jonas of 13 July 2011.

17 It is apparent from the order for reference that the transport by lorry from Northeim (Germany), where the animals were loaded, to the port of Sète (France), where the animals were loaded onto a ship for onward travel, took place as follows:

— 16 June 2011, from 10.30: loading;

— approximately 11.30 the same day: departure from the loading site;

— 19.00 the same day: stop at Wasserbilling (Luxembourg) for a one hour feed and water break;

— 22.00 the same day: stop at Épinal (France) for a second feed and water break for 10 hours, as required under the obligations relating to driving time and rest periods flowing from 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) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1);

— 17 June at approximately 8.00: continuation of the journey;

— 17.00 the same day: arrived at Sète.

18 Following checks carried out at that site by the official veterinarian at the exit point, the official veterinarian added the entry 'Not compliant with the official check pursuant to Article 2 of Regulation (EC) No 817/2010' in relation to all the animals, to the report. It later transpired that, according to the assessment of the French veterinary authority, a transport of cattle, where the cattle are not unloaded, with a total duration in excess of 31 hours, including the rest periods laid down for lorry drivers, does not satisfy the requirements of Regulation No 1/2005.

19 Consequently, by decision of 5 June 2012, the Principal Customs Office of Hamburg-Jonas sought to recover the export refunds which had been advanced to Masterrind, plus a supplement of 10%.

20 After submitting a complaint against that decision, Masterrind sent a request to the European Commission with a view to getting its opinion on the interpretation of the relevant provisions of Chapter V of Annex I to Regulation No 1/2005 concerning journey times and rest periods. The Commission indicated that it considered those provisions to imply that the maximum permitted journey time for cattle without unloading is 29 hours from the time of loading, including a 1 hour rest break in the vehicle, but that in the interest of the animals, and taking into account in particular the proximity of the place of destination, the journey time may be extended by 2 hours, meaning that the journey time cannot in any case exceed 31 hours.

21 By decision of 19 July 2013, the Principal Customs Office of Hamburg-Jonas rejected Masterrind's challenge, indicating that it was bound by the decision of the official veterinarian at the exit point.

22 Masterrind brought an action against that decision before the Finanzgericht Hamburg (Finance Court, Hamburg, Germany), submitting that the term 'a rest period of at least one hour' in Annex I, Chapter V, point 1.4(d) to Regulation No 1/2005 implies that the rest period between two periods of movement may be longer than one hour.

23 According to the referring court, the outcome of the dispute before it depends on, first, whether, in actual fact, the term 'a rest period of at least one hour' in Annex I, Chapter V, point 1.4(d) to Regulation No 1/2005 implies that the rest period between the two periods of movement may be longer than one hour and, second, whether the entry made by the official veterinarian at the exit point, located in France, signifying that the transport at issue in the main proceedings was not carried out in accordance with that regulation, may or may not be called into question before the German authority competent for the payment of the export refund for transported animals.

24 As regards the first point, the referring court considers, firstly, that it is irrelevant that the transport at issue in the main proceedings did not contain two periods of movement, as mentioned in point 1.4(d), but rather three, lasting 8 hours and 30 minutes, then 2 hours, then 9 hours, respectively, since none of those periods, nor any two successive periods combined, exceeded the maximum duration of 14 hours imposed by that provision for each of the two periods of movement that it prescribes.

25 Furthermore, recalling the wording of paragraph 15 of the judgment of 9 October 2008 in *Interboves* (C-277/06, EU:C:2008:548), as well as point 18 of the Opinion of Advocate General Mengozzi in *Interboves* (C-277/06, EU:C:2008:162), the referring court is of the opinion that that provision lays down an intermediate rest period which must be of at least one hour, but which may exceed that length of time. It takes the view that the general rule enshrined in point (a) of the second paragraph of Article 3 of Regulation No 1/2005, that all necessary arrangements must be made in advance of the journey to minimise the length of the journey and meet the animals needs during the journey, was made specific by the EU legislator, as regards the transport by road of cattle, in the rule laid down by Annex I, Chapter V, point 1.4(d) to that regulation, which provides for an intermediate rest period of at least one hour, and not of one hour as recommended by the Commission.

26 As for the rationale behind that rest period, the referring court considers that it must not exclusively be for watering or feeding the animals, referring to the term 'in particular', or to the equivalents which are used in the various language versions of that provision, in the expression 'a rest period of at least one hour sufficient for them in particular to be given liquid and if necessary fed'. That rest period could therefore be justified, as in the present case, by the adherence to the regulation on the driving times and the rest periods applicable to lorry drivers, since the animals benefit at the same time from this supply of water and food.

27 Finally, according to the referring court, the rest periods connecting two periods of movement of a maximum of 14 hours cannot themselves exceed, in total, 14 hours, corresponding to the maximum duration of a period of movement. Such a limitation, that that court finds to be much lower than the rest period of 24 hours with unloading laid down in Annex I, Chapter V, point 1.5 to Regulation No 1/2005 after two travel periods of a maximum of 14 hours each, would be justified by the fact that the rest period without unloading may be less beneficial and by the aim of limiting, where possible, a significant accumulation of journey time without unloading.

28 As regards the second point, namely the binding nature, on the authority competent for payment of the export refund, of the entry made by the official veterinarian at the exit point showing that the journey at issue in the main proceedings was carried out in a manner that was not in accordance with Regulation No 1/2005, the referring court takes the view that the entry made by that veterinarian in relation to his assessment, carried out in compliance with that regulation, as well as the affixing of his stamp, constitutes an administrative formality that can be challenged only at the same time as the decision, based on substance, in relation to the refusal to grant the export refund by the authority responsible for the payment thereof.

29 In support of that opinion, the referring court takes the view, in the first place, that the involvement of the official veterinarian at the exit point does not have a direct legal effect on the exporter and third parties since the exporter's legal situation is affected only by the decision of the authority competent for the payment of the export refund. That involvement appears therefore to be a single step in a procedure involving several stages as regards, in particular, Article 4(2)(a) of Regulation No 817/2010, which treats the entry made by the official veterinarian at the exit point as a procedural requirement which must be satisfied regardless of the content, positive or negative, of that entry, with an assessment based on substance being the responsibility of the authority competent for the payment of the export refund.

30 In the second place, the referring court refers to the judgments of 13 March 2008 in *Viamex Agrar Handel* (C-96/06, EU:C:2008:158) and 25 November 2008 in *Heemskerk and Schaap* (C-455/06, EU:C:2008:650) from which it is apparent that the positive assessment of an official veterinarian at the exit point does not constitute irrefutable proof of compliance with the provisions governing the transport of animals and, consequently, is not binding on the authority competent for the payment of the export refund if there is evidence casting doubt on that assessment.

31 Finally, the referring court finds that the report on the results of the checks carried out that the official veterinarian at the exit point must produce, alongside making the entry on the export document, and which he must send to that authority, contains evidence which falls within the particular expertise of a veterinarian, from which that court infers that the evidence is particularly valuable, but that the expertise is nonetheless unrelated to the legal review, by the competent payment body, of the fulfilment of the conditions applicable to an entitlement to a refund with regard to the findings made by that veterinarian.

32 It is in those circumstances that the Finanzgericht Hamburg (Finance Court, Hamburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the rule set out in point 1.4. of Chapter V of Annex I to Regulation No 1/2005 according to which, after 14 hours of travel, animals are to be given a rest period of at least 1 hour sufficient for them in particular to be given liquid and if necessary fed, after which they may be transported for a further 14 hours, to be interpreted as meaning that the periods of transport may … be interrupted by a rest period of more than 1 hour or by several rest periods, at least one of which lasts for 1 hour?

(2) Is the competent payment body of a Member State bound by the entry made by the official veterinarian at the exit point in accordance with Article 2(3) of Regulation No 817/2010 with the result that the lawfulness of a refusal to make the [negative] entry is reviewable only by the authority accountable for the actions of [of that veterinarian], or is the entry made by the official veterinarian a mere procedural act by the authority which may be contested only in tandem with the judicial review proceedings that lie against the payment body’s substantive decisions?’

Consideration of the questions referred

The first question

33 The referring court asks, by the first part of its first question, whether Annex I, Chapter V, point 1.4 to Regulation No 1/2005 must be interpreted as meaning that, in the context of the transport by road of animals belonging to the species referred to, in particular the bovine species, the two periods of movement of 14 hours may be interrupted by a rest period of more than 1 hour.

34 It should be noted that the answer to that question follows expressly from the very wording of that provision, according to which animals belonging to the species referred to must, after 14 hours of transport, be given a rest period ‘of at least one hour’. Those unambiguous terms show that the length of the intermediate rest period may exceed one hour.

35 However, as the Advocate General observed in points 58, 59 and 62 of his Opinion, a transport of live animals must, also as regards that aspect, comply with the general requirements of Article 3 of Regulation No 1/2005. As set out in recital 11 of that regulation, the detailed provisions addressing the specific needs in relation to the various types of transport, such as Annex I, Chapter V, point 1.4 to that regulation, must be interpreted and applied in accordance with the principle that animals must not be transported in a way likely to cause them injury or undue suffering, a principle which features

in the first paragraph of Article 3 and of which some general conditions are referenced in the second paragraph of that article. Among those conditions are the need to minimise the length of the journey and carry out the transport without delay, referred to in points (a) and (f) of that second paragraph.

36 As regards the 'rest period' within the meaning of point 1.4(d) that the animals are to be given, in particular in order to be given liquid and if necessary to be fed, the purpose of that rest period is, as the terms of that provision indicate, to allow the transported animals to recover from tiredness and inconvenience suffered during the preceding movement period and thus to begin the second period of movement in a good condition. As long as the stop of the vehicle satisfies that essential need to rest, that stop can be considered to be justified regardless of whether its extension fulfils solely that need or also other needs linked to the transport itself.

37 Consequently, the length of the intermediate rest period can never be such that, in the specific conditions in which that rest and the transport occur together, it constitutes a risk of injury or undue suffering for the transported animals. It is for the national authority competent for the payment of the export refund and, where appropriate, the national courts, to carry out the necessary assessments in that regard in each case, taking account of all the relevant evidence and in particular of the suitability of the organisational measures employed.

38 At the same time, it must be stated that Regulation No 1/2005 precludes a combined journey time and rest period, as provided for under Annex I, Chapter V, point 1.4 to that regulation, in excess of 29 hours, subject to the possibility of extending those periods by 2 hours in the interests of the animals, in accordance with point 1.8 of that chapter, and without prejudice to the application of Article 22 of that regulation concerning delays during transport in cases where unforeseeable circumstances prevent the application of that rule.

39 First, as observed by the Advocate General in points 51 to 55 of his Opinion, to authorise combined journey times and resting periods in excess of 29 hours would run counter to the principle established in the first paragraph of Article 3 of Regulation No 1/2005, referred to paragraph 35 above, namely to avoid the risk of injury and undue suffering on the part of the transported animals, as well as the implications of that principle that obligations to minimise the length of the journey and to carry out the transport without delay. In that regard, under Annex I, Chapter V, point 1.5 to that regulation, after the journey time set out in accordance with point 1.4 of that chapter, the animals must be unloaded, fed and watered, and must be rested for at least 24 hours. Second, that interpretation is supported by the fact that point 1.8 of that chapter provides that the journey time laid down in point 1.4 can be extended only by 2 hours, and only in the interests of the animals, taking account in particular of proximity to the place of destination.

40 By the second part of its first question the referring court then asks, in essence, whether Annex I, Chapter V, point 1.4(d) of Regulation No 1/2005 must be interpreted as meaning that, in the context of the transport by road of the animals belonging to the species referred to, in particular the bovine species, the two periods of movement of a maximum of 14 hours each, which must be interrupted by a rest period of at least 1 hour, may also include other break periods.

41 Regardless of the fact that to force the drivers of the animal transport vehicles concerned to stop only after a period of movement of a maximum of 14 hours would be unworkable in practice, it must be noted that, in normal circumstances, a period of movement during which the vehicle is removed from traffic and makes a stop is objectively less discomforting for the transported animals than a period of movement, as is apparent from the definition of the term 'place of rest' in Article 2(t) of Regulation No 1/2005, which covers 'any stop during the journey which is not a place of destination', and of certain passages of the opinions on animal welfare during transport adopted on 11 March 2002 by the Scientific Committee on Animal Health and Animal Welfare, which highlights the negative

consequences of the movement by vehicle on the welfare of the animals transported. Accordingly, the fact that a period of movement of a maximum of 14 hours includes one or more periods of stops cannot, in principle, be considered as detrimental to the welfare of the animals.

42 However, that or those additional break periods must, first, be justified by the needs linked to the transport itself and, second, be in addition to the periods of movement that count towards the period of movement of a maximum of 14 hours to which they belong in accordance with point 1.4(d) of Annex I, Chapter V, point 1.4 to Regulation No 1/2005.

43 The answer to the first question is therefore that Annex I, Chapter V, point 1.4(d) to Regulation No 1/2005 must be interpreted as meaning that, in the context of the transport by road of the animals belonging to the species referred to, in particular the bovine species except calves, first, the rest period between the periods of movement may, in principle, be longer than one hour. However, that length of time, if it exceeds one hour, must not be such that, in the specific conditions in which that rest and the transport occur together, it constitutes a risk of injury or undue suffering for the transported animals. Furthermore, the combined journey time and resting periods, as provided for under point 1.4(d) of that chapter, must not exceed 29 hours, subject to the possibility of extending those periods by 2 hours in the interests of the animals, in accordance with point 1.8 of that chapter and without prejudice to the application of Article 22 of that regulation in the event of unforeseeable circumstances. Second, the periods of movement of a maximum of 14 hours may each include one or more break periods. Those stop periods must be in addition to the periods of movement that count towards the overall period of movement of a maximum of 14 hours to which they belong.

The second question

44 By its second question, the referring court asks, in essence, whether Regulation No 817/2010 must be interpreted as meaning that the authority competent for the payment of the export refund for bovine animals is bound by the entry made by the official veterinarian at the exit point on the document constituting evidence of exit from the customs territory of the European Union of the animals concerned, according to which the applicable provisions of Regulation No 1/2005 were not adhered to in the context of the transport of those animals, in relation to all or some of those animals.

45 In the first place, it should be noted that, under Article 2(2) to (4) of Regulation No 817/2010, the involvement of the official veterinarian at the exit point is limited to assessing the compliance with the applicable provisions of Regulation No 1/2005 and to produce, for the benefit of the authority competent for the payment of export refunds, a report certifying the results of the checks performed, with those results also being subject to an entry on the document evidencing the exit of the animals from the customs territory of the European Union.

46 By contrast, under Article 5(1)(c) of Regulation No 817/2010, it is for the authority competent for the payment of export refunds to decide whether the applicable provisions of Regulation No 1/2005 have or have not been satisfied in the context of the transport concerned since the decision in that regard must be taken on the basis of the documents listed in Article 4(2) of Regulation No 817/2010 and/or all other elements at its disposal concerning compliance with that regulation. Article 4(2) makes reference to, in relation to the part of the transport carried out within the territory of the European Union, the document constituting evidence of exit from that territory as completed by the official veterinarian at the exit point in accordance with Article 2(3) or (4) of that regulation. In addition, among other elements that the authority has at its disposal is the official veterinarian's report, referred to in the second subparagraph of Article 2(2) of the same regulation. Drafted in accordance with the model set out in Annex I to the same regulation, that report contains the precise indications and observations which, where applicable, allow the authority competent for the payment of the refund to know in detail the reasons why the official veterinarian at the exit point considered the results of the

checks carried out in relation to all or some of the animals transported to be unsatisfactory and entered that assessment on the document constituting evidence of exit from the customs territory of the European Union, as provided for by Article 2(4).

47 In the second place, the Court points out that, ruling, within the framework of the legislation previously in force, as regards the opposite situation in which the entry added by the official veterinarian at the exit point contained a positive assessment as regards adherence to the relevant provisions of the legislation on the transport of live animals, the it held that the finding made by the veterinarian did not constitute irrefutable proof in that respect, so that that finding did not bind the authority competent for the payment of the export refund in relation to the export of cattle due to objective and specific evidence leading to the opposite conclusion (see, to that effect, judgments of 13 March 2008 in *Viamex Agrar Handel*, C-96/06, EU:C:2008:158, paragraphs 34, 35, 37 and 41, and 25 November 2008 in *Heemskerk and Schaap*, C-455/06, EU:C:2008:650, paragraphs 25 and 30).

48 Since the provisions relevant in those judgments were, in essence, identical to the provisions currently in force, that case-law remains relevant.

49 While the assessment of the official veterinarian at the exit point may be called into question where he finds that the animals have been transported in accordance with the provisions which must be adhered to in order to be able to eligible for the export refund, there is no reason why it is to be different where the opposite conclusion is reached in his assessment.

50 It appears therefore that, in accordance with the provisions of Regulation No 817/2010, the decision on the adherence to the conditions to which the entitlement to payment of the exports refund is subject, in particular as regards compliance with the relevant provisions of Regulation No 1/2005, falls within the remit of the national authority competent for that payment. In that regard, the indications provided by the official veterinarian at the exit point, in the context of the cooperation between the two parties laid down in Regulation No 817/2010, indeed constitute an item of evidence, but are refutable.

51 That finding is supported when, as in the case in the main proceedings, the assessment of that veterinarian does not concern the assessment of the physical condition and state of health of animals, which, under recital 5 of Regulation No 817/2010, requires specific expertise and experience, providing justification that the checks are to be carried out by a veterinarian. The presumption of relevance which naturally accompanies assessments carried out by a person skilled in his field of expertise does not apply when those assessments relate to questions outside of his field of expertise.

52 Consequently, the answer to the second question is that Regulation No 817/2010 must be interpreted as meaning that the authority competent for the payment of export refunds for bovine animals is not bound by the entry made by the official veterinarian at the exit point on the document constituting evidence of exit from the customs territory of the European Union of the animals concerned, according to which the applicable provisions of Regulation No 1/2005 were not adhered to in the context of the transport of those animals, in relation to all or some of those animals.

Costs

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

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

1. **Annex I, Chapter V, point 1.4(d) to Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 must be interpreted as meaning that, in the context of the transport by road of the animals belonging to the species referred to, in particular the bovine species except calves, first, the rest period between the periods of movement may, in principle, be longer than one hour. However, that length of time, if it exceeds one hour, must not be such that, in the specific conditions in which that rest and the transport occur together, it constitutes a risk of injury or undue suffering for the transported animals. Furthermore, the combined journey time and resting periods, as provided for under point 1.4(d) of that chapter, must not exceed 29 hours, subject to the possibility of extending those periods by 2 hours in the interests of the animals, in accordance with point 1.8 of that chapter and without prejudice to the application of Article 22 of that regulation in the event of unforeseeable circumstances. Second, the periods of movement of a maximum of 14 hours may each include 1 or more stop periods. Those break periods must be in addition to the periods of movement that count towards the overall period of movement of a maximum of 14 hours to which they belong.**

2. **Commission Regulation (EU) No 817/2010 of 16 September 2010 laying down detailed rules pursuant to Council Regulation (EC) No 1234/2007 as regards requirements for the granting of export refunds related to the welfare of live bovine animals during transport must be interpreted as meaning that the authority competent for the payment of export refunds for bovine animals is not bound by the entry made by the official veterinarian at the exit point on the document constituting evidence of exit from the customs territory of the European Union of the animals concerned, according to which the applicable provisions of Regulation No 1/2005 were not adhered to in the context of the transport of those animals, in relation to all or some of those animals.**

[Signatures]