JUDGMENT OF THE COURT (Third Chamber)

21 December 2011 *

In Case C-316/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Vestre Landsret (Denmark), made by decision of 28 June 2010, received at the Court on 1 July 2010, as corrected by decision of 24 August 2010, received at the Court on 26 August 2010, in the proceedings

Danske Svineproducenter

v

Justitsministeriet,

intervener:

Union européenne du commerce de bétail et de la viande,

* Language of the case: Danish.

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, J. Malenovský, R. Silva de Lapuerta, E. Juhász and D. Šváby (Rappporteur), Judges,

Advocate General: Y. Bot,
Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 15 September 2011,

after considering the observations submitted on behalf of:

— Danske Svineproducenter, by H. Sønderby Christensen, advokat,

— Union européenne du commerce de bétail and de la viande, by J.-F. Bellis, A. Bailleux, avocats, and E. Werlauff, advokat,

— the Danish Government, by V. Pasternak Jørgensen, acting as Agent, assisted by P. Biering, advokat,

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

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the second paragraph of Article 288 TFEU, of Article 3, second paragraph, points (f) and (g) and Article 37 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), and of Chapter II, points 1.1.(f) and 1.2., and Chapter VII, Part D, of Annex I to Regulation No 1/2005.

2 The reference has been made in proceedings between Danske Svineproducenter, a professional body of Danish pig producers, and the Justitsministeriet (Ministry of Justice) concerning, inter alia, the compatibility with Regulation No 1/2005 of supplementary national legislation seeking to define in greater detail, as regards certain matters, the application of that regulation, such as Order No 1729 of 21 December 2006 on the protection of animals during transport (bekendtgørelse om beskyttelse af dyr under transport, *Lovtidende* 2006 A) ('Order No 1729/2006'), and the conformity of various provisions of that order with Regulation No 1/2005.

Legal context

European Union Law

Regulation No 1/2005

3 Recitals 2, 6, 8, 10 and 11 in the preamble to Regulation No 1/2005 state:

'(2) Under Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport [and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17), as amended by Council Directive 95/29/EC of 29 June 1995 (OJ 1995 L 148, p. 52), ("Directive 91/628")], the Council has adopted rules in the field of the transport of animals in order to eliminate technical barriers to trade in live animals and to allow market organisations to operate smoothly, while ensuring a satisfactory level of protection for the animals concerned.

…

(6) The Council invited the Commission on 19 June 2001 … to submit proposals for ensuring effective implementation and strict enforcement of existing Community legislation, improving the protection and welfare of animals as well as preventing the occurrence and spread of infectious animal diseases, and putting in

place more stringent requirements so as to prevent pain and suffering in order to safeguard the welfare and health of animals during and after transport.

…

(8) The Scientific Committee on Animal Health and Animal Welfare adopted an opinion on the welfare of animals during transport on 11 March 2002. Community legislation should therefore be amended to take into account new scientific evidence while giving priority to the need for its enforceability to be properly ensured in the immediate future.

…

(10) In the light of experience gained under Directive [91/628] in harmonising Community legislation on the transport of animals, and the difficulties encountered due to the differences in transposition of that Directive at national level, it is more appropriate to set out Community rules in this field in a regulation. Pending the adoption of detailed provisions for certain species having particular needs and representing a very limited part of the Community livestock, it is appropriate to allow Member States to establish or maintain additional national rules applying to transport of animals of such species.

(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.'

4 Article 1 of Regulation No 1/2005 provides:

'1. This Regulation shall apply to the transport of live vertebrate animals carried out within the Community…

…

3. This Regulation shall not be an obstacle to any stricter national measures aimed at improving the welfare of animals during transport taking place entirely within the territory of a Member State or during sea transport departing from the territory of a Member State.

…'

5 Article 3 of Regulation No 1/2005, entitled 'General conditions for the transport of animals', provides:

'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:

…

(f) … the welfare conditions of the animals are regularly checked and appropriately maintained;

(g) sufficient floor area and height is provided for the animals, appropriate to their size and the intended journey;

…'

6 Article 6(3) of Regulation No 1/2005 provides:

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

7 Chapter II of Annex I to Regulation No 1/2005 contains the technical rules relating to means of transport. Point 1 of that chapter, which contains the provisions for all means of transport, is worded as follows:

'1.1. Means of transport, containers and their fittings shall be designed, constructed, maintained and operated so as to:

…

(f) provide access to the animals to allow them to be inspected and cared for;

…

1.2. Sufficient space shall be provided inside the animals' compartment and at each of its levels to ensure that there is adequate ventilation above the animals when they are in a naturally standing position, without on any account hindering their natural movement.

…'

8 Chapter III of that annex relates to transport practices. Point 2 of that chapter, entitled 'During transport', contains the following provision:

'2.1. Space allowances shall at least comply with the figures laid down, in respect of the animals and the means of transport referred to, in Chapter VII.'

9 Chapter V of Annex I deals with, inter alia, journey times; point 1 of that chapter, which concerns, among others, domestic animals of the porcine species, lays down the following rules:

'…

1.2. Journey times for animals belonging to the species referred to … 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.

…'

10 Chapter VI contains additional provisions, set out in four points, applicable to long journeys of, inter alia, domestic animals of the porcine species.

11 Point 1 of that chapter, which concerns all long journeys, sets out requirements in respect of the roof, floor and bedding, feed and partitions, as well as minimum criteria for certain species. With regard to the latter, the only condition applicable to pigs is that the weight of the animals transported on a long journey must be greater than 10 kg, except if they are accompanied by their mother. Points 2 to 4 of that chapter relate respectively to the water supply for transport by containers, ventilation and temperature monitoring for means of transport by road, and use of a navigation system.

12 Chapter VII of Annex I to Regulation No 1/2005 sets out the rules on loading densities. It is worded as follows:

'Space allowances for animals shall comply at least with the following figures:

…

D. Pigs

Transport by rail and by road

All pigs must at least be able to lie down and stand up in their natural position.

In order to comply with these minimum requirements, the loading density for pigs of around 100 kg should not exceed 235 kg/m^2.

The breed, size and physical condition of the pigs may mean that the minimum required surface area given above has to be increased; a maximum increase of 20 % may also be required depending on the meteorological conditions and the journey time.

…'

13 Under Article 37 of Regulation No 1/2005, the abovementioned provisions have been applicable, generally, as from 5 January 2007. The last paragraph of that article provides:

'This Regulation shall be binding in its entirety and directly applicable in all Member States.'

Directive 91/628 and Regulation (EC) No 411/98

14 Directive 91/628 was repealed by Regulation No 1/2005, in accordance with Article 33 of the latter. That directive applied to the transport of, inter alia, domestic animals of the porcine species within, to and from each Member State.

15 With particular regard to pigs, the annex to Directive 91/628 set out, in Chapter I, Section A, point 2(a) and (b), and in terms similar to those in Regulation No 1/2005, the requirements to be complied with in respect of the minimum height of compartments for animals.

16 Point 47 in Chapter VI of that annex related to loading densities. Section D of that point, dealing with pigs, was formulated in terms identical to those of Chapter VII, Part D, of Annex I to Regulation No 1/2005, set out in paragraph 12 of the present judgment.

17 Point 48 of the annex to Directive 91/628, which constituted Chapter VII thereof and related to, inter alia, journey times, contained the following provisions:

'…

2. Journey times for [domestic animals belonging to the porcine species, among others] shall not exceed eight hours.

3. The maximum journey time in point 2 may be extended where the transporting vehicle meets the following additional requirements:

…

— there is direct access to the animals,

…'

18 Council Regulation (EC) No 411/98 of 16 February 1998 on additional animal protection standards applicable to road vehicles used for the carriage of livestock on journeys exceeding eight hours (OJ 1998 L 52, p. 8), which was adopted pursuant to Article 13(1) of Directive 91/628, applied as from 1 July 1999. Under Article 1 of that regulation, in conjunction with point 3 of the annex thereto, it required that such vehicles, when used for the transportation of, inter alia, pigs, be 'equipped so that at all times there can be direct access to all the animals being transported so that they can be inspected and given all appropriate care'.

19 Regulation No 411/98 was also repealed by Regulation No 1/2005, in accordance with Article 33 of the latter.

20 In the judgment of 8 May 2008 in Case C-491/06 *Danske Svineproducenter* [2008] ECR I-3339, the Court held that:

> '1. National rules … comprising figures for the animal compartment height in order that transporters may refer to more precise standards than those set out in … Directive 91/628 … may fall within the margin of discretion conferred on the Member States by Article 249 EC, on condition that those rules, which comply with the objective pursued by that directive … of protecting animals during transport do not, contrary to the principle of proportionality, prevent attainment of the objectives, also pursued by that directive … of eliminating technical barriers to trade in live animals and allowing market organisations to operate smoothly. It is for the national court to establish whether those rules comply with those principles.
>
> 2. Section D of point 47 in Chapter VI of the annex to Directive 91/628 … must be interpreted as meaning that a Member State is entitled to introduce national rules under which, in the case of transport operations of over eight hours' duration, the available space per animal must be at least 0.50 m^2 per 100 kg of pig.'

National law

21 Order No 1729/2006 requires that certain standards be complied with in the transportation of pigs.

22 As regards the minimum height of compartments, Paragraph 9(1) of that order provides:

‘In the case of the transport of pigs weighing 40 kg or over, the internal height between each deck – measured from the highest point on the floor to the lowest point on the roof ([for example] the underside of any crossbeams or struts) – shall satisfy at least the following requirements during transport:

Average Weight [(in kg)]	Internal height where a mechanical ventilation system is used	Internal height where another ventilation system is used
40	74 cm	89 cm
50	77 cm	92 cm
70	84 cm	99 cm
90	90 cm	105 cm
100	92 cm	107 cm
110	95 cm	110 cm
130	99 cm	114 cm
150	103 cm	118 cm
170	106 cm	121 cm
190	109 cm	124 cm
210	111 cm	126 cm
230	112 cm	127 cm’

23 Paragraph 9(5) of Order No 1729/2006 regulates, in the following terms, the inspection height in the case where the duration of a journey exceeds eight hours:

'Where the total journey time for pigs weighing 40 kg and over exceeds eight hours, means of transport shall be used which – for example by means of a raisable roof combined with movable decks or similar construction – ensure at all times that an internal inspection height of at least 140 cm can be established on each deck – measured from the highest point on the floor to the lowest point on the ceiling ([for example] the underside of any crossbeams or struts). When setting the internal inspection height at 140 cm, there shall still be at least the height referred to in subparagraph 1 on the upper decks in the case of the transport of animals on several decks.'

24 The requirements in respect of space allowances are set out in Part D of Annex 2 to Order No 1729/2006, which deals with pigs and is worded as follows:

'Transport by rail or road, including trailer vehicles

1. Transport of under 8 hours' journey time:

Live weight (in kg)	Area (in m^2) per animal
25	0.17
50	0.26

75	0.33
100	0.42
200	0.70
250 or more	0.80

It may be necessary to increase the abovementioned minimum surface area depending on the animal's breed, size and physical condition. It may also be necessary to increase the area by up to 20 % due to weather conditions and journey time.

2. Transport of over eight hours' duration:

Live weight (in kg)	Area (in m^2) per animal
25	0.20
50	0.31
75	0.39
100	0.50
200	0.84
250 or more	0.96

…'

25 The second subparagraph of Paragraph 36(4) of Order No 1729/2006 contains a transitional provision on which transporters could rely up to 15 August 2010 in respect of road vehicles which had been registered for the first time no later than 15 August 2005. That provision states:

'In the case of the transport [of over eight hours' duration] of pigs weighing 40 kg or over, the internal height between each deck – measured from the highest point on the floor to the lowest point on the roof ([for example] the underside of any crossbeams or struts) – shall satisfy at least the following requirements during transport:

Average weight in kg	Internal height where a mechanical ventilation system is used	Internal height where another ventilation system is used
Pigs over 40 kg up to and including 110 kg	100 cm	107 cm
Pigs over 110 kg up to and including 150 kg	110 cm	118 cm
Pigs over 150 kg up to and including 230 kg	112 cm	127 cm
Pigs over 230 kg	> 112 cm	> 127 cm'

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

26 On 14 May 2005, Danske Svineproducenter brought an action before the Vestre Landsret (Western Regional Court) against the Justitsministeriet, arguing that the Danish legislation relating to the transport of animals in force prior to Order No 1729/2006

imposed, as regards the transport of pigs, certain standards in respect of the minimum height of compartments, minimum inspection height and maximum loading densities which were contrary to various rules of Community law, and in particular to the provisions of Directive 91/628. Following a first reference for a preliminary ruling, the Court ruled on the interpretation, in that regard, of Directive 91/628 in Case C-491/06 *Danske Svineproducenter* in the terms set out in paragraph 20 of the present judgment.

27 In the context of the same proceedings pending before the national court, the applicant in the main proceedings subsequently argued that the similar standards contained in Order No 1729/2006, now applicable, are contrary to Regulation No 1/2005.

28 In those circumstances, the Vestre Landsret once again decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Are [the second paragraph of Article 288 TFEU] and Article 37 of … Regulation No 1/2005 …, as well as Article 3, [second paragraph,] points (f) and (g) [of that regulation], together with point 1.1(f) and point 1.2 of Chapter II [of Annex I thereto], and Article 3, [second paragraph] point (g) [of that regulation], together with Part D of Chapter VII of [that] annex …, to be interpreted as meaning that Member States are precluded from adopting national rules which lay down detailed requirements [concerning the transport by road of pigs] in respect of internal transport height, inspection height and loading density?'

Consideration of the question referred

Preliminary observations

29 Danske Svineproducenter and Union européenne du commerce de bétail et de la viande request the Court to reformulate the question referred by the national court in such a way as to extend or define its scope.

30 Thus, on the one hand, the applicant in the main proceedings calls on the Court to reply to three questions corresponding to those submitted in the context of the reference for a preliminary ruling which gave rise to the judgment in Case C-491/06 *Danske Svineproducenter*.

31 On the other hand, Union européenne du commerce de bétail et de la viande suggests that the question referred be reformulated in such a way as to refer also to the principle of the free movement of goods, the principle of cooperation in good faith and Article 30(2) of Regulation No 1/2005. It suggests that it is also necessary to refer, in that question, to national rules which lay down, not detailed requirements, but figures which do not appear in that regulation.

32 In that regard, it must be noted that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case before it, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. The right to determine the questions to be put to

the Court thus devolves upon the national court alone and the parties to the main proceedings may not change their tenor (see, inter alia, Case C-138/08 *Hochtief and Linde-Kca-Dresden* [2009] ECR I-9889, paragraphs 20 and 21 and the case-law cited).

33 In addition, to alter the substance of the questions referred for a preliminary ruling, or to answer the additional questions mentioned in its observations by the applicant in the main proceedings, would be incompatible with the Court's duty to ensure that the governments of the Member States and the parties concerned are given the opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union, bearing in mind the fact that, under that provision, only the decision of the referring court is notified to the interested parties (see, to that effect, *Hochtief and Linde-Kca-Dresden*, paragraph 22 and the case-law cited).

34 It follows that the Court cannot accede to the requests submitted by Danske Svineproducenter and Union européenne du commerce de bétail et de la viande that it reformulate the question referred.

35 Nor, furthermore, can the Court uphold the application to have the procedure reopened, which was submitted by Danske Svineproducenter and received by the Registry of the Court on 9 December 2011. First, that application is essentially based on the judgment by which the Højesteret (Danish Supreme Court) dismissed the appeal which Danske Svineproducenter had lodged against the decision to make the reference in the present case with a view to having additional questions to the question contained in that decision referred to the Court. Such a situation is, however, by its nature, irrelevant for the purposes of the present reference for a preliminary ruling. Second, concerning the reference to the judgment of 6 October 2011 in Case C-381/10 *Astrid Preissl* [2011] ECR I-9281, it must be held that no reasons are given to show how that judgment would justify a reopening of the procedure in the context of the present reference for a preliminary ruling.

The Court's reply

36 By its question, the national court asks the Court, in essence, whether Regulation No 1/2005 is to be interpreted as meaning that it precludes the adoption, by a Member State, of measures establishing, in respect of the transport by road of pigs, numerical standards as regards, first, the internal height of compartments intended for animals, second, the inspection of animals during a journey, and, third, the surface area available per animal, those standards varying, as the case may be, according to whether they govern journeys exceeding eight hours or not. Specifically, the national court relates such standards to, respectively, Article 3, second paragraph, point (g) of Regulation No 1/2005, in conjunction with Chapter II, point 1.2, of Annex I thereto, to Article 3, second paragraph, point (f) of that regulation, in conjunction with Chapter II, point 1.1(f), of Annex I thereto, and to Article 3, second paragraph, point (g) of that regulation, in conjunction with Chapter VII, Part D, of Annex I thereto.

37 However, by the wording of its question, read in the light of the arguments set out in the order for reference, that court highlights the fact that, in the judgment in Case C-491/06 *Danske Svineproducenter*, the Court has already ruled on the compatibility of national measures, such as those at issue in the main proceedings, with Directive 91/628, the provisions of which have significant similarities with those of Regulation No 1/2005 in regard to the matters concerned by such measures. In that context, the Vestre Landsret raises the question of the potential bearing that the fact that the subject-matter is now governed at European-Union level by a regulation, and no longer by a directive, may have on the possibility for Member States to continue to adopt measures of that nature.

38 In that regard, it must be pointed out that, pursuant to the second and third paragraphs of Article 288 TFEU, whereas directives are binding upon Member States as to the result to be achieved, but leave to the national authorities the choice of form and methods, regulations are binding in their entirety and are directly applicable in the Member States.

39 Therefore, by virtue of the very nature of regulations and of their function in the system of sources of European Union law, the provisions of regulations generally have immediate effect in the national legal systems without its being necessary for the national authorities to adopt measures of application (see Case C-278/02 *Handlbauer* [2004] ECR I-6171, paragraph 25 and the case-law cited).

40 However, some of their provisions may necessitate, for their implementation, the adoption of measures of application by the Member States (*Handlbauer*, paragraph 26 and the case-law cited).

41 It also follows from settled case-law that Member States may adopt rules for the application of a regulation if they do not obstruct its direct applicability and do not conceal its Community nature, and if they specify that a discretion granted to them by that regulation is being exercised, provided that they adhere to the parameters laid down under it (Case C-113/02 *Commission* v *Netherlands* [2004] ECR I-9707, paragraph 16 and the case-law cited).

42 Consequently, the fact that the European Union legislation on the protection of animals during transport is now set out in a regulation does not necessarily mean that all national measures for the application of that legislation are now prohibited.

43 In order to determine whether a national measure for the application of Regulation No 1/2005 is in accordance with European Union law, it is therefore necessary to refer to the relevant provisions of that regulation in order to establish whether those provisions, interpreted in the light of the objectives of that regulation, prohibit, require or allow Member States to adopt certain measures of application and, particularly in the latter case, whether the measure concerned comes within the scope of the discretion that each Member State is recognised as having.

44 As regards the objectives of Regulation No 1/2005, it must be pointed out that, although it is true that the elimination of technical barriers to trade in live animals and the smooth operation of market organisations, referred to in recital 2 in the preamble to that regulation, form part of the purpose of that regulation in the same way as they formed part of that of Directive 91/628, of which Regulation No 1/2005 constitutes the extension, it is, however, apparent from recitals 2, 6 and 11 in the preamble to that regulation that, like that directive, its main objective is the protection of animals during transport. In that regard, the finding in paragraph 29 of the judgment in Case C-491/06 *Danske Svineproducenter* as regards the objectives of that directive therefore remains valid in respect of Regulation No 1/2005.

45 The compatibility with that regulation of national measures such as those at issue in the main proceedings, which lay down, in respect of the transport by road of pigs, numerical standards as regards the internal height of compartments, inspection of animals during a journey and the surface area available per animal, must be examined in the light of those considerations.

Internal height of compartments

46 With regard to the internal height of compartments intended for animals in road vehicles used for the transport of pigs, the legislation at issue in the main proceedings contains two separate types of standards. First, Paragraph 9(1) of Order No 1729/2006, which is applicable irrespective of the journey time, lays down standards with regard to the minimum internal height of compartments in relation to the weight of the animals being transported. Secondly, Paragraph 36(4) of that order lays down, on a transitional basis, standards of the same nature, although more stringent, which are, however, applicable only to journeys of more than eight hours. Such standards are identical to those examined in the judgment in Case C-491/06 *Danske Svineproducenter*, as is apparent from paragraphs 14, 15 and 34 of that judgment.

47 That aspect of the road transport of pigs is governed by Article 3, second paragraph, point (g) of Regulation No 1/2005 and by Chapter II, point 1.2, and the first sentence of Part D of Chapter VII of Annex I to that regulation. It is apparent from those provisions as a whole that, in road vehicles used for the transport of pigs, the internal height of the compartments intended for the animals must be sufficient for them to be able to stand up in their natural position, having regard to their size and the intended journey, and that there must be adequate ventilation above them when they are in a naturally standing position, without hindering their natural movement. As has been stated in paragraph 15 of the present judgment, such provisions are similar to those of Directive 91/628, which was interpreted by the judgment in Case C-491/06 *Danske Svineproducenter*.

48 In so far as Regulation No 1/2005 does not lay down, in precise terms, the height of the internal compartments and the relevant provisions of the regulation in that regard are similar to those of Directive 91/628, Member States must be recognised as having some discretion in that respect, identical to the discretion which they were recognised as having under that directive by the judgment in Case C-491/06 *Danske Svineproducenter*.

49 Furthermore, as the Danish Government submits, the adoption by a Member State of standards specifically defining, at national level, the scope of requirements formulated in general terms by Regulation No 1/2005 is liable to strengthen legal certainty, in so far as those standards establish criteria which increase the predictability of the requirements of that regulation and thereby contribute both towards compliance with those requirements on the part of the traders concerned and to the effectiveness and objectivity of the checks to be carried out by all the competent authorities to that end.

50 Consequently, the adoption of national measures laying down numerical standards as regards the internal height of compartments is not, in itself, contrary to that regulation.

51 It is, however, important that such standards be in accordance both with the provisions and objectives of Regulation No 1/2005 and with the general principles of European Union law, in particular the principle of proportionality.

52 That principle, which applies to, inter alia, the legislative and regulatory authorities of the Member States when they apply European Union law, requires that measures implemented by means of a provision must be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it (see, to that effect, Case C-375/08 *Pontini and Others* [2010] ECR I-5767, paragraph 87 and the case-law cited). That principle implies, inter alia, that, where there is European Union legislation which pursues a number of objectives, one of which is the main objective, a Member State which adopts a standard in the context of the discretion conferred on it by a provision of that legislation must comply with that main objective without hindering the attainment of the other objectives of that legislation. Therefore, in the light of those other objectives, such a national standard must be appropriate for ensuring that that main objective is attained and must not go beyond what is necessary to achieve it (see, by analogy, Case C-491/06 *Danske Svineproducenter*, paragraphs 31, 32 and 40).

53 Each of the two types of standards concerned here must be examined with regard to those points.

54 As regards, first, provisions specifying the minimum internal height of compartments, such as those at issue in the main proceedings, it must be stated that the standards which they lay down are appropriate for attaining the main objective of the protection of animals during transport which is pursued by Regulation No 1/2005 (see, by analogy, Case C-491/06 *Danske Svineproducenter*, paragraph 46).

55 It is, however, appropriate to point out that standards of that nature, if they are likely to apply to the entire transport of pigs which takes place, even in part, on the territory of the Member State which prescribes them, may undermine the attainment of

the objectives of eliminating technical barriers to trade in live animals and allowing market organisations to operate smoothly, objectives which are also pursued by Regulation No 1/2005. It is therefore necessary to establish that, having regard to those objectives, such standards are necessary and proportionate to the main objective of the protection of animals during transport pursued by that regulation and that their application does not restrict the free movement of goods in respect of both imports and exports (see, by analogy, Case C-491/06 *Danske Svineproducenter*, paragraph 43) disproportionately (see, by analogy, Case C-562/08 *Müller Fleisch* [2010] ECR I-1391, paragraphs 38 and 42).

56 Consequently, numerical standards relating to the minimum internal height of compartments, such as those laid down by Order No 1729/2006, must be proportionate to the objective of protecting animals during transport and must not go beyond what is necessary to achieve it.

57 In that regard, it is important in particular to establish that those standards do not go beyond what is necessary to achieve the objective of safeguarding the welfare of animals during transport as reflected in the requirements of Regulation No 1/2005, according to which, first, all pigs must be able to stand up in their natural position and, secondly, there must be sufficient space inside each compartment and at each of its levels to ensure that there is adequate ventilation above the animals when they are in a naturally standing position, without on any account hindering their natural movement.

58 Furthermore, it is also necessary to ascertain that those standards do not result in additional costs or technical difficulties which disadvantage either producers in the Member State which adopted them or producers from other Member States who wish to export their goods to or via that Member State (see, by analogy, Case C-491/06 *Danske Svineproducenter*, paragraph 45).

59 In the absence of relevant information in the file submitted to the Court, it is for the national court to carry out the investigations necessary in that regard, taking into account the criteria generally accepted, in compliance with Regulation No 1/2005, by Member States other than that which laid down those standards.

60 It must, however, be pointed out at this stage that standards relating to the minimum internal height of compartments for journeys of more than eight hours, such as those set out in the transitional provisions in Paragraph 36(4) of Order No 1729/2006, cannot be regarded as proportionate since the same Member State has also adopted less restrictive standards, such as those set out in Paragraph 9(1) of that order, under the system of general law.

Inspection of animals during a journey

61 Under Paragraph 9(5) of Order No 1729/2006, road vehicles used to transport pigs weighing over 40 kg on journeys of over eight hours must be designed in such a way that an inspection height of at least 140 cm can be established at all times on each deck.

62 In that regard, Article 3, second paragraph, point (f) of Regulation No 1/2005, read in conjunction with Chapter II, point 1.1(f), of Annex I thereto, provides that means of transport intended for the transport of animals must be designed in such a way as to allow access to the animals in order to check regularly their welfare conditions. It must, however, be pointed out that, unlike the position under the system established by Directive 91/628 and Regulation No 411/98, the provisions of Regulation No 1/2005 relating to the inspection of animals during a journey are applicable to all means of transport, irrespective of the journey time.

63 Consequently, a national measure laying down specific requirements in that field which are applicable only to journeys of over eight hours is contrary to those provisions of Regulation No 1/2005, given that access to the animals for the purpose of regular monitoring of their welfare conditions must be provided for on every journey.

64 Moreover, it must be added that, as is apparent, *mutatis mutandis*, from paragraphs 54 to 59 of the present judgment, numerical standards which establish a minimum inspection height to permit such access must be consonant with the objectives of Regulation No 1/2005 and must be proportionate to those objectives.

Surface area available per animal

65 Under points 1 and 2 of Part D of Annex 2 to Order No 1729/2006, in the case where pigs are transported by road, the animals must have a minimum surface area which varies according to their weight, that surface area being, for a 100 kg pig, 0.42 m^2 where the journey time is less than eight hours and 0.50 m^2 for journeys of more than eight hours.

66 That aspect of the transport of live animals is governed by Article 3, second paragraph, point (g) of Regulation No 1/2005, under which 'sufficient floor area … is provided for the animals, appropriate to their size and the … journey'. As regards pigs in particular, Chapter VII, Part D, of Annex I to that regulation states that, in order to permit them to lie down and stand up in their natural position, 'the loading density for pigs of around 100 kg should not exceed 235 kg/m^2' and that surface area, categorised as the minimum, may be increased by 20 % depending on, among other factors, the journey time. For animals weighing 100 kg, those values correspond respectively to an available surface area of 0.42m^2 and 0.50 m^2.

67 It must therefore be held that numerical standards relating to maximum loading density such as those laid down in Annex 2, points 1 and 2, of Order No 1729/2006 comply with the minimum and maximum standards laid down by Regulation No 1/2005 (see, by analogy, Case C-491/06 *Danske Svineproducenter*, paragraph 50).

68 In the light of all of the foregoing, the answer to the question referred is that Regulation No 1/2005 must be interpreted as meaning that:

— it does not preclude the adoption, by a Member State, of standards applicable to the transport by road of pigs which, in order to strengthen legal certainty, define, in compliance with the objective of protecting the welfare of animals and without laying down any excessive criteria in that regard, the requirements provided for by that regulation as regards the minimum internal height of compartments intended for animals, provided that those standards do not result in additional costs or technical difficulties which disadvantage either producers in the Member State which has adopted those standards or producers from other Member States who wish to export their goods to or via that first Member State, that being a matter for the national court to determine. Standards such as those set out in the transitional provisions in Paragraph 36(4) of Order No 1729/2006 cannot, however, be regarded as proportionate since the same Member State has adopted less restrictive standards, such as those in Paragraph 9(1) of that order, under the system of general law;

— it precludes the adoption, by a Member State, of standards applicable to the transport by road of pigs defining in greater detail the requirements provided for by that regulation in respect of access to animals in order to check regularly their welfare conditions, which relate only to journeys of more than eight hours' duration; and

— it does not preclude the adoption, by a Member State, of standards according to which, where pigs are being transported by road, the animals must have a minimum surface area which varies according to their weight, that surface area being, for a 100 kg animal, 0.42 m^2 where the journey time is less than eight hours and 0.50 m^2 for journeys of more than eight hours.

Costs

69 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:

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:

— **it does not preclude the adoption, by a Member State, of standards applicable to the transport by road of pigs which, in order to strengthen legal certainty, define, in compliance with the objective of protecting the welfare of animals and without laying down any excessive criteria in that regard, the requirements provided for by that regulation as regards the minimum internal height of compartments intended for animals, provided that those standards do not result in additional costs or technical difficulties which disadvantage**

either producers in the Member State which has adopted those standards or producers from other Member States who wish to export their goods to or via that first Member State, that being a matter for the national court to determine. Standards such as those set out in the transitional provisions in Paragraph 36(4) of Order No 1729 of 21 December 2006 on the protection of animals during transport cannot, however, be regarded as proportionate since the same Member State has adopted less restrictive standards, such as those in Paragraph 9(1) of that order, under the system of general law;

— **it precludes the adoption, by a Member State, of standards applicable to the transport by road of pigs defining in greater detail the requirements provided for by that regulation in respect of access to animals in order to check regularly their welfare conditions, which relate only to journeys of more than eight hours' duration; and**

— **it does not preclude the adoption, by a Member State, of standards according to which, where pigs are being transported by road, the animals must have a minimum surface area which varies according to their weight, that surface area being, for a 100 kg animal, 0.42 m^2 where the journey time is less than eight hours and 0.50 m^2 for journeys of more than eight hours.**

[Signatures]