



Weaknesses in the animal-transport monetary sanctions

A comparative study of the effectiveness, proportion and dissuasiveness of the monetary penalties applicable to infringements of Regulation EC 1/2005 among major players of the EU.



Photo: Eyes on Animals/TSB Zurich

**This report is written in dedication
to the animals that suffered during
transport in European Member States
due to the disregard of Article 25.**

Article 25:

**“The penalties provided for must be
effective, proportionate and dissuasive.”**

**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**

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Personal comments

As a Canadian doing a Masters in ethology at the University of Guelph (Canada), I learned about animal-protection legislation in Europe and remember being greatly impressed. While Canada was allowing cattle to be transported 52 hours without water, food or rest, Europe insisted that they be given water every 14 hours and unloaded after 29 hours. Injured animals were not allowed to be transported; only those that could walk on their own without pain were to get on board.

In 2001 I moved to Europe and began working as an investigator for Animals' Angels. Roughly 10 days per month I was trailing livestock trucks, visiting livestock markets and observing the unloading at slaughterhouses and farms. I remember the shock I felt during my first investigation when I trailed a chicken truck from northern France to the Netherlands. Two-thousand chickens had suffocated to death on board the trailer that had been left parked in the sun while the driver loaded the front. Did the driver not know that that was illegal? Worse was that I called the highway police in France several times, as well as in Belgium without any success.

Perhaps it was just a rare incident I thought. But shortly thereafter I visited a market in Portugal where several traders squeezed a young steer into the windowless box between the wheels of the truck, in front of the local veterinarian. Their excuse? They could not fit him onto the truck as it was already full.

Perhaps things were better the further north I went? Arriving at a cow market in the Netherlands I observed 4 downer cows being dragged by chains onto trucks, and an official veterinarian from the Ministry was present. What was going on?

This is when I realized that legislation was only as useful as its enforcement. The European transport legislation was pretty on paper, but not well enforced. It was frustrating and a great disappointment.

Due to a combination of factors, some things have improved since then. Investigators from NGO's have published video material and countless reports of their observations trailing trucks; campaign organizations have made society aware of the animal-transport violations and consequential suffering via the media; and the European Commission has focused more of their attention on these problems. And lastly, but very importantly, NGO's and some individual officials have developed training programs for highway police in several EU countries. This has led to greater enforcement of the European animal-protection during transport legislation because the police there are now stopping livestock trucks and checking for compliance with the EC 1/2005 provisions.

However, we are still faced with the biggest challenge of all-proper sanction systems.

Drivers are reporting colleagues by-passing whole countries that have strict sanctions, and choosing countries where fines are easy to pay or never followed up on. As well, the police are losing their motivation in countries where they are not able to hand out dissuasive fines. In some countries, transport companies that have been adhering to the law are going out of business or reducing their number of livestock trucks in operation, whereas in other countries livestock companies violating the law are benefitting from the uneven playing field.

Should we wish to see animal transport throughout Europe reach a harmonious level of compliance, it is absolutely vital that EU member states be forced to comply with Article 25 of the EC 1/2005. All EU Member States are obligated to develop and adequately implement sanction systems that are effective, dissuasive and proportionate so that participants of animal transport are discouraged from violating the law.

Lesley Moffat
Director, Eyes on Animals

Summary

The purpose of Council Regulation (EC) No 1/2005 is to assure adequate animal welfare during transport and related operations throughout the European Community. Article 25 of the Regulation requires that penalties applicable to infringements of the provisions be “effective, proportionate and dissuasive”.

In the European Union there is the problem of whether to obey the provisions of EC 1/2005 or not. It is a matter of cost effectiveness. If the chance of getting caught is low and the monetary penalty is less than the cost to comply, then animal transporters think of it as just being a business decision. Unfortunately, the monetary sanctions on animal transport in many EU countries are so low that they completely defeat their purpose.

Additionally, many EU Member States do not have monetary sanction systems covering each provision listed in the EC 1/2005 Regulation. As a result, law enforcers revealing non-compliance with certain provisions are left without the ability to fine the perpetrator.

In many Member States, police and animal transport inspectors are not able to hand out a monetary fine on the spot, nor even collect a deposit of the final fine-to-be. Therefore foreign perpetrators are often getting away scot-free.

And lastly, those countries that require all animal transport cases of non-compliance to first pass via a state prosecutor instead of being handled directly and quickly by their own offices, are risking the case not being sanctioned at all. There are cut-backs on the public prosecutors’ services and personal interests influence priority. Certain countries have statistics showing 60-70% of cases not being followed up by the public prosecutors.

Recommendations:

All EU Member States must have sanction systems that are thorough and cover infringements of each and every provision of the EC 1/2005.

All law enforcers should be able to hand out fines on the spot and demand immediate payment from foreign perpetrators.

Monetary sanctions must be expensive enough to be effective and dissuasive.

The ability to increase the fine based on the additional profit the perpetrator was about to earn by disrespecting particular provisions (e.g. loading surplus animals) should be available to inspectors of animal transport throughout Europe.

The European Commission should consult its legal services to check whether the monetary sanctions for violations to the provisions listed in the EC 1/2005 can be considered effective, proportionate and dissuasive in each Member State.

Introduction

In 2005 the European Commission published the 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. The purpose of this regulation was to assure adequate animal welfare throughout the European Community

Article 25 of the regulation requires that “all Member States lay down the rules on penalties applicable to infringements of the provisions of *this* regulation”. The penalties were to be “effective, proportionate and dissuasive” with Member States notifying the details to the Commission by 5 July 2006. To highlight the necessity for effective sanctioning of this regulation, paragraph 22 explained that the “inadequate follow-up on infringements of legislation on animal welfare encourages non-compliance with such legislation and leads to distortion of competition”. In simple words, effective sanctioning was needed to properly protect animals during transport and to provide a level playing field for the livestock transport industry.

Sadly, NGO inspectors, official veterinarians, police and members of the transport industry are recognizing that in practice, things are not so harmonious. Sanctions in some countries are extremely weak. Other countries have not adopted all the provisions of the EC regulation into their national legal system. And other countries have done this, but have not updated their sanction codes, leaving law enforcers without tools to sanction violations to these additional provisions.

This report looks at Member States’ monetary sanctions applicable to violations of the EC 1/2005. It is recommended to read in conjunction with two other reports: the “Briefing on Enforcement of Council Regulation (EC) No 1/2005 on Animal Transportation” by Eurogroup for Animals and “The widespread failure to enforce EU law on animal transport” by Compassion in World Farming (CIWF). Eurogroups’ briefing focuses on the Member States Reports, concluding that their data are confusing and unreliable, that deadlines are not respected, that action plans are missing and that inspections are ineffective or carried out at the wrong place. The analysis by CIWF of the FVO-reports show severe enforcement failures with regards to food, water and rest breaks during long journeys, minimum space allowances and the prohibition to transport unfit animals.

Whilst Eurogroup and CIWF focus on official publications, this report is largely based on the situation on the ground with many first-hand accounts. Given the outcome of Eurogroup and CIWFs’ analysis that the probability of detection of infringements is low, this report looks at what happens *if* an infringement is ascertained and penalized¹, and how the reality on the ground is often different from theory.

With the help of a table, monetary sanctions are compared between different major EU Member States to illustrate the inequalities. A map shows two livestock trucks, in violation of the EC 1/2005 requirements, traveling through major European countries and facing different monetary penalties depending on which country it is stopped in, for the same violation. In addition, findings of the Food and Veterinary Office with regards to monetary sanctions in countries where they have conducted missions in are presented.

Due to the fact that the European Union comprises more than two dozen countries and our insistence that information presented in this report represent the reality and not just theory, this report will focus solely on the EU countries where we have lots of experience in the field, as well as personal contact with official transport inspectors, highway police officers and transport companies. It is highly likely that monetary sanctions in other EU Member states not covered in this report are also weak and unequal. In fact, judging from the FVO mission reports as well as recent NGO reports about animal transport in Spain, Portugal, Bulgaria, Romania and Lithuania, the problems there appear even worse.

Examples will be drawn from personal experience, during meetings with law enforcers, Ministry of Agriculture officials and transport companies, during our practical police trainings, from NGO reports of truck-trailings and from legal documents published by the country’s authorities as well as concrete examples of fines that have been handed out.

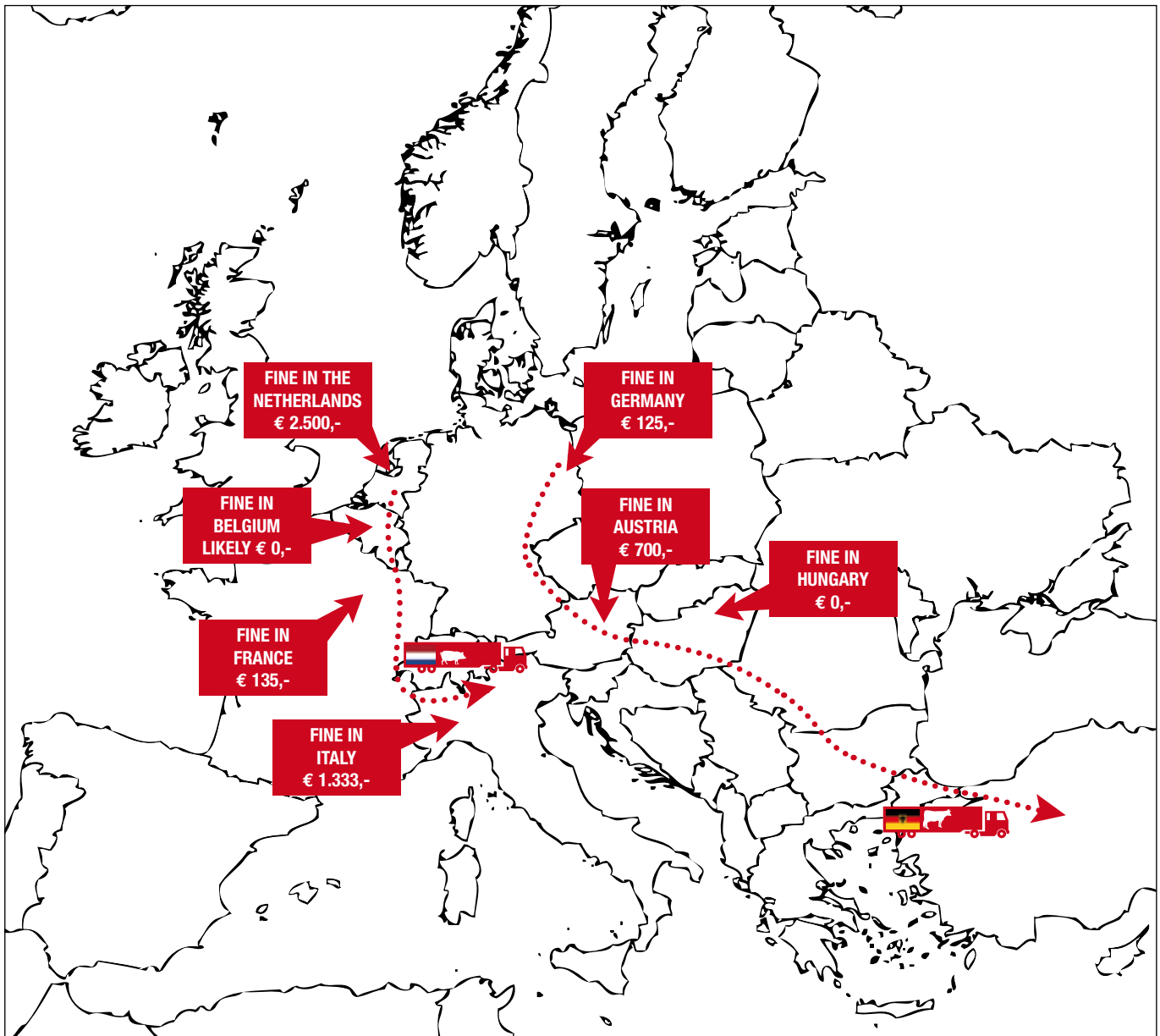
It is important to keep in mind that this report will *solely* focus on the sanction applicable to the transporter, and not the keepers and organizers as this information was too difficult to collect or guarantee reliability.

Following the purpose of this report, penalties of a variable nature will *not* be discussed. For example, livestock transporters in violation are often forced to unload, have a second truck come or even return to where they are coming from. These corrective measures are extremely important, but cannot be compared in a structured way as they are too dependent on the individual situation (night-time, availability of control posts in the region, hot temperatures preventing any kind of corrective action aside from letting the truck continue, etc...). This report therefore focuses *solely* on the monetary penalties that are applied in a consistent manner on top of the variable corrective procedures.

¹ See also: V.A. Cussen, ‘Enforcement of Transport Regulations: the EU as Case Study’, in: M. Appleby, V. Cussen, L. Garcès, L. Lambert, J. Turner, *Long Distance Transport and Welfare of Farm Animals* (Wallingford/Cambridge 2008), 113-136

Consequences of an illegal journey

Consequences of an illegal journey through Europe



Truck 1: Overcrowded Dutch pig truck, pigs suffering from high density

In NL stopped: € 2.500
In BE: likely € 0 (authorities cannot chase foreigners to pay open fines)
In FR: € 135
In Italy: € 1.333

Truck 2: German truck transporting cattle with inadequate headspace to Turkey

In Germany stopped: € 125
In Austria stopped: € 700
In Hungary: € 0 (authorities cannot chase foreigners to pay open fines)

Police inspection in practice

- A comparative table - Monetary sanctions applicable to violations of provisions in EC 1/2005

N: National transporter

F: Foreign transporter

Violation ► Country ▼	Overcrowded "slaughter" pig truck (10-20 pigs too many), indication of suffering, first time caught	Un-weaned calves over the maximum transport time without being unloaded at control post, no clear indication of serious suffering yet, first time caught	Long-distance pig transport, no water available, third time caught	Double-deck cattle truck, inadequate headspace, indication of suffering with their backs rubbing the ceiling, first time caught	Unfit calf on board, some suffering involved and obvious that animal was unfit already during loading, first time caught
The Netherlands	N: € 2.500 F: challenging ¹	N: € 0 ² F: € 0 ²	N: € 1.000 F: challenging ¹	N: € 1.500 F: challenging ¹	N: € 1.500 F: challenging ¹
Belgium	N: € 0 / € 500 F: challenging ⁴	N: € 0 / € 250 F: challenging ⁴	N: € 0 / € 650 F: challenging ⁴	N: € 0 / € 500 F: challenging ⁴	N: € 0 / € 250 F: challenging ⁴
France	N: € 135 ⁵ F: € 135 ⁵	N: € 135 ⁵ F: € 135 ⁵	N: € 135 ⁵ F: € 135 ⁵	N: € 135 ⁵ F: € 135 ⁵	N: € 135 ⁵ F: € 135 ⁵
Germany	N: € 500 ⁶ F: € 500 ⁷	N: € 1000 F: challenging ⁸	N: € 150 F: € 150 ⁷	N: € 125 F: € 125 ⁷	N: challenging ⁹ F: challenging ⁹
Austria	N: € 1.500 F: € 1.000 ¹⁰	N: € 700 F: € 700 ¹⁰	N: € 1.500 F: € 1.000 ¹⁰	N: € 700 F: € 700 ¹⁰	N: € 1.000 F: € 700 ¹⁰
Italy	N: € 1.333 F: € 1.333	N: € 1.000 F: € 1.000	N: € 1.000 F: € 1.000	N: € 1.333 F: € 1.333	N: € 2.000 F: € 2.000
Hungary	N: € 20 - € 555 ¹¹ F: challenging ¹²	N: € 20 - € 555 ¹¹ F: challenging ¹²	N: € 20 - € 555 ¹¹ F: challenging ¹²	N: € 20 - € 555 ¹¹ F: challenging ¹²	N: € 20 - € 555 ¹¹ F: challenging ¹²

1 Unable to demand payment on the spot from foreigners. Only able to collect money if law enforcers are fortunate enough to catch perpetrator again driving in the Netherlands.

2 If there is no indication of suffering and it is the company's first time caught only a written warning is given.

3 To keep in mind that police in Belgium can only send their written statement of offences in to the public prosecutor and 60-70% of statements of offence in Belgium are not followed up on by the public prosecutor office. So these figures are based on when they are followed up on (best case scenario).

4 Unable to demand payment on the spot from foreigners. Only able to collect money if they have the luck to catch perpetrator again in Belgium.

5 In France police are able to hand out fines on the spot to livestock transporters and chose this method instead of writing a statement of offence. If the perpetrator is French he has 45 days to pay the fine, if a foreigner he must pay it on the spot. Written statements of offence can have the potential of a higher fine (up to € 750) but only if successfully treated by the state prosecutor (Procureur de la Republique). Because state prosecutors are overburdened with other crimes, animal transport cases (particularly less serious ones or cases with foreign transports) are often left untreated as they are not a priority and foreigners cannot easily be chased later to pay anyway).

6 Monetary fine is calculated based on the total profit of consignment and thus the number of overloaded animals plus the profit per animal are taken into account. This figure is an estimate. The more profit the transporter would make, the higher the monetary fine.

7 Drivers of foreign transport companies are made to pay a guarantee-deposit as close to the real amount of the fine as possible.

8 First read above pt 7 above. Because this infringement is not defined as reason to penalize the driver under German animal transport sanction system, but just the transport company owner, the police cannot demand the driver to pay the guarantee-deposit in cash on the spot. The driver is in this case not seen as "guilty" at all. The police in this example only have the option of writing a statement of offence (OWI) that will be treated at a later date by the official veterinarian office. If the transport company is from Belgium, Luxembourg, the Netherlands or Austria the money from the final fine can be successfully collected because Germany has a bilateral agreement with these countries. But if the transport company is Spanish or Lithuanian or some other EU country not in the bilateral agreement, the fine will likely never be paid.

9 Not defined as a reason for penalty under German animal transport sanction system. If unfit animal is clearly suffering and law enforcer can prove this (with the help of a veterinarian's statement, for example), prosecution for causing general cruelty to animals can be attempted. But this is a different sanction system (applicable to infringements of the animal protection law) and is very difficult to apply successfully.

10 Foreign transporters must pay a deposit of up to 30% of the maximum amount possible of the fine. It is case of negotiation too, taking into consideration how much cash the transporter has on him. These figures are what are most common in practice.

11 We did not have contact with a Hungarian policeman with lots of field experience to get exact figures from for each case, so here we can only provide the entire range of the Hungarian animal transport sanction system.

12 Unable to demand payment on the spot from foreigners.

Sanction systems THE NETHERLANDS

General information

In the Netherlands, inspectors from the nVWA and the highway police check on livestock trucks. The Dutch sanction system is relatively new. It is very detailed and complete with an infringement of every provision listed in the EC 1/2005 corresponding to a category of violation-type (minor, regular, severe), and each category-type corresponds to a penalty. This makes things very clear for the law enforcers, giving them the confidence they need to use it properly in the field.

The Dutch have three categories of "violation-type":

1 - Minor: Violations often but not exclusively of an administrative nature that have not resulted in animal suffering.

Example 1: During transportation, the journey log is not available.

Example 2: The loading density is slightly over the maximum, but animal welfare was not compromised.

2 - General: Violations that are considered more serious than minor ones, but less so than severe violations. Animal welfare was not yet in jeopardy but a risk was taken.

Example 1: Even after the journey is completed, there is still no journey log made available.

Example 2: The loading density is too high and animal welfare is slightly compromised.

3 - Severe: Violations that have led to serious animal suffering. As well, transporters carrying animals without an official authorization to do so or without an authorized vehicle for live animals.

Example 1: No care was taken regarding the extreme weather conditions and as a result animal welfare was seriously compromised.

Example 2: The loading density is too high and animal welfare is seriously compromised.

How do the authorities apply the sanctions?

There are two legal systems available to law enforcers:

1. The administrative system (Bestuurrecht)

2. The criminal system (Strafrecht)

The administrative system is quicker than the criminal system because the case can be handled directly by the nVWA.

Cases treated by the Criminal system have to be sent away to be evaluated and judged by the "Openbaar Ministerie" (public prosecutor).

Cases treated by the public prosecutor however can result in tougher penalties and that is why cases of serious animal suffering pass via this route. Nevertheless, it can take years before a decision is made. As well, it is not certain if the case will be treated or not, as the criminal system is burdened with many other cases of crime, each of which take lots of time to treat.

Administrative legal system

The administrative system has 2 options of penalizing:

A) "Last onder dwangsom" (penalty imposed on a weekly basis in case of non-compliance)

B) Bestuurlijke boete (monetary administrative penalties)

A) "Last onder dwangsom" is a system that threatens the violator with penalties on a weekly basis in case of non-compliance but gives the perpetrator a chance to remedy the problem immediately.

For minor violations, the penalty is a letter of warning. However, should the culprit be caught three times committing a minor violation of a similar nature within three consecutive years, the fourth time caught will result in a compounded fine of € 3.000 per week until either the problem is solved or a maximum of € 15.000 euro is reached. In the latter case, the amount of the weekly fine will then be raised to € 5.000 should the violation continue.

For general violations, a letter of warning is sent out for the first two times caught in a time period of three consecutive years. By the third time, a compounded fine of € 5.000 per week is handed out until either the problem is solved or the maximum of € 25.000 is reached. After this, the law enforcer can choose either to raise the weekly fines to € 10.000 per week or revoke the company's licence.

Glossary

nVWA (nieuwe Voedsel en Waren Autoriteit): Food and Consumer Product Safety Authority (a branch of the Ministry of Economy, Agriculture and Innovation that oversees animals and animal-products).

OM (Openbaar Ministerie): Public prosecutor's office

Officier van justitie: Public prosecutor

Strafrecht: Criminal legal case that is judged by the OM

Bestuurrecht: Administrative legal case that is judged by the nVWA

Proces-verbaal: Written statement of offence, to be passed through the OM who will decide if case will be followed up on or not, and if so what the final penalty will be.

Bestuurlijke boete: An administrative fine. The case does not need to pass via the OM. The head nVWA officials handle the case directly and can set the final penalty quickly.

For serious violations the licence to transport animals can be immediately revoked. Alternatively, weekly compounded fines of € 10.000 can be handed out. This latter choice is applied if there is no licence to revoke (such as when the violator is the keeper, the organizer, the head of a collecting centre or a transport company that only transports animals under 65 km and therefore does not require a licence).

B) The “bestuurlijke boete”:

In September 2010, the “bestuurlijke boete” penalty system was implemented. These penalties can be decided on quickly. This makes them more efficient than the “last onder dwangsom”, as there is less paper work and one does not have to give the perpetrator the time to correct his mistake. The transporter receives a monetary administrative fine (a ticket). The amount of the administrative fine depends on the gravity of the violation. Minor violations are penalized with a fine of € 500; general violations are fined € 1.500; and severe violations are penalized with a fine of € 2.500. Additionally, violations whereby six or more mammals are dead on board, or in the case of poultry more than five percent of the load has died, a fine of € 6.000 is handed out.

Of great advantage is that, next to the administrative fines, the “last onder dwangsom” method can also be applied. Therefore, the company or individual must pay a fine, but also must correct the problem. If the problem has not been corrected within a certain time period, the violator can face increasingly worse consequences.

For example: In the case that a transporter has received five administrative fines within three years, each one for a violation of a similar nature, his or her licence to transport animals can be revoked if caught a sixth time.

Not all cases can be treated by the administrative system; violations that have resulted in serious animal suffering with many animals dying must be passed up to the criminal system and judged by the public prosecutor.

For example: When a transporter has eleven or more dead mammals on board or more than ten percent of the loaded poultry are dead, the case must be sent to the OM for a thorough examination and possible prosecution.

The implementation of the “bestuurlijke boete” system is very new to the Netherlands. It has enabled law enforcers to be more effective in the field and cases to be treated in a timely manner.

“I think animal welfare during transport has improved a lot in the Netherlands, particularly during the last two years. Dutch transporters don’t do things that we used to, there is more inspection and expensive fines are handed out”

Anonymous Dutch livestock driver

There remains however a serious important flaw; law enforcers cannot demand payment on the spot from foreign transporters in violation. Therefore many foreigners get away scot-free. It is only when the foreign transporter has the misfortune of being stopped a second time in the Netherlands that the law enforcers can force payment for the previous unpaid fine. Open (unpaid) tickets are registered in their system.

Criminal legal system

With the criminal system, inspectors document the violation and send this description plus any extra material such as photos or witness statements in to the head office of the nVWA. The nVWA head-office will either draw up a letter of warning (if the case is not too serious) or a proces-verbaal (if the case is serious and has a chance for prosecution). A proces-verbaal is a written account of the violation, usually supported by photos and as many details as possible, so that the public prosecutor (OM) is given a thorough picture of what happened. The OM then decides if the case will be followed up or not, and if so what the appropriate final penalty will be.

The nVWA inspectors have to decide which law they find appropriate to use. The administrative law and criminal law cannot be applied simultaneously; it depends on the seriousness of the violation. The more serious, the more likely the inspector will pass the case via the criminal law system because that way you can make a file against a violator, which potentially could lead to a large monetary fine or even a jail sentence.

Problems In practice

- It remains still very difficult to successfully penalize a foreigner. Proces-verbaal and “last onder dwangsom” are very difficult to follow up on but even a monetary administrative fine is not paid on the spot and thus takes the risk that the foreigner will get away scot-free.
- Concerns were reported by official inspectors that they were often not informed if a proces-verbaal they sent to the public prosecutor (OM) was followed up or not. Some inspectors doubt that they are followed up, particularly for the cases that are less-serious. As well, when the OM did inform the nVWA of his decision, 1.5 to two years would have already gone by. This is a long time in which the perpetrator may have gone out of business, moved or have repeated his mistake many times without learning from it.
- Eyes on Animals has asked the nVWA what percentage of their proces-verbaals are followed up on by the public prosecutor but they do not know. It is unclear if these statistics are kept track of.

Examples of the Dutch sanction system in practice:


1. March 2008

Overcrowded cattle lorry (each animal given 0,84 m² instead of required 0,95 m²) = Proces-verbaal = final decision made in February 2009 = € 850 fine


€ 850




Blad 1.

Ministerie van Landbouw, Natuur en Voedselkwaliteit
Algemene Inspectiedienst







Besproken met:  **KOPIE**




PRO-JUSTITIA




Dit proces-verbaal is bestemd voor de economische kamer van de rechtbank te 

Opsporing nr. 
Proces-verbaal nummer: 
Contra: 

Verdachte 1.

Naam onderneming : 
Rechtsvorm : Besloten Vennootschap
Vestigingsadres : 
Postcode en Vestigingsplaats : 
Gemeente van vestiging : 
Land : Nederland
Ingeschreven bij KvK : 
Inschrijvingsnummer KvK : 

Gepleegd binnen de gemeente : 
Pleegdatum :  2008
In beslag genomen : 

Datum eerste verhoor : 
Datum laatste verhoor : 
Datum sluiting proces-verbaal : 

Wil de verdachte – zo dit wordt toegestaan – transigeren: Nee

Vermoedelijke overtreding van : Artikel 9, van de Regeling dierenvervoer 2007 juncto artikel 3 aanhef en onder g, juncto artikel 6, lid 3 gelet op Bijlage I hoofdstuk III onder 2, punt 2.1 juncto Hoofdstuk VII onder B. van de Verordening EG Nr. 1/2005, gelet op artikel 59 van de Gezondheids- en welzijnswet voor dieren, strafbaar gesteld in artikel 1 onder ten 4^e van de Wet op de economische delicten.

Korte omschrijving van het feit : Het vervoeren van 80 runderen met een gemiddeld gewicht van 369 kg, die de beschikking hadden over een oppervlakte van 0,84 m² per rund, terwijl minimaal 0,95 m² per rund berekend is volgens de beladingsnorm.

2. April 2010

Overcrowded cattle lorry (each animal given 0,77 m² instead of required 0,95 m²) = Proces-verbaal = final decision made in late June 2010 = € 1.300 fine

€ 1.300



Algemene Inspectiedienst
Ministerie van Landbouw, Natuur en
Voedselkwaliteit

AID Zuid Nederland
Team Veehouderij West-Brabant - Zeeland

Besproken met:

Ruimte bestemd voor het parket.

Parketnummer:

PRO-JUSTITIA

Dit proces-verbaal is bestemd voor de economische kamer van de rechtbank te [redacted]

Opsporing nr: [redacted]
Proces-verbaal nummer: [redacted]
Contra:

Verdachte 1.

Naam onderneming : [redacted]
Rechtsvorm : Besloten Vennootschap
Vestigingsadres : [redacted]
Postcode en Vestigingsplaats : [redacted]
Gemeente van vestiging : [redacted]
Land : Nederland
Ingeschreven bij KvK : [redacted]
Inschrijvingsnummer KvK : [redacted]

Gepleegd binnen de gemeente : [redacted]
Pleegdatum : [redacted] 2010
In beslag genomen : [redacted]

Datum eerste verhoor : [redacted]
Datum laatste verhoor : [redacted]
Datum sluiting proces-verbaal : [redacted]

Wil de verdachte - zo dit wordt toegestaan - transigeren: Nee

Vermoedelijke overtreding van : Artikel 9, van de Regeling dierenvervoer 2007 juncto artikel 3 eerste en onder g, juncto artikel 6, lid 3 gelet op de bijlage I hoofdstuk III onder 2, punt 2.1 juncto Hoofdstuk VII onder B. van de Verordening EG nr. 1/2005, gelet op artikel 59 van de Gezondheids- en welrijeswet voor dieren, strafbaar besteld in artikel 1 onder ten 4^e van de Wet op de economische delicten.

Korte omschrijving van het feit : Het vervoeren van 84 runderen met een gemiddeld gewicht van 364 kg, die de beschikking hadden over een oppervlakte van 0,77 m² per rund, zijnde minder dan de vastgestelde minimale ruimte voor betreffende categorie runderen.



1187062584610

3. March 2010

Pigs transported for 35,5 hours (over the maximum 24 hours limit) = Proces-verbaal = final decision June 2010 = € 4.000 fine for transporter (€ 4.000 for client)

€ 4.000 for transporter
(€ 4.000 also for client)



Algemeen Inspectiegebied
Middel- en Noord-Nederland, Wageningen
Inspectiegebied

AID Zuid Nederland

Besproken met:

Buimte bestemd voor het parket.
Parketnummer:

PRO-JUSTITIA

Dit proces-verbaal is bestemd voor de Officier van Justitie bij het Functioneel Parket te [redacted]

Opsporing nr.: [redacted]
Proces-verbaal nummer: [redacted]
Contra:

Verdachte 1:

Naam onderneming : [redacted]
Rechtsvorm : BV
Vestigingsadres : [redacted]
Postcode en Vestigingsplaats : [redacted]
Land : Nederland
Ingeschreven bij KvK : [redacted]
Inschrijvingsnummer KvK : [redacted]

Gepleegd binnen de gemeente : [redacted]
Pleegdatum : 2010 t/m [redacted] 2010
In beslag genomen : [redacted]
Bijlagen : [redacted]

Datum eerste verhoor : [redacted]
Datum laatste verhoor : [redacted]
Datum sluiting proces-verbaal : [redacted]

Vermoedelijke overtreding van : Artikel 9 van de Regeling Dierenvervoer 2007 juncto artikel 3 aanhef en onder a + b en artikel 5, lid 4 en artikel 6, lid 3, gelet op Bijlage I, hoofdstuk III, punt 2, onder punt 2.7 juncto Hoofdstuk V, punt 1, punt 1.4, onder b van de Verordening (EG) Nr. 1/2005 van de Raad, gelet op artikel 59 van de Gezondheids- en welzijnswet voor dieren, gelet op artikel 1, onder ten 4e van de Wet op de economische delicten en artikel 36, lid 1 en artikel 37, gelet op artikel 121 van de Gezondheids- en welzijnswet voor dieren.

Korte omschrijving van het feit : Het laten vervoeren van 500 varkens met een transporttijd van 35 1/2 uur, zijnde een overschrijding van de maximale transporttijd van 24 uur voor varkens, waarna de dieren hadden moeten worden uitgeladen ten behoeve van een minimale rusttijd van 24 uur en voor het voeren en drinken van de varkens.



Sanction systems BELGIUM

General information

In Belgium, all requirements of the EC 1/2005 are applicable and technically enforceable. Both police and official inspectors from the FAVV (a branch of the Ministry of Agriculture that oversees animals and animal-products) are authorized to check on livestock trucks and enforce the rules set out in EC 1/2005. However, their tools in enforcement are limited to just the writing of process-verbaals (statement of offences).

A PV is a written account of the violation (indicating clearly which articles of the EC 1/2005 were violated), usually supported by photos and as many details as possible. These PV's are sent to a higher up authority to decide what to do with the case.

The path that these PV's take is different depending on whether the police or the FAVV inspectors wrote them.

How it works

Should a Belgian *police* officer catch a livestock transporter in violation of the EC 1/2005 requirements, his office sends the PV about the incident to the Procureur des Konings at the public prosecutor's office. The Procureur des Konings has three substitutes, with one of them handling cases to do with the environment, animals and urban development. This substitute will be given the PV about the livestock transport violation and judge whether it is worth following up on or not. This often depends on how many other cases s/he has to handle, and on the seriousness of the violation. Another influencing factor is if the culprit is a foreigner or not. Because it is difficult to trace foreigners, following up on such a case takes more effort and thus is likely only done for very serious cases. Should the Substitute du Procureur des Konings decide the case is worthy of being followed up on, it will go to court.

Should the PV not be written up by the police but instead by an *official inspector from the FAVV*, it is sent to the Commissaris from the FAVV. This is of great advantage because the Commissaris can hand out administrative fines directly without the case having to pass via the public prosecutor's office and go to court. Administrative fines are monetary fines that the Commissaries will collect from the perpetrator. This works well when the violator is Belgian but, just like in the Netherlands and other countries, collecting payment from foreign violators remains very difficult.

Violations to the provisions of EC 1/2005 can be sanctioned with jail sentences of between eight days to five years, and/or monetary fines of between € 26 to € 15.000.

Examples:

Transport of sick/injured equines or adult cattle:

1 animal = € 500 plus € 50 per additional animal

Transport of sick/injured pigs or sheep or calves:

1 animal = € 250 plus € 50 per additional animal

Loading density too high of cattle or pigs: = € 500

Maximum journey time not respected: = € 250

Several other factors also play a role in the final amount of the monetary fine.

- When more than one violation is documented on the same transport, the amount of the administrative fines can be summed up but cannot be higher than double the amount of the highest fine.
- When there are several serious violations on the same transport, one applies only the highest fine plus € 200.
- If the perpetrator was only given a warning the first time caught, but is caught again without any improvement, the fine for the violation will be increased by € 100.
- If the perpetrator repeats a violation within five consecutive years, the fine for the violation will be increased by € 150.
- If there are exceptional arguments or actions taken, the fines can be reduced or increased by € 150.
- If the violator is not willing to be cooperative the fine is increased by € 150.
- If the transporter has made a significant improvement in between the time of the inspection and the judgment, the final fine can be decreased by € 150.

It is important to note that the FAVV Commissaris may pass cases that they received but consider very serious on to the public prosecutor so that it be thoroughly analyzed and judged in court. As well, the public prosecutor can also decide to pass on animal-transport cases to the Commissaris to handle.

Glossary

FAVV (Federaal Agentschap voor de Veiligheid van de Voedselketen): Federal Agency for the Safety of the Food Chain (a branch of the Ministry of Agriculture that oversees animals and animal-products).

Openbaar Ministerie (OM): Public prosecutor's office

Procureur des koning: public prosecutor

Commissaris van de FAVV: commissioner of the FAVV

Proces-verbaal (PV): written statement of offence, to be passed from the police to the OM or the veterinarian inspector to the Commissaris of the FAVV who will decide if case will be followed up on or not, and if so what the final penalty will be.

Administrative boete: An administrative monetary penalty. The case does not need to pass via the public prosecutor. The Commissaris of the FAVV handles the case directly and can set the penalty quickly.

Problems in practice

- Unfortunately, both the FAVV and the police have stated that 60% - 70% of PV's treated by the OM are not followed up on. This is why the FAVV inspectors are pleased that their PV's can be treated directly by the Commissaries but also why many police in Belgium are frustrated; after putting a lot of work into inspecting trucks and writing PV's they know there is still a big chance that nothing will be done.
- Because the law enforcers cannot demand payment on the spot from foreign perpetrators, fines for foreigners are often left open.
- Amount of fines are most often not high enough by any means to be considered proportionate or dissuasive.



Since recently the Belgian police are now also checking for compliance with EC 1/2005 provisions

Photo: Eyes on Animals

Sanction systems FRANCE

Background information

THE CODE RURAL

France has still not adopted the new requirements of the European animal transport legislation, EC 1/2005, into its national animal transport legislation found in their "Code Rural". The French Code Rural is out-dated and in several parts even contradicts the requirements of the EC 1/2005 legislation.

As a consequence, official inspectors from the DDCSPP and policemen and gendarmes are left at times helpless and confused. This is particularly the case when it comes to enforcing such things as the fitness of the animals, loading density, the navigation system and the temperature monitoring system, all things that are either new or written in finer detail in the EC 1/2005.

When one speaks to official veterinarians in France about the transport of sick, injured and non-ambulatory animals that are still observed transported for emergency slaughter, they will quote the Code Rural Article R214-52:

Il est interdit à tout transporteur ainsi qu'à tout propriétaire, expéditeur, commissionnaire, mandataire, destinataire ou tout autre donneur d'ordre d'effectuer ou de faire effectuer un transport d'animaux vivants :

°2: Si les animaux sont malades ou blessés, ou sont inaptes au déplacement envisagé..., sauf dans le cas de transports ...d'abattage d'urgence ;

(It is forbidden...to transport or request the transport of live animals:

°2: If the animals are sick or injured, or unfit for the envisioned journey or when they are females about to give birth, except for transport to...emergency slaughter.)

This provision is not in unison with the requirements of the

European EC 1/2005 legislation which forbids the transport of seriously sick and injured live animals, even for emergency slaughter. Only lightly sick or lightly injured animals are allowed to be transported.

"Animals that are injured or that present physiological weaknesses or pathological processes shall not be considered fit for transport and in particular if a) they are unable to move independently without pain or walk unassisted..." And "Sick or injured animals may be considered fit for transport if they are: a) slightly injured or ill and transport would not cause additional suffering."

EC 1/2005 Annex 1 Ch. 1 pt 2a and 3a.

THE CODES NATINF

The CODES NATINF are codes that inform the law enforcer of the appropriate penalty to apply related to the violation of an article in the CODE RURAL. If a requirement of the EC 1/2005 is violated, but there isn't a CODE NATINF linked to this provision because of the lack of an equivalent national article, there is not much that the law enforcer can do.



In France it is still often thought that injured and sick animals can be transported for emergency slaughter, as written in their current national legislation (Code Rural).

Photo: Animals ' Angels

Glossary

Procureur de la République: State prosecutor

Procès-verbal: written statement of offence written by an official that is sent to the Procureur de la République to decide to follow up or not.

Amende forfaitaire: a ticket handed out on the spot that must be paid within 45 days.

Amende forfaitaire minorée: a ticket handed out on the spot with the option of paying a lower amount if paid within three days.

Amende forfaitaire majorée: a ticket handed out on the spot with the option of paying after 45 days at a higher amount .

Amende forfaitaire quittance: a ticket that is handed out on the spot and must be paid immediately. Often used for foreigners in violation, to be sure that the ticket is paid before returning home.

Crime: crime committed

Délit: offence

Contravention: minor offence

DDCSPP: Direction Départementale de Cohésion Sociale et de Protection des Populations: official French animal and animal-product inspectors, previously known under the name of Direction Départemental des Services Vétérinaires.

CODE NATINF (NATure de l'INFraction): codes linked to legal requirements in the French national laws. These codes give the information necessary to the law enforcer so that he or she can apply the appropriate fine.

Code Rural: French legal codes that group articles found in their national legislation related to all rural matters, animal transport being one of them.

General information

In France, the applicable Penal Code system is made up of three categories of violations that can be sanctioned, starting from least serious to most serious:

1. "contraventions" (which have five sub-classes, all of which lead to monetary fines)
2. "délits" (which lead to a monetary fine or up to ten years imprisonment)
3. "crimes" (long term imprisonment up to lifetime).

Almost all violations to the French animal- protection- during-transport legislation fall under the category of "contraventions". There is only one example of a violation which results in a "délit".

As stated above, within the category "contraventions" there are five sub-categories relating to the gravity of the violation, level 1 being least serious to level 5 being most serious. Most violations to the animal-protection-during-transport legislation fall under Class 3 and 4.

Class 3:

- International transporter on a journey of over eight hours not able to present the "Journey Plan" document. (Code Natinf 22477)

Class 4:

- Transport of an animal which is unfit for transport (Code Natinf 6902).
- Transport of animals in a vehicle that does not respect the requirements related to comfort, security and sanitation (Code Natinf 6903).
- Transport of animals without the ability to water, feed, rest or care for the animals (Code Natinf 6904).
- Transport of animals without enough space or air flow circulation (Code Natinf 6907).
- Transport of animals that are not registered or identified (Code Natinf 20866).
- Absence of a certificate of competence (Code Natinf 20864).

Délit:

- Transporter does not have an authorization to transport animals (Code Natinf 22475).

How do the authorities apply the sanctions?

Violations to the animal transport legislation are either treated by:

1. a procès-verbal (written statement of offence)
2. an amende forfaitaire (a fine handed out on the spot)

A procès-verbal is a written statement of offence that is sent to the "Procureur de la République" (State prosecutor). The Procureur de la République judges if a) the case will be followed up or not and b) should the case be followed up, how much the final penalty will be within the maximum limit. A procès-verbal can be written by the police, gendarmes and the veterinarian- service inspectors from the DDSCPP.

"A PV (written statement of offence) about ten pigs too many on board, or cattle without adequate headroom, will rarely be followed up on by the state attorney. The suffering is not spectacular enough. I therefore chose to hand out an "amende forfaitaire" fine that is already set and must be paid. It is frustrating though, because the amount of these monetary fines is so low compared to the profit the transporter almost made by disrespecting the law. I doubt it will really change the behaviour of the driver. He will likely take the chance of loading too many animals again."

- Highway gendarme

An amende forfaitaire is a fine that does not have to take the long way and be judged by the state prosecutor. The decision has been made by the law-enforcer to penalize the person and a fine is handed out on the spot. The amount of the fine however is standardized and low. As well, only the police and gendarmes can hand out an "amende forfaitaire", not the officials from the DDSCPP.

The French perpetrator has 45 days to pay the "amende forfaitaire". However, in the case of the culprit being a foreigner (and therefore there is a risk that the fine will never be paid), the gendarmes and police can require him to pay it immediately. In this case, the fine is called an "Amende forfaitaire-quittance".

Because the Procureur de la République receives *all* the PV's coming in, including ones from the category "Crimes" (serious crimes such as murder, rape and theft) there is a chance that violations to animal-welfare during transport will not be followed up on. This is especially the case if the violation did not entail serious suffering or when the violator is not a resident of France and thus time-consuming to trace. The "amende forfaitaire" is therefore very advantageous, as it avoids burdening the Procureur de la République with too much paper work and it guarantees a result. The gendarmes and police will therefore almost always choose the option of handing out an amende forfaitaire over a procès-verbal for violations of Class 3 and Class 4 contraventions.

The option of handing out an amende forfaitaire does not exist for cases of a délit. Délits are considered more serious in France and therefore must be sent in the form of a procès-verbal to be treated by the Procureur de la République.

"The chance of a PV concerning a violation to the animal-protection legislation being followed up on largely depends on the amount and type of other PV's coming in. Animal welfare violations are in competition to be noticed by the state attorney with PV's about murder, personal assault, major theft..."

- Highway gendarme

Unfortunately, the amount of an amende forfaitaire in France is so low that it often defeats its purpose. For example, a Class 4 violation is fined € 135 and includes such acts as transporting an unfit animal, denying the animals rest, water and feeding breaks during long distance journeys, overcrowding the animals or leaving the transport up to



A French gendarme checking on compliance with provisions of the EC 1/2005.

Photo: Animals ' Angels

someone that does not have a certificate of competence. The fine is also not per animal (except in the case of fitness for transport) but for the *entire* consignment. This means that a transporter who loaded 25 animals over the limit is still making a large profit, even after paying the fine. In short, the fine is in no way proportional.

Problems in practice

- France has not yet adapted the EC 1/2005 into their national legislation and as consequences their sanction system does not cover all provisions of the EC 1/2005 (and in some cases contradicts them). This leaves law enforcers vulnerable to confusion and weak in the field, and transporters more likely to get away with violations to European requirements.
- Amendes forfaitaires (tickets handed out on the spot) are an effective way of guaranteeing that perpetrators be penalized, but the purpose of the sanction is defeated because the cost is so low (€ 68 or € 135). The “amendes forfaitaires” for violations to animal-protection-during-transport that have threatened the welfare of animals are not dissuasive, effective or proportionate.
- Violations of an unspectacular nature are at risk of not being followed up by the state attorney as they have to compete with “Crimes”.
- Officials from the French veterinarian inspection services (DDSCPP) are not able to hand out tickets on the spot, only statement of offences.

“The time available and the personal interests of the state attorney in question play an important factor in the outcome. In some departments in France, the state attorney is particularly sensitive to animals, in others much less so....particularly in regions where the livelihoods of people are largely dependent on the livestock industry”

- **Official veterinarian inspector in Brittany**

Summary of sanctioning methods

	Procès Verbale (Sent to Procureur for review)	Amende forfaitaire (On the spot fine)
Contravention Class 3: (E.g. Absence of journey plan)	• Up to € 450	• € 68
Advantage Disadvantage	• Potential of being more costly • May never get followed up	• Must be paid • Very inexpensive • Only the police/gendarmes can give out these fines, not the DDSCPP inspectors
Contravention Class 4: (E.g. Unfit animal, no water, rest breaks not provided)	• Up to € 750	• € 135
Advantage Disadvantage	• Potential of being more costly • May never get followed up	• Must be paid • Very inexpensive • Only the police/gendarmes can give out these fines, not the DDSCPP inspectors
Délits: (only one example: Transport company without authorization)	• Up to € 10.000 or 10 yrs prison	• Not applicable

Examples of fines handed out by the French gendarmes

May 2008

Long distance transport of pigs without water = Amende forfaitaire. Quittance = € 90.

(A mistake was made, it should have been € 135 (Amende forfaitaire Contravention Classe 4) as the cheaper option of Amende forfaitaire "mineur" does not apply for animal transport violations, even if paid immediately).

Feuillelet n° 2

RÉPUBLIQUE FRANÇAISE
QUITTANCE (1)

N° F 2819198

A. CONSTATATION D'UNE INFRACTION

Le 13/05/08 Service/Unité : Gendarmerie 13/05/08

Nous soussigné (ou numéros d'identification) Gendarmes A. AD

et nous trouvant à [redacted] constatons que [redacted]

demeurant à [redacted]

titulaire (de la pièce d'identité (2), du permis de conduire (2) n° B 96031 HEG 1

délivré(e) le 03/08/92 par [redacted] Marque (2) [redacted]

conduisant le véhicule immatriculé (2) 02ER 555

appartenant à [redacted]

a commis, en application des textes visés, l'infraction ci-après : Transport d'animaux mal ventilés, sans moyens nécessaires pour leur entretien, l'absence d'eau pour l'entretien.

B. ENCAISSEMENT

Le contrevenant a payé une AMENDE FORFAITAIRE de quatre-vingt euros € (3)

Il reconnaît avoir été informé des dispositions portées au verso de ce document.

Signatures des agents verbalisateurs et du contrevenant : [redacted]

L'auteur de l'infraction, sur décision du Procureur de la République près le tribunal de grande instance de [redacted] a versé une CONSIGNATION de [redacted] € (3)

(P.V. N° [redacted])

Il reconnaît avoir été informé des dispositions portées au verso de ce document.

Signatures des agents verbalisateurs et de l'auteur de l'infraction : [redacted]

C. MODE DE RÈGLEMENT

La somme de 90 (4)

a été réglée :

☒ en numéraire.

☐ par chèque (5) à son nom.

☐ par chèque (5) au nom de M [redacted]

☐ par carte bancaire (5)

Le numéro de la quittance doit être reporté au dos du chèque

ORIENTATION D'ÉCHANGE DU PERMIS DE CONDUIRE ☐

RETRAIT DE POINTS DU PERMIS DE CONDUIRE ☐

VOIR INFORMATION AU VERSO

(1) À remettre au contrevenant ou à l'auteur de l'infraction.
(2) Rayer la ou les mentions inutiles.
(3) Somme en toutes lettres.
(4) Somme en chiffres.
(5) Règlement sous réserve d'encaissement.

May 2008

Long-distance transport of pigs in a truck with a broken ventilation system = amende forfaitaire quittance = € 90

(A mistake was made, it should have been € 135 as the cheaper option of "mineur" does not apply for animal transport violations)

Feuillelet n° 2

RÉPUBLIQUE FRANÇAISE
QUITTANCE (1)

N° F 2819121

A. CONSTATATION D'UNE INFRACTION

Le 13/05/08 Service/Unité : Gendarmerie 13/05/08

Nous soussigné (ou numéros d'identification) Gendarmes A. AD

et nous trouvant à [redacted] constatons que [redacted]

demeurant à [redacted]

titulaire (de la pièce d'identité (2), du permis de conduire (2) n° B 96031 HEG 1

délivré(e) le 03/08/92 par [redacted] Marque (2) [redacted]

conduisant le véhicule immatriculé (2) 02ER 555

appartenant à [redacted]

a commis, en application des textes visés, l'infraction ci-après : Transport d'animaux mal ventilés, sans moyens nécessaires pour leur entretien, l'absence d'eau pour l'entretien.

B. ENCAISSEMENT

Le contrevenant a payé une AMENDE FORFAITAIRE de quatre-vingt euros € (3)

Il reconnaît avoir été informé des dispositions portées au verso de ce document.

Signatures des agents verbalisateurs et du contrevenant : [redacted]

L'auteur de l'infraction, sur décision du Procureur de la République près le tribunal de grande instance de [redacted] a versé une CONSIGNATION de [redacted] € (3)

(P.V. N° [redacted])

Il reconnaît avoir été informé des dispositions portées au verso de ce document.

Signatures des agents verbalisateurs et de l'auteur de l'infraction : [redacted]

C. MODE DE RÈGLEMENT

La somme de 90 (4)

a été réglée :

☒ en numéraire.

☐ par chèque (5) à son nom.

☐ par chèque (5) au nom de M [redacted]

☐ par carte bancaire (5)

Le numéro de la quittance doit être reporté au dos du chèque

ORIENTATION D'ÉCHANGE DU PERMIS DE CONDUIRE ☐

RETRAIT DE POINTS DU PERMIS DE CONDUIRE ☐

VOIR INFORMATION AU VERSO

(1) À remettre au contrevenant ou à l'auteur de l'infraction.
(2) Rayer la ou les mentions inutiles.
(3) Somme en toutes lettres.
(4) Somme en chiffres.
(5) Règlement sous réserve d'encaissement.

April 2010

*Seriously overcrowded national pig truck on a 12-hour journey to slaughter; 1 pig dead under pile of live ones =
Amende forfaitaire = € 135*



Photos: Animals'-Angels (present during inspection)

Sanction systems GERMANY

Background information

The national German sanction system does not cover all details listed in the EC 1/2005. As a result, animal transport law enforcers are left in a difficult position when confronted with violations of provisions listed in the EC 1/2005 but not in their sanction system. An example concerns the fitness of the animals. The details regarding what makes an animal fit enough to be transported are left out of their sanction codes. Of course, should the “unfit” animal be clearly suffering, the law enforcer can try to prosecute the perpetrator for animal-cruelty, but if it is a matter of the animal’s fitness not fitting the EC 1/2005 animal-transport criteria and the animal is not yet seriously suffering because of it, a German sanction does not exist.

“It was a political decision not to include fitness of transport into our sanction systems. The industry has such a strong lobby group, and there is just too much economic interest on their side to keep it this way.”

- **official German veterinarian inspector**

On another confusing note, the German monetary sanction system for violations to the rules on the protection of animals during transport are not the same throughout the country. Each German state is slightly different. This makes it complicated and non-harmonious even within their national boundaries.

How do the authorities apply the sanctions?

In Germany, both official veterinarians and the police enforce the animal protection during transport laws. On a positive note, the German sanction system has many different tools for the law enforcers to sanction violators, including foreigners.

The type of sanction depends on the seriousness of the offence. There are 6 main types of sanctions:

Mündliche Verwarnung

This is a verbal warning. Verbal warnings are reserved for when the mistake is “innocent” and there is no negative implication on the welfare of the animals. An example is a driver that forgot to enter the date on section 4 of the journey log, or mixed up the correct date innocently. The purpose of the verbal warning is to correct the mistake and warn the driver to pay better attention next time.

Verwarngeld

This is a small fine to be paid on the spot of between € 5 and € 35. This type of fine is handed out for less serious cases that do not have a significant negative impact on the welfare of the animals. It is slightly more serious than a verbal warning.

Some examples:

- Overloading of one bovine: € 35
- Overloading of up-to-three goats or sheep: € 35
- Copy of Type 1 or Type II Transporter Authorization not on hand: € 35

Ordnungswidrigkeitsverfahren (OWI)

This is a written statement of offence. The police or official veterinarian inspector informs the transporter of the violation committed and that he will receive an OWI in the mail. All OWIs that have to do with the German animal transport regulation are sent to the official veterinarian institution of the state where the violation took place. It is the official state-veterinarians that handle these cases and sends the perpetrator the statement of offence and invites him to comment on it.

If the violator gives a justifiable excuse for committing the offence, he may be pardoned and the case closed. If he admits he was at fault, the official veterinarian office sends him the fine to be paid. If the perpetrator denies being at fault or refuses to pay, the case is turned over to the state prosecutor and risks going to court. The range of the OWI fines vary from € 0 to € 50.000. The state-veterinarian office has the freedom to set it according to their professional opinion.



German police inspection of a Dutch livestock truck Photo: Eyes on Animals

Glossary

Staatsanwalt: public prosecutor/state attorney

Tierschutztransportverordnung: German animal transport regulations

Mündliche Verwarnung: verbal warning

Verwarngeld: on- the- spot fine without any further consequence

Ordnungswidrigkeitsverfahren: written statement of offence

Sicherheitsleistung: guarantee of payment

Wertabschöpfungs-Verfahren: procedure to skim off illegal surplus profit

Strafverfahren: criminal procedure

OWI Sicherheitsleistung

This is a guarantee of payment and is used for OWI's when the perpetrator is a foreigner and thus there is a risk he will never pay. The OWI Sicherheitsleistung must be paid on the spot. This option is not necessary for Dutch, Austrian, Luxembourg or Belgian transporters because Germany and these countries have bi-lateral agreements meaning they help each-other collect outstanding OWI's back and forth across their border.

Important: The German State of Niedersachsen has a catalogue listing the amount of the OWI fines. This is used as a guideline so that they know how much money they can demand on the spot from a foreign transporter in non-compliance. Unfortunately, this catalogue is only known and being used by the police in Niedersachsen. For the rest of Germany, this catalogue is still stuck in the Ministerial level and not yet transposed so that it can be used in practice by law - enforcers working on the ground. Therefore, the police in the rest of Germany must continue to rely on first contacting the official state-veterinarian office to ask how much Sicherheitsleistung money they must ask for from the foreign transporter. Why is this a problem? On weekends or at night, the German police say that it is difficult to reach the state-veterinarian office. This means the German police cannot ask for a "Sicherheitsleistung" payment on the spot from the transporter, because they have no instruction from the State-veterinarian office about how much to ask for. The police in these cases can only write a standard OWI and wait for the Official State veterinarian office to treat it when back at work. If the foreign transporter that was caught was from the Netherlands, Austria, Luxembourg or Belgium there is not a problem, the money from the OWI will be collected. But if the transporter is from elsewhere, he just got away scot-free. He did not have to pay anything on the spot, and his outstanding OWI will never be collected by the authorities in his native country!

Some examples taken from the OWI Catalogue:

- Loading of horned and hornless cattle together: € 150
- Loading tied and untied animals together: € 150
- Loading sexually mature boars or stallions together: € 150
- Use of an instrument with a pointy end to move animals: € 200
- Drag or pull an animal by the ear, horns, head, legs, tail or fur-wool: € 300
- Overloading of three equine or bovine: € 150
- Overloading of up-to twelve sheep/goats: € 150
- Overloading of more than 18 slaughter pigs: € 500
- Lactating animals in transit not milked on time: € 100

Wertabschöpfungs-Verfahren/ Verfallbescheid

This is a monetary penalty that can be applied when the violator has made a significant profit by not respecting the law. It is often applied in cases such as when a livestock transporter loads more animals than permitted, or when his vehicle is over four- meters tall so that he can fit another deck of animals on board. The kilometers driven and the number of surplus animals on board are taken into account when determining the final amount of the Wertabschöpfungs fine and is normally in the range of € 500 - € 4.000. This option is particularly useful for when other measures are not available, such as ordering a second truck to unload the surplus animals into or unloading the surplus animals at a control post, as it guarantees that the final penalty can be proportional and dissuasive enough to discourage the culprit from repeating the offence. (For a real example, see second attached fine at the end of this chapter).

Strafverfahren

This type of sanction is for serious cases. It is not a part of the sanction system for general violations to the German animal-protection-during-transport regulations. However, should many animals be dead or suffering badly, and it looks like a case of blatant animal cruelty, the prosecutor is obligated to notify the state attorney. If the state attorney agrees with the seriousness, the case is turned over to him and handled as a "cruelty to animals" crime, and not a violation of animal transport regulations. The penalty for "Strafverfahren" can be up to three years in prison or € 25.000 fine. If however the state attorney does not agree with its seriousness, the case can be returned to the official veterinarian institution to handle as an OWI. Should the perpetrator be a foreigner, the police and official veterinarians can call the "Bereitschaftstaatsanwalt", which is a state attorney that is available during out-of-office hours so that a decision can be made right away. This is very useful as it helps guarantee that foreigners do not get away scot-free with causing animal cruelty in Germany.

Problems in practice


- Of major concern in Germany is that their sanctioning system does not cover certain provisions from the EC 1/2005 (such as fitness of transport).
- Several German official veterinarians have also indicated their concern about successfully sanctioning perpetrators with the OWI. They say that they have to prove beyond a shadow of a doubt that the culprit was in the wrong, because nowadays transport companies have very skilled lawyers that are capable of putting a spin on the story to the detriment of the inspector.
- In many cases, the fines are very inexpensive and therefore not dissuasive. For example, not stopping to milk lactating animals on board can save the transport company a lot of money (save on labour costs, vehicle not moving etc...) and only results in a fine of € 100, if caught!
- Collecting OWI "Sicherheitsleistung" payment from foreigners remains a problem if the police cannot reach the official state-veterinarian office at the time of the inspection. Exception is in Niedersachsen where the police have a catalogue listing the amount of the fines.
- Under the German sanction system, the driver is not always considered guilty, but instead just the transport company's owner. An example is when the animals have been on board over the maximum time limit. Because of this, the police cannot get their hands on the sicherheitsleistung cash during an inspection of a foreign truck with such a violation, because only the driver is present.

April 2010

1. Headspace for cattle was not adequate (violation to animal protection during transport regulations)
2. Incorrect number of animals on board compared to number written on transport documents (violation to animal protection during transport regulations)
3. Lorry was higher than 4 m maximum (traffic regulation)
4. Lorry was over the maximum weight (traffic regulation)

5. Documents of disinfection were not filled in completely (violation to animal disease regulation)
6. Driving and resting hours of truck driver not respected (violation to driver-work hours regulations)

Total for all 6 violations of which two were to animal protection during transport = € 600.



Landkreis Harburg
Der Landrat

... einfach für Sie da!

Landkreis Harburg - Postfach 14 40 - 21414 Winsen (Luhe)

Gegen Zustellungsurkunde

Ordnung und Zivilschutz/ Verkehrsordnungswidrigkeiten

Auskunft erteilt: **[Redacted]**
Gebäude / Zimmer: A -224
Tel. Durchwahl: 04171 693-724
Telefax: 04171 687-733
E-Mail: **[Redacted]**
Mein Zeichen: **[Redacted]**
(bei Antwort bitte angeben)
Ihr Schreiben vom: **[Redacted]**
Ihr Zeichen: **[Redacted]**
Datum: 09.07.2010

Bußgeldbescheid
(Urschrift)
Aktenzeichen: **[Redacted]**
(Bei Schriftwechsel bitte unbedingt angeben)
Kassenzeichen: **[Redacted]**
(Bei Zahlung bitte unbedingt angeben)

Verteidiger/in: **[Redacted]**
geboren am: **[Redacted]**
Gesamtbetrag: 1027,25 EUR, Punkte: 1

Sehr geehrter **[Redacted]**,

Ihnen wird zur Last gelegt, am 13.04.2010 um 09:15 Uhr in Egestorf, An der Bahn 4, (Kontrollort), als Führer und Halter des LKW mit Anhänger mit dem Kennzeichen **[Redacted]**, Fabrikat Volvo, mit Anhänger **[Redacted]**, folgende Ordnungswidrigkeit(en) begangen zu haben:

Tat	Ordnungswidrigkeit	Verletzte Vorschriften	Buße	Punkte
1	Sie führten als Halter die Fahrzeugkombination, obwohl das zulässige Gesamtgewicht um 10,15 Prozent = 4060 kg überschritten war. Festgestelltes Gesamtgewicht: 44060 kg. Zulässiges Gesamtgewicht: 40000 kg.	§ 34 Abs. 3, § 69a StVZO; § 24 StVG; 198.1.3 BKat; § 3 Abs. 2 BKatV	600,00 EUR	1
	Sie führten das Fahrzeug, dessen Maße die gesetzlich allgemein zugelassenen Grenzen tatsächlich überschritten, ohne dass eine Erlaubnis vorlag. Höhe des Anhängers 4,12 Meter, festgestellt mit geeichtem Höhenmessgerät.	§ 29 Abs. 3, § 49 StVO; § 24 StVG; 116 BKat		
	Sie beförderten Rinder in einem Transportmittel, das nicht den Anforderungen entsprach. Auf dem Anhänger war die Raumhöhe in der unteren Ebene ungenügend, sie betrug deutlich weniger als 20 cm über dem höchsten Punkt des Tieres. - Verletzte Vorschriften: Artikel 3 Satz 1 in Verbindung mit Satz 2 Buchstabe c, d der Verordnung (EG) Nr. 1/2005, § 21 Absatz 3 Nr. 1 Tierschutztransportverordnung (TierSchTrV), § 18 Absatz 3 Nr. 2 Buchstabe a Tierschutzgesetz (TierSchG).	§ siehe Text		
	Sie haben beim Transport von Rindern kein vorschriftsmäßiges Transportbuch mitgeführt. Im Buch des Anhängers waren 25 Rinder eingetragen, auf dem Fahrzeug befanden sich aber 26 Tiere. - Verletzte Vorschriften: § 21 Absatz 3 Nr. 2 Tierschutztransportverordnung (TierSchTrV), § 18 Absatz 3 Nr. 2 Buchstabe a Tierschutzgesetz.	§ siehe Text		

Dieser Bescheid wurde maschinell erstellt und ist daher ohne Unterschrift gültig.

Dienstgebäude:
Hansendriesen
A Schellplatz 6 (Altbau)
B Schellplatz 6 (Neubau)
C Rathausstraße 29
D Von-Siemnitz-Platz 13
E Hilde-Kreus-Strasse 5
F St.-Bartholomäus-Platz 1

21423 Winsen (Luhe)

Kontakt:
Telefon: 04171 693-0
Telefax: 04171 687-100
Elektronische Kommunikation:
Es gelten die Richtlinien auf unseren Internetseiten.
Internet:
www.landkreis-harburg.de
www.landkreis-harburg.de

Bankverbindungen:
Sparkasse
Harburg-Buxtehude
BLZ 207 500 00
Kto.-Nr. 7 028 962
Postbank Hamburg
BLZ 200 100 20
Kto.-Nr. 132 05-204

metropol region hamburg

Sprechzeiten nach Terminabsprache:
Montag - Donnerstag 07:00 - 19:00 Uhr
Freitag 07:00 - 15:00 Uhr
Terminvereinbarungen bitte von:
Montag - Donnerstag 06:30 - 16:00 Uhr
Freitag 06:30 - 15:00 Uhr
Parkplätze: Schilling und Eppens Allee
P im unteren Teil der Parkpalette am Schilling

	Sie haben beim Transport von Rindern die Desinfektionskontrollbücher von LKW und Anhänger nicht vollständig mitgeführt. In beiden Büchern war das Desinfektionsmittel nicht eingetragen (Spalte 13). - Verletzte Vorschriften: § 21 Absatz 2 Satz 1 in Verbindung mit Absatz 1, § 22 Absatz 1, § 46 Absatz 2 Nr. 13 Vieh-Verkehrs-Verordnung, § 76 Absatz 2 Nr. 2 Tierseuchengesetz.	§ siehe Text		
	Sie haben im Zeitraum vom 18.03.2010 bis 10.04.2010 als Fahrer gegen die Verordnung (EG) 561/2006 verstoßen, indem Sie fahrlässig Fahrtunterbrechungen nach Artikel 7 Satz 1 und Ruhezeiten nach Artikel 8 Absatz 2 Satz 1, Absatz 4 bis 7 verkürzten, sowie Lenkzeiten überschritten, Artikel 6 Absatz 1 Satz 1, Absatz 2 und 3; Ordnungswidrigkeit nach § 8a Absatz 2 Nr. 1 Fahrpersonalgesetz (FPersG).	§ siehe Text		
2	Fahrtunterbrechung verkürzt am 18.03.2010 von 08:28 bis 16:40 Uhr. Soll 00:45, Ist 00:16, Differenz 00:29 Minuten.	§ siehe Text	60,00 EUR	0
3	Fahrtunterbrechung verkürzt am 30.03.2010 von 08:52 bis 14:56 Uhr. Soll 00:45, Ist 00:34, Differenz 00:11 Minuten.	§ siehe Text	15,00 EUR	0
4	Fahrtunterbrechung verkürzt am 31.03.2010 von 07:41 bis 15:33 Uhr. Soll 00:45, Ist 00:25, Differenz 00:20 Minuten.	§ siehe Text	60,00 EUR	0
5	Regelmäßige tägliche Ruhezeit (11 h) verkürzt vom 01.04.2010, 07:42 Uhr, bis 02.04.2010, 07:42 Uhr. Soll 11:00, Ist 09:24, Differenz 01:36 Stunden. - Tageslenkzeit (9h) überschritten am 01.04.2010 von 07:42 bis 22:18 Uhr. Soll 09:00, Ist 10:00, Differenz 01:00 Stunden.	§ siehe Text	37,50 EUR	0
6	Reduzierte tägliche Ruhezeit (9h) verkürzt vom 06.04.2010, 05:53 Uhr bis 07.04.2010, 05:53 Uhr. Soll 09:00, Ist 08:03, Differenz 00:57 Stunden. - Fahrtunterbrechung verkürzt am 06.04.2010 von 13:22 bis 21:50 Uhr. Soll 00:45, Ist 00:20, Differenz 00:25 Minuten.	§ siehe Text	67,50 EUR	0
7	Fahrtunterbrechung verkürzt am 07.04.2010 von 07:41 bis 13:20 Uhr. Soll 00:45, Ist 00:23, Differenz 00:22 Minuten, und von 14:30 bis 20:57 Uhr. Soll 00:45, Ist 00:32, Differenz 00:13 Minuten.	§ siehe Text	67,50 EUR	0
8	Tageslenkzeit (9h) überschritten am 09.04.2010 von 05:13 bis 21:01 Uhr. Soll 09:00, Ist 10:43, Differenz 01:43 Stunden - Reduzierte tägliche Ruhezeit (9h) verkürzt vom 09.04.2010, 05:13 Uhr, bis 10.04.2010, 05:13 Uhr. Soll 09:00, Ist 08:12, Differenz 00:48 Stunden.	§ siehe Text	67,50 EUR	0

Beweismittel: Foto, Wiegekarte.

Zeuge(n): PK Engelke, PK'in Waack

Bemerkungen: Wegen zahlreicher Eintragungen im Verkehrszentralregister habe ich die Geldbuße nach StVG angemessen erhöht. Die Verstöße gegen das Straßenverkehrsgesetz, Tierschutzgesetz und Tierseuchengesetz stehen zueinander in Tateinheit, sodass ich hierfür nur eine Geldbuße festsetze. Die Verstöße gegen das Fahrpersonalgesetz stehen dazu und zueinander in Tateinheit, so dass hier jeweils einzelne Geldbußen festzusetzen sind.

Dieser Bescheid wurde maschinell erstellt und ist daher ohne Unterschrift gültig.



September 2010 (Example of a "Verfallbescheid")

Transporter with too many pigs on board (loading density, and as consequence also maximum tonnage, not respected).

Due to additional profit transporter was about to make, he is fined the profit x the number of animals on board:

€ 3,50 x 180 pigs = € 630,00

Landkreis Harburg

Der Landrat



Landkreis Harburg · Postfach 14 40 · 21414 Winsen (Luhe)

Ordnung und Zivilschutz Verkehrsordnungswidrigkeiten

Gegen Zustellungsurkunde

Firma

Orion

Auskunft erteilt: **[REDACTED]**
Gebäude / Zimmer: A -224
Tel.- Durchwahl: 04171 693-724
Telefax: 04171 687-733
E-Mail: **[REDACTED]**
Mein Zeichen: **[REDACTED]**
(Bei Antwort bitte angeben)
Ihr Schreiben vom:
Ihr Zeichen:
Datum: 8. September 2010

Verfallsbescheid

Sehr geehrte Damen und Herren,

[REDACTED] vertreten durch die persönlich haftenden Gesellschafter **[REDACTED]**, ordne ich den Verfall eines Geldbetrages in Höhe von 630,00 Euro an, § 29 a Absatz 2 Ordnungswidrigkeitengesetz (OWiG). Außerdem haben Sie die durch Ihre Beteiligung entstandenen besonderen Kosten zu tragen, § 105 Absatz 1 OWiG in Verbindung mit § 472 b Strafprozessordnung (StPO).

Verfallsbetrag:	630,00	Euro
Kosten:	3,50	Euro
Gesamtbetrag:	633,50	Euro

Vorfalldaten:

Zeit und Ort : 13.04.2010 um 10:15 Uhr, Gemarkung Dibbersen, BAB 1, km 26,5 Richtung Bremen

Fahrzeuge : LKW + Anhänger **[REDACTED]**

Mit Geldbuße bedrohte Handlung:

1. Anordnen oder Zulassen, dass die Fahrzeugkombination in Betrieb genommen wurde, obwohl das zulässige Gesamtgewicht um 9,05 Prozent = 3.620 kg überschritten war. Festgestelltes Gesamtgewicht: 43.620 kg. Zulässiges Gesamtgewicht: 40.000 kg. §§ 31 Absatz 2, 34 Absatz 3, 69a Straßenverkehrs-Zulassungsordnung (StVZO), § 24 Straßenverkehrsgesetz (StVG).
2. Als Beförderer beim innerstaatlichen Transport von Schweinen die Mindestbodenfläche nicht eingehalten, nach Anlage 2 Nr. 4 Spalte 2 TierSchTrV. - Auf dem LKW befanden sich 60 Schweine, auf 2 Ladeböden jeweils 30 Tiere mit einem durchschnittlichen Lebendgewicht von 114,67 kg. Der Raumbedarf betrug pro Ladeboden 16,5 qm, nämlich 0,55 qm pro Tier. Tatsächlich vorhanden waren auf dem mittleren Boden 14,5 qm und

Dieses Schreiben wurde maschinell erstellt und ist daher ohne Unterschrift gültig.

Dienstgebäude:

- A Hausdrossen
- B Schloßplatz 6 (Altbau)
- C Schloßplatz 6 (Neubau)
- D Rathausstraße 29
- E Von-Schmütz-Ring 13
- F Rote-Kreuz-Str. 6
- G St.-Barbara-Weg 1

21423 Winsen (Luhe)

Kontakt:

Telefon : 04171 693-0
Telefax : 04171 687-100

Elektronische Kommunikation:
Es gelten die Richtlinien auf unseren Internetseiten

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www.lkharburg.de
www.landkreis-harburg.de

Bankverbindungen:

SparKasse
Harburg-Buxtehude
BLZ: 207 500 00
Kto.-Nr. 7 028 982

Postbank Hamburg
BLZ: 200 100 20
Kto.-Nr. 192 68-204



Sprechzeiten nach Terminabsprache:

Montag - Donnerstag 07:00 - 19:00 Uhr
Freitag 07:00 - 15:00 Uhr

Terminvereinbarungen bitte von

Montag - Donnerstag 08:30 - 16:00 Uhr

Freitag 08:30 - 15:00 Uhr

Parkplätze: Schloßring 12 und Eppens Allee

P Im unteren Teil der Parkpalette "Schloßring 12"

unten 15,0 qm. Die Mindestbodenfläche wurde in der Mitte um 2 qm = 12,1 % und unten um 1,5 qm = 9 % unterschritten. Auf dem Anhänger befanden sich 120 Schweine, auf 3 Ladeböden jeweils 40 Tiere. - Auf dem Anhänger befanden sich 120 Schweine, auf 3 Ladeböden jeweils 40 Tiere. Der Raumbedarf betrug 0,55 qm pro Tier und damit pro Ladeboden 22 qm. Tatsächlich vorhanden waren: auf dem oberen Boden 19,2 qm, Unterschreitung um 2,8 qm = 12,72 %; auf dem mittleren Boden 20,0 qm, Unterschreitung um 2 qm = 9 %; auf dem unteren Boden 20,5 qm, Unterschreitung um 1,5 qm = 6,81 %. - Verletzte Vorschriften: §§ 9 Absatz 2, 21 Absatz 1 Nr. 8 Tierschutztransportverordnung (TierSchTrV), § 18 Absatz 1 Nr. 3 Buchstabe a Tierschutzgesetz.

Beweismittel : Wiegekarte

Zeuge : PK Riebesell, PK Schmoelder.

Hat der Täter einer mit Geldbuße bedrohten Handlung für einen anderen gehandelt und hat dieser dadurch etwas erlangt, so kann gegen ihn der Verfall eines Geldbetrages bis zu der Höhe angeordnet werden, die dem Wert des Erlangten entspricht, § 29a Absatz 2 OWiG. Der erlangte Vermögenswert sind zum Beispiel sämtliche Einnahmen aus der Fahrt, aber auch ersparte Ausgaben oder sonst notwendig gewesene Aufwendungen wirtschaftlicher Art. Es gilt das Bruttonprinzip, wonach entstandene Kosten für die Tat nicht gegenzurechnen sind. Auf ein Verschulden kommt es beim Verfall nicht an.

Sie waren Beförderer und haben durch die Tat einen Vermögensvorteil erlangt, denn Sie wurden für den Transport der Schweine bezahlt. Wegen der Ordnungswidrigkeit habe ich ein Verfahren gegen den Gesellschafter und Disponenten ~~_____~~ eingeleitet und Ihre Beteiligung angeordnet. Das Verfahren gegen ~~_____~~ habe ich inzwischen eingestellt. Den Verfall ordne ich selbständig an, § 29a Absatz 4 OWiG.

Sie haben mitgeteilt, dass Sie beim Transport vom 189 Schweinen pro Schwein 3,50 € netto erhalten. Bei weniger Tieren seien die Kosten für die Landwirte pro Stück etwas höher, zum Beispiel bei 160 Schweinen um 0,60 €. In diesem Fall beförderten Sie 180 Schweine, ich bleibe daher bei dem Satz von 3,50 € pro Tier. Das ergibt eine Nettoeinnahme von 630,00 €. Verfallen sind sämtliche Einnahmen aus dem illegalen Transport, nicht nur der Anteil der Überladung. Aus Ermessensgründen berücksichtige ich aber nicht den Anteil der Umsatzsteuer. Kosten, die Ihnen durch den Transport entstanden sind, sind nicht abzuziehen.

Rechtsbehelfsbelehrung

Dieser Verfallsbescheid wird rechtskräftig und vollstreckbar, wenn Sie nicht innerhalb von zwei Wochen nach seiner Zustellung schriftlich oder zur Niederschrift beim Landkreis Harburg, Schloßplatz 6, D-21423 Winsen (Luhe), Einspruch einlegen. Bei schriftlicher Erklärung ist die Frist nur gewahrt, wenn der Einspruch vor Ablauf der Frist bei dieser Behörde eingeht. Die Erklärung muss in deutscher Sprache abgefasst sein.

Wichtige Hinweise bei einem Einspruch:

Bei einem Einspruch kann auch eine für Sie nachteilige Entscheidung getroffen werden.

Sie haben die Möglichkeit, zugleich mit dem Einspruch oder spätestens innerhalb von zwei Wochen nach Zustellung dieses Verfallsbescheides sich dazu zu äußern, ob und welche Tatsachen und Beweismittel Sie im weiteren Verfahren zu Ihrer Entlastung vorbringen wollen; dabei steht es Ihnen frei, sich zu dem Vorwurf zu äußern oder nicht zur Sache auszusagen. Ich weise Sie jedoch darauf hin, dass Ihnen, falls entlastende Umstände nicht rechtzeitig vorgebracht werden, Nachteile bei der Kostenfestsetzung entstehen können.

Sanction systems AUSTRIA

General information

The Austrian National Animal Transport legislation covers the same requirements as found in the EC 1/2005 and all violations of provisions from the EU texts can be sanctioned in Austria. Both highway police and special "Animal Transport Inspectors" are involved in checking livestock trucks on the Austrian roads, and can penalize perpetrators.

How do the authorities apply the sanctions?

There are three different types of penalties:

1. Mündliche Verwarnung (verbal warning)
2. Organmandat (small monetary fine given on the spot)
3. Anzeige (written statement of offence)

Mündliche Verwarnung

For non-serious cases where there is no evidence of animal-welfare being compromised or foul-play with the paper work, the law enforcer can decide to just give a verbal warning. The transporter is informed of the mistake and taught how to do things properly. He is let off this time, but is told not to repeat the mistake again; if not a monetary penalty will be given.

Examples of violations which would normally only lead to a verbal warning are:

- A local transporter known to the law-enforcers that forgot to bring his TYPE 1 document with him.
- A National transport journey whereby the driver forgot to mark down the time of departure in his transport papers.

Organmandat

These fines can be handed out on the spot. They are practical because they do not require a lot of work for the law enforcer. It is a small ticket that takes a few minutes to fill in and then the case is finished.

The amounts of these fines are low and are applicable just for certain provisions of the EC 1/2005. Here are a few examples:

- Transport of an animal that is too young: € 72 (per animal)
- Headspace is not adequate: € 150
- Absence of sign on back of truck indicating live animals on board: € 36
- Vehicle without suitable watering devices for the animals: € 150
- Vehicle without suitable dividers: € 150
- Ropes used to attach animals on board are not long enough to allow them to lie down: € 72

However, because the amount of these "Organmandat" fines

are very low, they are in practice only used by law enforcers for violations that did not cause animal suffering. Normally, when the violation causes suffering or the attitude of the driver is very poor, the law enforcer will instead write an "Anzeige" (following category, see below) which will lead to more severe penalties.

Anzeige

An "Anzeige" is a written statement of offence. This sanctioning option is used when the violation is more serious than the examples above. The "Animal Transport Inspector" can write up the statement of offence, but normally it is left for the police to do. There are three price categories for an Anzeige: up to € 2.000, up to € 3.500 and up to € 5.000 depending on the violation committed.

Some examples:

Anzeige up to € 2.000 (in practice normally € 500)

- Non-presentation of transport papers or not shown within due time
- Certificate of competence not present or not shown within due time

Anzeige up to € 3.500 (in practice normally € 700)

- Transport of animals is conducted without avoiding delays or animals are not regularly checked during the journey.
- Transport vehicle and loading/unloading mechanisms are not constructed or used in such a way as to avoid any risk of injury.

Anzeige up to € 5.000 (in practice normally € 1.000 - € 2.000)

- Transport of an unfit animal
- Food, water and rest breaks for the animals during the journey are not respected.

The "Anzeige" is sent to the County's "Strafreferat" (public prosecutor) at the Administrative Court. He or she will judge the case and decide on the final amount of the fine, within the maximum range as shown above. Normally this is done in consultation with a veterinarian who gives a recommendation on the final amount of the fine.

In theory, the Strafreferat can decide whether the written statement of offence is worth being followed up on or not, but according to the Austrian animal transport inspectors, they always are.

Glossary

Tiertransport Gesetz: Animal Transport Law in Austria

Mündliche Verwarnung: verbal warning

Organmandat: a standard and low-cost on-the-spot ticket"

Anzeige: written statement of offence

Strafreferat: public prosecutor

Administrative court: place of judgement of violations that will result in a monetary administrative fine.

Criminal court: place of judgement of violations of serious crimes such as rape and murder and fraud.

Cases involving blatant animal abuse during transport and serious suffering can be passed here.

(Please note that cases of blatant animal cruelty during transport are passed to the Criminal court, and handled as animal abuse. Here there is a small risk of them not being followed up as they are in competition with cases of human murder, rape and major fraud).

Austria and Germany have a judicial treaty; a German transporter caught violating the animal transport regulations in Austria will be traced and forced to pay the Anzeige. However, for other foreigners it is unsure if they will ever pay once they return home. To partly solve this problem, the Austrian transport inspector and police can demand a deposit of the Anzeige to be paid immediately. The maximum amount of the deposit is up to 30% of the highest amount of the Anzeige.

For example, in practice, an Anzeige for transporting an unfit animal will result in the Strafreferat deciding on a fine of around € 2.300. However, if it is a foreign transporter, he will be asked to pay up to 30% of € 5.000 on the spot.

If he does not have this amount of cash on him, the Austrian law-enforcer has other possibilities such as:

1. The driver can get cash by using his petrol credit cards at the petrol station.
2. The Austrian police has electronic ATM's in the police cars, so the policeman asks for the 16-digit-number + security-code of the credit-card and debits the money.
3. The "DKV"-card (www.dkv-euroservice.com) offers a 24-hour service in the following way: The driver sends a fax from the petrol station to this service indicating the amount of fee the police asks for. The service informs the owner of the lorry and the owner gives the guarantee to the service. The service sends a fax to the petrol station and the petrol station pays the money to the driver.

Problems in practice

- In general, the sanction system is applied regularly and effectively in Austria. There have been very few complaints of the public prosecutor not following up on statement of offences in the Administrative court. However, writing up and treating statement of offences take a lot of work. It would be more effective if the cost of the Organmandat fines be increased, so that law-enforcers could hand out a ticket on the spot and the fine be quickly solved and still effective.

"The farmer and transport lobby groups have been complaining about veterinarian transport inspectors that give out written statement of offences ("Anzeigen") for violations to the EC 1/2005 requirements. They insist on only Organmandats being issued"

- Official inspector

- Another concern is that a lot depends on the motivation level of the individual inspector. Law enforcers that are less motivated or tired, may be more likely to hand out an Organmandat for a violation that did result in animal suffering, simply because it is far less work or time-intensive than writing up a statement of offence.

- Because foreign perpetrators are made to pay a deposit on the spot, which is usually of a significant amount, it is probably that foreign transport companies often avoid going through Austria and instead take a far longer detour. This of course is not a problem with the Austrian sanction system per se, au contraire it is a compliment, but it does show that the sanction system of neighboring countries to Austria are flawed.

Example of a fine handed out in Austria

October 2010

Absence of a sign on the back of the lorry indicating live animals on board = Organmandat = € 36.

Behörde: BWL [Redacted] 64 [Redacted] 05
 (Block No.) (Forts. Z.)

Organstrafverfügung
gemäß § 50 des Verwaltungsstrafgesetzes (VS:G)

Auf Grund der erhaltenen Ermächtigung wurde eine Geldstrafe von E 36,-

☐ vom Lenker des Fahrzeuges [Redacted]
 behördl. Kennzeichen [Redacted]
 eingehoben.
 Grund (Tat): § 2(3) TFG Verkehrsverstoß
 begangen in [Redacted]
 am [Redacted] um (vor-mitt-nach) 15:10 Uhr.
 Die Geldstrafe wurde ☐ Zutreffendes ist angekreuzt ☒

☒ in bar ☐ mit Scheck ☐ mit Kreditkarte ☐ mit ☐ entrichtet.

Widmung des Strafbetrages: 174
[Redacted]
 Ort, Datum [Redacted] Unterschrift [Redacted]

Sanction systems ITALY

General information

Up until 2007 there was a very simple sanction system in Italy; each violation to the animal transport regulations applicable then was sanctioned with a fine of € 3.098. However, since September 2007 a new sanction system has been put into place called "Decreto legislativo 25.07.2007, n. 151". In this new sanction system the fines have a sliding range. Provisions of the EU 1/2005 legislation are covered by this updated Italian sanction system, with a couple of exceptions such as the requirement of vehicles used for long-distance having a navigation system.

Here are a few examples of violations and consequential sanctions if caught in Italy:

Violation to provisions listed in Annex 1, Chapter I of the EC 1/2005 (Fitness of animals): € 2.000 - € 6.000.

Violation to provisions listed in Annex 1, Chapter II of the EC 1/2005 (Means of transport/vehicle conditions) : € 1.000 - € 4.000.

Violation to provisions listed in Annex 1, Chapter III of the EC 1/2005 (Conditions of transport including loading density and transport time): € 1.000 - € 3.000.

Violation to provisions (except requirement to have a navigation system) listed in Annex 1, Chapter VI of the EC 1/2005 (extra requirements for Long Journeys > 8 hrs): € 2.000 - € 6.000.

Copy of transport authorization not on hand: € 200 - € 600

Transport authorization invalid, outdated or non-existent: € 2.000 - € 6.000

How do the authorities apply the sanctions?

In Italy, both police and veterinarian inspectors can hand out fines on the spot to perpetrators of the EC 1/2005 requirements. Should the perpetrator be an Italian, he has sixty days to pay it. If the violation is committed with a vehicle with a non-Italian license plate the fine must be paid on the spot immediately, if not his truck is confiscated and he may not leave.

To determine the amount of the fine to be paid on the spot, the police or veterinarian inspector must make some calculations. For example, a transporter that has an animal that is not fit for transport on board faces a fine in the range of € 2.000 - € 6.000. The official calculates the double of the minimum amount in the range (in this case € 4.000) and one third of the maximum (in this case € 2.000), he then compares the two amounts and applies the lower one, i.e. in this case it would be € 2.000.

The transporter can later try to refute the fine, but faces the risk that the fine be raised further within the maximum range limit.

Problems in practice

Before the new sanction system in 2007, Italy had a huge problem in successfully fining foreign transporters. Often the fine was left unpaid and there was little way for the Italian authorities to chase up on it. However, there is now a new challenge with sanctioning foreigners - that of finding an appropriate place to unload the animals when the truck is confiscated. As mentioned above, foreign transports now have to pay the fine on the spot, if not their truck and the animals on board are confiscated. Because the fines are quite expensive, some foreign transports are not able to pay the fine on the spot. Because there are not enough emergency unloading facilities, authorities are sometimes left with the problem of what to do with the confiscated animals. But aside from this, it can be argued that the Italian system is quite good and in general satisfies the requirements of Article 25 of the EC 1/2005. The Italian authorities can hand out fines on the spot; they do not overburden public prosecutors with paper work or take any risk that the foreign perpetrators will get off scot-free. As well, because the amount of the fines is quite high, the sanction system is dissuasive. Perpetrators are likely to be very careful repeating their mistake when driving through Italy.

Glossary

Sanzione in misura ridotta: the amount of fine the inspection authorities calculate on the spot (this is the fine when calculating the double of the minimum and one third of the maximum, comparing the two amounts and applying the lower one).

Verbale di contestazione: Statement of offence. It is the form police issues with the description of the violation and the amount of fine to be paid. This form is given to the perpetrator and is the "legal basis" of the fine he has to pay. The same form is used for violations against the traffic regulations.

Verbale di accertamento: Statement of ascertainment. This form is required specifically for violations of EC Reg. 1/2005 and it is to be filled out in addition to the "statement of offence". It contains various information on the transport (e.g. place of origin of animals, place of destination, number and species etc.)

Examples of the ITALIAN sanction system in practice:

1. March 2010

Long-distance transport journey for pigs and the water tank of the truck was empty. The transporter was fined € 2.000.

MINISTERO DELL'INTERNO
DIPARTIMENTO DELLA P.S.

SEZIONE POLIZIA STRADALE

Mod. 352 Pol. Str.

di Torino Sanvr Susa Reparto (1) TOPS 45

Verbale Num. 700002665892

In data 11.03.2010 alle ore 11.40 al Km. 09.000 della strada Tipo AT Numero 32

Co. BARRIERA AUTOSTRADALE S. Strada (L)

Comune AVIGLIANA Prov. TO Codice 3.116.17

Nei sottoscritti 1) SOV. 2) 260361 3) AGT. 4) 3.116.17

1 TRASGRESSORE Cogn. [redacted]

Nome [redacted] data 25.02.1963

Nascita [redacted] Prov. [redacted] Stato DK

Residenza [redacted] Prov. [redacted] Stato DK

Indirizzo ECCUNDIRIS 65

Patente Cat. DG Num. 25.02.63.1.015 rilasciata 28.04.2004 Prov. [redacted] Stato DK

Tipo Veicolo A.T.V.T. Targa UXC-5 Stato DK MCPC Kg 18.000 Tara Kg [redacted] Peso Acc. Kg [redacted]

Tipo Veicolo [redacted] Targa [redacted] Stato [redacted] MCPC Kg [redacted] Tara Kg [redacted] Peso Acc. Kg [redacted]

OBLIGATO IN SOLIDO ☐ SOC ☐ LOC ☒ PROP. Cogn. [redacted]

Nome [redacted] data [redacted]

Nascita [redacted] Prov. [redacted] Stato [redacted]

Residenza [redacted] Prov. [redacted] Stato DK

Indirizzo VILISBAIKVEI 37

Verbale a seguito di incidente con solo danni ☐ con feriti ☐ Articolo / Circolo / (colore) (1) Pagamento in misura ridotta 3 Punti decurtati

2 In violazione: CDS ☐ L. 72/78 ☐ 1) VI. ☐ PAV. ☐ 2) VI. ☐ PAV. ☐ 3) VI. ☐ PAV. ☐ 4) VI. ☐ PAV. ☐ 5) VI. ☐ PAV. ☐ 6) VI. ☐ PAV. ☐ 7) VI. ☐ PAV. ☐ 8) VI. ☐ PAV. ☐ 9) VI. ☐ PAV. ☐ 10) VI. ☐ PAV. ☐ 11) VI. ☐ PAV. ☐ 12) VI. ☐ PAV. ☐ 13) VI. ☐ PAV. ☐ 14) VI. ☐ PAV. ☐ 15) VI. ☐ PAV. ☐ 16) VI. ☐ PAV. ☐ 17) VI. ☐ PAV. ☐ 18) VI. ☐ PAV. ☐ 19) VI. ☐ PAV. ☐ 20) VI. ☐ PAV. ☐ 21) VI. ☐ PAV. ☐ 22) VI. ☐ PAV. ☐ 23) VI. ☐ PAV. ☐ 24) VI. ☐ PAV. ☐ 25) VI. ☐ PAV. ☐ 26) VI. ☐ PAV. ☐ 27) VI. ☐ PAV. ☐ 28) VI. ☐ PAV. ☐ 29) VI. ☐ PAV. ☐ 30) VI. ☐ PAV. ☐ 31) VI. ☐ PAV. ☐ 32) VI. ☐ PAV. ☐ 33) VI. ☐ PAV. ☐ 34) VI. ☐ PAV. ☐ 35) VI. ☐ PAV. ☐ 36) VI. ☐ PAV. ☐ 37) VI. ☐ PAV. ☐ 38) VI. ☐ PAV. ☐ 39) VI. ☐ PAV. ☐ 40) VI. ☐ PAV. ☐ 41) VI. ☐ PAV. ☐ 42) VI. ☐ PAV. ☐ 43) VI. ☐ PAV. ☐ 44) VI. ☐ PAV. ☐ 45) VI. ☐ PAV. ☐ 46) VI. ☐ PAV. ☐ 47) VI. ☐ PAV. ☐ 48) VI. ☐ PAV. ☐ 49) VI. ☐ PAV. ☐ 50) VI. ☐ PAV. ☐ 51) VI. ☐ PAV. ☐ 52) VI. ☐ PAV. ☐ 53) VI. ☐ PAV. ☐ 54) VI. ☐ PAV. ☐ 55) VI. ☐ PAV. ☐ 56) VI. ☐ PAV. ☐ 57) VI. ☐ PAV. ☐ 58) 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2. July 2009

Long-distance transport journey of horses without dividers in place. Fine is € 2.000.

MINISTERO DELL'INTERNO
DIPARTIMENTO DELLA P.S.

SEZIONE POLIZIA STRADALE

Mod. 352 Pol. Str.

di CUNEO

Reparto (1) CNPSIAS

Verbale Num. 700005271656

In Data 16/07/2009 alle ore 11.55 al Km. della strada Tipo Numero

Loc. CUNEO POLIZIA STRADALE Stato (1)

Comune MONDOVI Prov. CN Codice

Nei sottoscritti AG. 2 F. 293162 AG. 8 F. 303696

1 TRASGRESSORE: Cogn. B. FILIPPO SNC* N. 1

Nome B. FILIPPO N. 1

Matr. a B. FILIPPO N. 1

Residente a B. FILIPPO N. 1

Indirizzo VIA DELLA GRANGIA 5

Patente Cat. Num. rilasciata il / / Prov. Stato Usa Lati

Tipo Veicolo RIM Targa A Stato LITA MOPC Kg Tara Kg Peso Acc. Kg

Tipo Veicolo Targa Stato MOPC Kg Tara Kg Peso Acc. Kg

OBLIGATO IN SOLIDO: C.C. Loc. Prov. Cogn. N. 1

Nome B. FILIPPO N. 1

Matr. a B. FILIPPO N. 1

Residente a B. FILIPPO N. 1

Indirizzo VIA DELLA GRANGIA 5

Verbale a seguito di incidente con solo danni con feriti Articolo / Comm. / Ipotesi (1) Pagamento in misura ridotta 3 Punti decurtati

2 ha violato: CDS L. 727/76 1) Vel. Rim. 3) Vel. Rim. 4) Totale da pagare € 2.000,00

ALTRE Norme D.L. 151/2007 2) Vel. Rim. 3) Vel. Rim. 4) Totale da pagare € 2.000,00

Recapitolato SI NO 3) Vel. Rim. 4) Totale da pagare € 2.000,00

Descrizione infrazione: Il 04/07/2009 verso le ore 04.07, sull'A/6 To-Sv al km. 64 N, Comune di Mondovì (CN), effettuava il trasporto intracomunitario di n. 16 equidi, dei quali n. 5 femmine, di durata superiore alle 8 ore, da Rieupeyroux (P) a Montà (CN) di 800 km. ca. con il suddetto rimorchio, trainato dall'atc. Scania tg. L. Reginaldo, sebbene sprovvisto dei prescritti stalli individuali per ciascun animale trasportato. Violazione ai sensi dell'art. 7/4 in rel. All. 4 punto 1.6-1.7-1.8 del D.L. 151/2007 accertata dai verbalizzanti all'esito dell'istruttoria amministrativa relativa al controllo esperito da pattuglia dipendente in data e luogo di cui sopra, come da relazione di accertamento allegata, parte integrante del presente verbale.

5 (v. rel.) E' AMMESSO PAGAMENTO IN MISURA RIDOTTA NON E' AMMESSO PAGAMENTO IN MISURA RIDOTTA

5a MODALITÀ DI PAGAMENTO per violazioni diverse dal CDS e L. 727/76 (v. rel.) m.c. postale n. 12318127 intestato ASI CN "applicazione di sanzioni amministrative L.R. 35/1996"

6 RICORSO (v. rel.) 6a al PREFETTO di in alternativa al 6b GIUDICE DI PACE di a 6c U.V.A.C. Piemonte 10123 Torino P.zza Lagrange 1

7 OBBLIGO DI ESIBIZIONE (ART. 103/0 CDS - v. rel.) SI NO

8 SANZIONI ACCESSORIE: SI NO

9 IMPORTO CAUZIONE o PAGAMENTO OLTRE 60 € (v. rel.) viol. 1) viol. 2) viol. 3)

Al sensi dell'art. 287 CDS ricevo la somma di € quale pagamento in misura ridotta versato a titolo di cauzione

SOTTOSCRIZIONI

Il Trasgressore Accreditato 1

L'obbligo in solido Accreditato 2

(1) Parte riservata all'ufficio

Notificato Controvv. Notificato G144. N° Bollet.

*SUA PERSONA DEL RUI LEGALE RAPPRESENTANTE PRO TEMPORE

NGO examples

March 2008

Animals' Angels trailed a truck with horses from Romania and destined for Italy. They asked the Italian police and veterinarians to check on the truck and three violations were found:

- horses not transported in individual stalls;
- exceeded loading density;
- inadequate water system for horses.

The fine to be paid on the spot was **€ 5.500.**

(Since the transporter was a foreigner he was asked to pay the fine immediately. The foreigner however did not have access to enough cash and therefore the horses were unloaded at a control post and the truck was blocked until the fine was paid.)

Sanction systems HUNGARY

Due to our limited number of contacts in Hungary and personal experience with the Hungarian sanction system, it was difficult to get a complete picture of how it works. Below is what we were told.

General information

Hungary accepted Reg. EC 1/2005 entirely and its sanction system is applicable to all violations of the provisions listed in it.

The official veterinarians are involved in enforcing the rules and ask the police or custom officials to join them so that they can stop livestock trucks on the road. The police are not knowledgeable enough to apply the sanctions without assistance from the official veterinarians. The rate of the penalty is always the judgment of the official veterinarian concerned.

The amount of the monetary fines can be determined between € 20 - € 555 (5.000 - 150.000 HUF), depending on the seriousness of the infringement. However, if the infringement is not very serious, the official veterinarians can hand out a written warning the first time.

The official veterinarians cannot hand-out on-the-spot tickets, and thus it is difficult to sanction foreign transporters.

Problems in practice

- difficult to sanction foreign transporters.
- amount of fines in many cases much too low (maximum is only € 555).

Findings in the Food and Veterinarian Office reports

Food and Veterinary Office's findings during their missions

In its role as guardian of the European Community Treaties, the EU Commission is responsible for ensuring that Community legislation on food safety, animal health, plant health and animal welfare is properly implemented and enforced. The Food and Veterinary Office (FVO) is a service to the EU Commission that works to assure effective control systems and to evaluate compliance with EU standards. The FVO does this mainly by carrying out inspections in Member States and in third countries exporting to the EU. After each inspection, the FVO publishes reports of their findings in the Member State visited.

It is clear from the FVO reports that in many Member States, penalties for animal transports in violation of the EC 1/2005 requirements are often not imposed and that in other cases the penalties imposed are too low to be dissuasive. Moreover, some Member States have no effective powers to impose penalties on transporters from other Member States. Examples of these problems can be found in the following FVO reports:

FVO report on Hungary, 2009

The FVO report states that *"In relation to Animal Welfare, no enforcement action was taken in nearly all cases evaluated. Sometime corrective actions were requested but no proper follow up took place. The only exception concerned joint inspections carried out with the Police where sanctions were applied. Nevertheless the CA has no legal power to collect fines on the spot, meaning that in practice it is quite difficult to sanction foreign transporters"*.



Dutch livestock truck without automatic water system approved in Hungary for a long-distance export journey of cattle to Turkey (April 2011).

Photo: Eyes on Animals/Tierschutzbund Zurich

FVO report on Bulgaria, 2009

The amount of the fines that can be imposed is not effective, proportionate or dissuasive in relation to commercial transport of significant numbers of animals.



Bulgarian sheep transport approved for export (April 2011)

Photo: Eyes on Animals/Tierschutzbund Zurich

FVO report on Portugal, 2009

Sanctions have not been effective to dissuade operators from transporting unfit animals.

FVO report on Romania's horse trade, 2009

The FVO concluded that *"Imposing sanctions remain a low priority for the CA on these issues as only one case resulted in a fine and the CA were unable to demonstrate that further legal measures had been taken. The fine was relatively low when compared with the amount of trade from this AC [assembly centre]"*.

FVO report on Spain, 2009

Animal welfare infringements are invariably classified as light and/or fines are rarely dissuasive. Sanctioning procedures have only been used in limited circumstances and, because of the low levels of fines imposed, do not, in themselves, bring about corrective action.

FVO report on France, 2010

The long procedure for penalties, generally combined with relatively low fines leads to sanctions not being dissuasive despite the requirement in Article 55 of Regulation (EC) No 882/2004 that sanctions must be dissuasive. In one case a fine of just € 135 was imposed for the transport of two unfit animals to a slaughterhouse.

Conclusion and recommendations

- At the very least, **all EU Member States must have sanction systems that are thorough and cover infringements of each and every provision of the EC 1/2005**. There is no excuse that France has not yet updated its National Code Rural, and as consequence its sanctions do not cover certain infringements of the EC 1/2005. Nor does Germany have an excuse for not having an applicable sanction for certain provisions of the EC 1/2005.
- Due to the difficulties arising when the perpetrator is a foreigner, all law enforcers should be able to hand out tickets on the spot and demand **immediate payment from foreign perpetrators**. The Dutch, Hungarian and Belgian law enforcers are handicapped without this ability; foreign transporters in violation are often getting away scot-free in their countries while national transporters and animals are left to pay the price of the uneven playing field. Being able to hand out **tickets on the spot is also advantageous as they do not have to pass through a public prosecutor who may, or may not, follow up on the case** (Belgium reports 60% - 70% of written statement of offences not being followed up on by the public prosecutor). As well, in a time when countries are cutting back more and more of their public prosecutor's services (in particular France at the moment), it would relieve them of some of the burden of paper work allowing them to be more effective.
- **On-the-spot tickets must be expensive enough to be effective and dissuasive**. France's sanction system is advantageous on one hand, because the police can hand out tickets on the spot and even demand foreigners to pay immediately, but the cost of these tickets is so low it defeats the purpose. The tickets in Italy, for example, are effective because they are not cheap and the Italians can demand payment of these tickets from foreigners immediately.
- Germany's sanction option of **setting a monetary fine based on the additional profit the perpetrator was about to earn by disrespecting the law** (e.g. loading surplus animals) should be available to inspectors of animal transport throughout Europe. It is possible that other countries have this option already, but it does not seem commonly used based on the information gathered for this report and personal experience. Transport companies that avoid stopping and unloading animals at control posts to skip the fee and wasted paid hours of their drivers, or transporters that are driving with an empty water tank to save on gasoline are also making a profit by acting illegally. If this profit could be removed from them, the fines would be much more proportionate, not just to the animal suffering caused but to the unfair competition "bad" companies are creating.

The European Union was developed to bring more unity and make European matters easier. This is one reason for the creation of the EC 1/2005 legislation; so that all transports within the EU respect the same minimal rules regarding animal protection during transit. Would it not make most sense then that the EU also publishes a European-wide animal-transport sanction system and encourage each Member State to use it as a guideline and adapt it into its national sanction system? Each provision would be penalized by the same amount of fine, regardless if you were a Dutch pig transporter driving in Hungary, or a Hungarian transporter driving in the Netherlands.

Eyes on Animals and WSPA urge the European Commission to consult its legal services to check whether all EU Member States' monetary sanctions applicable to EC 1/2005 can be considered **effective, proportionate and dissuasive**".

References and acknowledgements

We would like to thank the following people and organizations:

Michel Courat from **Eurogroup for Animals** for helping gather official information from Member States about their sanction system and for providing general advice on how to write this report.

Animals' Angels for sharing their reports of the trucks they have trailed as well as their photos. Having information from the field is crucial as it often differs greatly from theory.

Thank you to all the **policemen, gendarmes and official veterinarians** that I met in person with to learn about their national sanction systems and their experiences (both positive and negative) in the field applying it. Your openness is what allowed me to get to the core of this important problem and for this reason I will keep your names anonymous.

I would also like to thank the many managers and drivers of **livestock transport companies** that had the courage to meet with me to share their stories and give me copies of fines they had received. This was vital to proving how monetary sanctions are used in practice.

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World Society for the Protection of Animals

The World Society for the Protection of Animals (WSPA) is the world's largest alliance of animal welfare organizations. The organization has consultative status with the UN and the Council of Europe, and has a network of over 1,000 member societies across 150 countries. WSPA works with decision-makers, international organizations, and businesses to incorporate animal welfare into policy at all levels. WSPA has an extensive presence in the field through working with partners to improve animal welfare around the world.



Eyes on
Animals

Watching
out for their
welfare

Eyes on Animals is an animal-welfare inspection organization that serves the Benelux and countries linked via export and import. The organization was created to fulfill the urgent need of ensuring that current animal protection legislation is put into practice, that sanction systems are dissuasive and that loopholes in the legislation are filled. Eyes on Animals' investigators inspect farms, livestock markets, animal trucks and slaughterhouses. The organization also gives training courses to highway police on the European legislative requirements concerning animal transport and welfare-workshops to livestock drivers.