



ANIMALS' ANGELS – Rossertstr. 8 – 60323 Frankfurt

To the

**EUROPEAN COMMISSION
DG SANTE**

To the attention of

**Commissioner for Health and Food Safety
Ms Stella Kyriakides**

**Crisis preparedness in food, animals and plants
Mr Bernard Van Goethem**

**Head of Animal welfare and Antimicrobial resistance
Mr Andrea Gavinelli**

**Head of Health and food audits and analysis, Animals
Ms Ana Ramirez Vela**

**Head of Legal Services
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**OBJECT: REVISION OF COUNCIL REGULATION (EC) NO.
1/2005/SANCTION SYSTEMS IN THE EUROPEAN UNION**

Dear Madams and Sirs,

Animals' Angels welcomes the policy within F2F-Stratgy aiming for a fair, healthy and environmentally friendly food system and improving animal welfare. We particularly welcome the intended revision of Council Regulation (EC) No 1/2005 on the protection of animals during transport.

Recently, the European Commission called all stakeholders to contribute to the evaluation of the effectiveness of the current animal welfare rules. Animals' Angels listed some of the most relevant points to amend. Among them, a very important one concerns **the sanction regimes of Reg. 1/2005**.

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The Regulation for the protection of animals during transport had the merit of being directly applicable in all EU Member States. On the other hand, article 25 is one of the fundamental reasons, among others, that has made its application inconsistent. States were given the responsibility to create the correspondent sanctioning system in its entirety. This choice was likely because the power of the European Community was limited in 2005. Sanctions were part of the so-called third pillar. With the Treaty of Lisbon, effective in 2009, the three-pillar structure of the European Union was abolished. Since then, there have **been several attempts to harmonise sanctions¹ in the EU through directives and regulations.**

The aim of the European Union is to create a community of people, funded on common values and objectives² and on democracy, without internal frontiers and with an internal common market. **Equality**, solidarity among Member States, high protection of the environment, **a common transport policy³, economic and social cohesion**, social progress and justice, respecting its cultural and linguistic diversity, are some of the aims and principles crystallized in the official agreements. **European laws must be applied equally to the member states and the citizens of the union. In other words, the treatment of those violating the laws should be uniform. For animal transporters it does not happen⁴.** At the present time, each state has decreed its own procedures, competent authorities and sanctions in case of violations of Reg. 1/2005. This has been done in a very uneven manner. A haulier who commits the same offence in different member states runs a greater or minor risk of being checked. If checked, it can get a greater or minor fine, depending on the country in which it happens.

Examples:

VIOLATION	PENALTY IN ITALY	PENALTY IN ROMANIA	PENALTY IN SPAIN
Too many animals loaded	1000 euro	1292.52 euro (6000 lei)	Up to 600 euro or a warning
Water system not functioning	2000 euro	1292.52 euro	Up to 600 euro or a warning
Unfit animals	2000 euro	3877.57 euro (18000 lei)	Up to 600 euro or a warning

Under chapter 3, called “approximation of laws”, of the Treaty for the Functioning of the European Union (TFEU), articles 114, 115, 116 and 117 confirm the need to harmonise

¹ Examples:

- Directive No. 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive No. 2002/87/EC and repealing Directives No. 2006/48/EC and No. 2006/49/EC (see article 26 and section IV).
- Regulation (EU) No. 596/2014 of the European Parliament and Council of 16 April 2014 market abuse (market abuse regulation) and repealing Directive No. 2003/6/EC of the European Parliament and of the Council and Commission Directives No. 2003/124/EC, 2003/125/EC and No. 2004/72/EC (see chapter 5).
- Commission Regulation (EU) 2016/403 of 18 March 2016 supplementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council about the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator.
- Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (see article 83).

² See articles 1-2-3-4-9 of the Treaty of the European Union

³ See art. 90 of the Treaty on the Functioning of the European Union

⁴ See footnote 6



regulations and administrative actions in the territory of the Union, in order to protect the internal market and avoid distortion of competition. This has always been the case and other NGOs have also reported it⁵

Now that the European Commission has been evaluating the effectiveness of Reg. 1/2005, it is important to keep in mind that article 25 needs to be improved. The EU Commission showed to be aware of the need of a harmonization. Moreover, it recognized the necessity to contract a legal expert to draw up a professional comparative study of the sanction systems of Reg.1/2005 of all EU countries⁶. A similar study was already assigned to a legal firm, for what concerns the sanctions of different countries in the field of commercial road transport. The study was preparatory to harmonise commercial road transport sanctions⁷.

The EU has gone so far as to define minimum criteria for common sanctions in several areas. The time has come for animal transport as well.

Animals' Angels believes, after years of experience in the field, that a common sanction system should have certain characteristics. A recent article published by the Autonomous University of Barcelona⁸ in their legal publication on animal law, outlines some of the most relevant. It also compared the sanction systems of Italy, Romania and Spain, revealing macro-differences among the three countries. The following table summarized key factors influencing an effective sanctioning system for the violation of Reg. 1/2005.

Table of key factors⁹

STRATEGY	Thorough ¹⁰ national and regional plans
	Annual reports with professional analysis and action plan
TRAINING	Pocket-size manual for inspectors
	Standardized training
	Training provided by an expert group of inspectors

⁵ "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.", a document written by WSPA and Eyes on Animals in 2011

⁶ "Report from the Commission to the European Parliament and the Council on the impact of Council Regulation (EC) No 1/2005 on the protection of animals during transport: *"An in-depth comparison of the level of penalties in the Member States would therefore be meaningful only if linked to a precise infringement or offence and contrasted against the gravity of the infringement or offence. Such a comparison has not been carried out by the Commission. However, estimation based on the information available shows significant variations when it comes to the level of penalties for infringements of the Regulation across the European Union"*, page 12

"Report on the implementation of Council Regulation No 1/2005 on the protection of animals during transport within and outside the EU (2018/2110(INI))", report A8-0057/2019 of the European Parliament. See recommendation 7 at page 7, suggestion 28 at page 29, suggestion 18 at page 35 and suggestion 19 at page 41.

⁷ The comparative study was compiled in 2013, by the Italian Law firm Grimaldi and its external collaborators from all over the Union, concerning sanctions of commercial road transport. Grimaldi in its conclusions recommended three policies, to approximate transport legislation: 1) no action; 2) the use of soft law; 3) action through a directive issuing indications for harmonized sanctions. The path for the harmonization of the penalties on animal transports is at point 2), so far.

⁸ "La armonización de la protección animal durante el transporte en la Unión Europea – Análisis del sistema de sanciones en Italia, Rumanía y España", dA. Derecho Animal - Forum of Animal Law Studies, <https://revistes.uab.cat/da/article/view/v11-n3-meriggi>

⁹ Reference to note 44 in the table: Risk assessment in animal welfare – Especially referring to animal transport M. Marahrens,*, N. Kleinschmidt, A. Di Nardo, A. Velarde, C. Fuentes, A. Truar, J.L. Otero, E. Di Fede, P. Dalla Villa

¹⁰ Risk assessment in animal welfare – Especially referring to animal transport M. Marahrens, N. Kleinschmidt, A. Di Nardo, A. Velarde, C. Fuentes, A. Truar, J.L. Otero, E. Di Fede, P. Dalla Villa



EMPOWERMENT	Veterinary and police field inspectors empowered to levy fines
COORDINATION	Agreements between police and veterinarians/respective ministries Contact persons for information exchange
EFFECTIVENESS	High monetary sanctions
	Three levels of intensity: minor, serious, most serious infringements/correspondent sanctions
	Clear and thorough legal categorization of offences, based on Reg. 1/2005 definitions
	Easy procedure to impose accessory sanctions
	European database to track repeat offences
TRANSPARENCY	On-the-spot payment and seizure of trucks and animals for foreign offenders
	National and regional plans, official reports and phone-contact for requests of animal transport checks published on government websites

The above mentioned abstract concludes with the theory for a feasible harmonisation, supported by a legal basis, and with some urgent proposals for the European Commission that Animals' Angels takes the opportunity to recommend here and now:

- 1) **to commission a comparative study from a legal expert, to analyse and compare the sanction system of Reg. 1/2005 in all EU Member States.** The study must include the analysis and comparison of the legal categorization of violations and sanctions. It must identify and compare the competent authorities and their empowerment (at national, regional, or local level?). It should analyse best practices and common features and outline the basis of a common system of sanctions for all states;
- 2) **to consider to directly amend article 25 of Reg. 1/2005, or to issue a separate regulation, providing basic features that all sanctioning systems must have in common** (examples: define different levels of intensity of offences and sanctions: minor, serious and most serious; define minimum/maximum limits of monetary penalties, or how to calculate them in an equal way; define supervising authorities, including police forces and veterinary officers; grant field inspectors investigative and corrective powers).

For more details, please read the attached article.

Your kind feedback to our request will be very much appreciated.

Yours sincerely,