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ZUCHTVIEH-EXPORT GMBH v. STADT KEMPTEN: THE TENSION BETWEEN UNIFORM, CROSS-BORDER REGULATION AND TERRITORIAL SOVEREIGNTY

DAVID MAHONEY*

Abstract: In *Zuchtvieh-Export GmbH v. Stadt Kempten*, the European Court of Justice ruled that a European Council regulation that protects animal welfare during transport applies to the stages of a journey outside of the European Union (EU), if that journey commenced within the EU. This ruling by the European Court of Justice has been praised as it improves animal transport conditions outside of the EU. However, transport companies and governments outside of the EU are less welcoming of the ruling. The ruling highlights the difficulty in determining when and how such a regulation should be applied abroad. It also raises the broader question of striking a balance between efficient and uniform regulation across borders and maintaining territorial sovereignty. As a solution to the issues raised in *Zuchtvieh-Export*, this Comment suggests the use of bilateral international agreements, which would reduce conflict between nations by protecting territorial sovereignty.

INTRODUCTION

In the age of globalization, the relationship between jurisdiction, territoriality, and sovereignty has become increasingly complex.¹ This trend is exemplified in *Zuchtvieh-Export GmbH v. Stadt Kempten*, a recent judgment of the European Court of Justice (ECJ).² On April 23, 2015 the ECJ ruled in *Zuchtvieh-Export* that Council Regulation (EC) No. 1/2005 (Regulation), which protects animals during transport, applies to the stages of a journey outside of the European Un-

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¹ See Cedric Ryngaert, *Whither Territoriality? The European Union's Use of Territoriality to Set Norms with Universal Effects*, in *WHAT'S WRONG WITH INTERNATIONAL LAW?* 434, 434 (Cedric Ryngaert et al. eds., 2015); Hannah L. Buxbaum, *Territory, Territoriality, and the Resolution of Jurisdictional Conflict*, 57 *AM. J. COMP. L.* 631, 632 (2009).

² See Case C-424/13, *Zuchtvieh-Export GmbH v. Stadt Kempten*, 2015 E.C.R. 259. The European Court of Justice (ECJ) is one of the two courts that constitute the Court of Justice of the European Union (CJEU). *The Institution: General Presentation*, CURIA, http://curia.europa.eu/jcms/jcms/Jo2_6999/en/ [<https://perma.cc/Y2YP-EVA4>]. The CJEU, located in Luxembourg, constitutes the European Union (EU) judiciary and aims to ensure a uniform interpretation and application of EU law among the member states. *Id.*

ion (EU) if that journey began within the territory of the European Union.³ In particular, the ECJ ruled that Article 14(1) of the Regulation must be interpreted to mean that the competent authority at the place of departure may require the organizer of the journey to amend the journey log to comply with the Regulation, even for the section of the journey in the territory of a third-party country.⁴ From a practical perspective, the ruling represents an animal rights victory, as it exports the strict EU regulatory law regarding animal transport to third-party countries.⁵ However, this animal rights victory could come at the expense of transport companies as well as governments of third-party countries.⁶

Part I of this Comment describes the relevant facts of *Zuchtvieh-Export*, summarizes the procedural history of the case, and provides a brief overview of the applicable law. Part II of this Comment details the parties' arguments and explains the opinions of Advocate General Yves Bot and the ECJ. Part III highlights the controversy in the application of this Regulation, noting that while the ECJ's judgment improves the transport conditions of animals governed by the Regulation, it could be characterized as interpreting the Regulation in a manner inconsistent with the principle of territoriality as well as EU legislative intent. Part III also suggests engaging in traditional treaty-making as an effective remedy to the disagreement presented in *Zuchtvieh-Export*.

I. BACKGROUND

A. Council Regulation (EC) No. 1/2005

The Regulation, adopted on December 22, 2004 by the Council of the European Union, regulates the "protection of animals during transport and related operations."⁷ The Regulation contains thirty-seven articles divided over six

³ See *Zuchtvieh-Export*, 2015 E.C.R. ¶ 57. See generally Council Regulation 1/2005, 2004 O.J. (L 3) 1 (EC) (describing various measures to protect animals during transport).

⁴ See *Zuchtvieh-Export*, 2015 E.C.R. ¶ 57. In the context of this decision, third-party countries are non-EU members. See *id.*

⁵ See Jessica Lawrence, *Zuchtvieh-Export GmbH v. Stadt Kempten: The Extraterritorial Reach of EU Animal Welfare Rules*, EUR. L. BLOG (June 18, 2015), <http://europeanlawblog.eu/?p=2793> [<https://perma.cc/977J-3Q4W>]; Cedric Ryngaert, *The Long Arm of EU Law: EU Animal Welfare Legislation Extended to International Road Transport*, RENFORCE BLOG (Aug. 24, 2015), <http://blog.renforce.eu/index.php/en/2015/08/24/the-long-arm-of-eu-law-eu-animal-welfare-legislation-extended-to-international-road-transport-2/> [<https://perma.cc/S4XU-LVN5>].

⁶ See Ryngaert, *supra* note 5. The CJEU has justified applying EU regulations in foreign countries when it finds there to be some territorial connection between the conduct regulated and the EU. Lawrence, *supra* note 5.

⁷ Council Regulation 1/2005, *supra* note 3, at 1. The Council of the European Union and the European Parliament jointly adopt EU laws as well as the EU budget. *Council of the European Union*, EUROPA.EU (Jan. 10, 2017), https://europa.eu/european-union/about-eu/institutions-bodies/council-eu_en [<https://perma.cc/RX2Q-BC5F>].

chapters as well as five annexes.⁸ Under the Regulation, the organizer of a long journey of animals must submit a journey log to the proper authorities at the place of departure.⁹ When submitting the journey log before departure, Section 1, the planning section, must be completed, outlining the planning for the journey.¹⁰ Under the planning section, there must be a completed list of the scheduled resting stops, transfer points, and exits.¹¹ In addition to requiring the submission of a journey log, the Regulation requires, *inter alia*, checks at exit points as well as at border inspection posts by veterinarians to ensure that all transportation of animals complies with the Regulation.¹²

B. Stadt Kempen's Refusal to Grant Customs Clearance

Zuchtvieh-Export GmbH¹³ (Zuchtvieh-Export) planned to use two trucks to transport sixty-two cattle from Kempen, Germany to Andijan, Uzbekistan by way of Poland, Belarus, Russia, and Kazakhstan.¹⁴ This journey was to total approximately 7000 kilometers and was scheduled to take place between April 23, 2012 and May 2, 2012.¹⁵

According to the journey log submitted to Stadt Kempen (Kempen) by Zuchtvieh-Export, the only places for rest and transfer of the cattle during the stages of the journey outside of the EU would be Brest, Belarus and Karaganda, Kazakhstan.¹⁶ A rest period of twenty-four hours was scheduled for both locations, where the cattle would be given food and water but would not be unloaded from the trucks.¹⁷ The following and final stage of the transport between Karaganda and Andijan would then take an estimated twenty-nine hours.¹⁸

⁸ See generally Council Regulation 1/2005, *supra* note 3 (setting out the overall layout and structure of the Regulation). The Articles most relevant to the dispute are Articles 1, 2, 3, 14, 15, 21, and 30. See *Zuchtvieh-Export*, 2015 E.C.R. ¶¶ 20–22, 28, 37; Council Regulation 1/2005, *supra* note 3, arts. 1, 2, 3, 14, 15, 21, 30. The journey log found in Annex II, especially points 3, 4, 7, and 8, were also found relevant to the dispute. Council Regulation 1/2005, *supra* note 3, Annex 2, at 32. See *Zuchtvieh-Export*, 2015 E.C.R. ¶¶ 24, 49. In addition, Section 1 of the journey log, which contains the planning details of long journeys, was also central to the dispute. See *Zuchtvieh-Export*, 2015 E.C.R. ¶ 50; see also Council Regulation 1/2005, *supra* note 3, Annex 2, at 33.

⁹ Opinion of Advocate General Bot, ¶ 3, *Zuchtvieh-Export*, 2015 E.C.R. 259.

¹⁰ See *id.*; Council Regulation 1/2005, *supra* note 3, Annex 2, at 32.

¹¹ Opinion of Advocate General Bot, *supra* note 9, ¶ 3; Council Regulation 1/2005, *supra* note 3, Annex 2, at 33.

¹² Council Regulation 1/2005, *supra* note 3, art. 21(1).

¹³ Zuchtvieh-Export GmbH is a cattle export company based in Lohfelden, Germany. *Company Portrait*, ZVE ZUCHTVIEH-EXPORT GMBH, http://www.zv-export.de/firmenportrait_eng.htm [https://perma.cc/E53H-HUCJ].

¹⁴ *Zuchtvieh-Export*, 2015 E.C.R. ¶ 16.

¹⁵ *Id.*

¹⁶ *Id.* ¶ 17.

¹⁷ *Id.*

¹⁸ *Id.*

On January 30, 2012, Kempten refused customs clearance for the shipment of the sixty-two cattle to Andijan because, in their view, point 6 of the planning section of the journey log, which lists the scheduled resting, transfer, and exit points, was not in compliance with the Regulation.¹⁹ According to Kempten, Zuchtvieh-Export had not specified sufficient rest and unloading stops for the section of the journey outside the EU.²⁰ In order for Kempten to grant customs clearance for the sixty-two cattle, Kempten required Zuchtvieh-Export to amend the journey log to comply with the Regulation²¹ for the stages of the journey taking place outside of the EU.²²

C. Procedural History in Germany

In response to Kempten's refusal to grant customs clearance for the shipment of cattle, Zuchtvieh-Export applied for an interlocutory injunction, but was unsuccessful.²³ In addition to applying for an interlocutory injunction, Zuchtvieh-Export brought an action against Kempten, challenging their refusal to issue customs clearance.²⁴ The Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court) heard the case on appeal.²⁵ In particular, the company alleged that Kempten's decision was unlawful and asked the court to compel Kempten to issue customs clearance for the shipment of cattle.²⁶

In response, the Bavarian Higher Administrative Court stayed the proceedings and referred two questions to the ECJ.²⁷ In essence, these two questions ask

¹⁹ See *id.* ¶¶ 17, 18.

²⁰ See *id.* Point 6 of the planning section requires a “[l]ist of scheduled resting, transfer or exit points.” Council Regulation 1/2005, *supra* note 3, Annex 2, at 33.

²¹ See Council Regulation 1/2005, *supra* note 3, Annex 2, at 33.

²² *Zuchtvieh-Export*, 2015 E.C.R. ¶ 18.

²³ *Id.* ¶ 19.

²⁴ *Id.*

²⁵ *Id.*; see also Court of Justice of the European Union Press Release 43/15, Protection for Animals Under EU Law Does Not Stop at the Outer Borders of the EU (Apr. 23, 2015).

²⁶ *Zuchtvieh-Export*, 2015 E.C.R. ¶ 19.

²⁷ *Id.* ¶ 33. The two questions referred to the ECJ were:

(1) Is Article 14(1) of Regulation (EC) No 1/2005 to be interpreted as meaning that in the case of long journeys for [animals concerned], where the place of departure is in a Member State of the European Union but the place of destination is in a third country, the competent authority of the place of departure may stamp the journey log submitted by the organiser in accordance with Article 14(1)(c) only if the journey log meets the requirements set out in Article 14(1)(a)(ii) for the entire journey from the place of departure to the place of destination, and thus also for stages of the journey which lie entirely outside the territory of the European Union?

(2) Is Article 14(1) of Regulation (EC) No 1/2005 to be interpreted as meaning that the competent authority at the place of departure pursuant to that provision may, in accordance with Article 14(1)(b) of that regulation, require the organiser of the transport to change the arrangements for the intended long journey in such a way that it will comply with the provisions of that regulation for the entire journey from the place of

whether Article 14(1) of the Regulation applies to stages of a journey taking place outside of the EU when the journey begins in the EU and ends in a third-party country.²⁸ On April 23, 2015, the Fifth Chamber of the ECJ, contrary to the opinion of Advocate General Bot,²⁹ held that the Regulation applied to those stages of the journey outside of the EU.³⁰ More specifically, the ECJ held that the Regulation requires the journey organizer to submit a journey log that is realistic and reflects compliance with the Regulation for the stages of the journey outside of the EU.³¹ The court reasoned that if the journey log is not realistic, the departing authority has the power to require the organizer to amend the journey log to ensure compliance with the Regulation for those stages of the journey outside of the EU.³²

II. DISCUSSION

A. Application of the Regulation

The two questions referred to the ECJ involve the interpretation of Article 14 of the Regulation.³³ Article 14, titled “Checks and other measures related to journey log to be carried out by the competent authority before long journeys,” sets out in Section 1 the departing authority’s duties and obligations in long journeys such as the proposed journey by *Zuchtvieh-Export*.³⁴ Of particular relevance is subsection (a)(ii) of Section 1, which states that the authority at the departing location must verify “the journey log submitted by the organiser is realistic and indicates compliance with this Regulation.”³⁵ If the authority at the departure point believes that the journey log is in compliance, the departing authority must approve the journey log.³⁶ If, however, the departing authority believes the journey log is not in compliance, the departing authority must require the organizer to change the log to comply with the regulation.³⁷

departure to the place of destination, even if some stages of that journey lie entirely within third countries?

Id.

²⁸ Opinion of Advocate General Bot, *supra* note 9, ¶ 34.

²⁹ *See id.* ¶¶ 80, 81. Advocate General Bot reasoned that Council Regulation 1/2005 does not apply to the stages of a long journey in a third country when the journey commences within the EU and the destination is in a third country. *Id.*

³⁰ *Zuchtvieh-Export*, 2015 E.C.R. ¶ 57.

³¹ *Id.* ¶ 56.

³² *Id.*

³³ *See* Case C424/13, *Zuchtvieh-Export GmbH v. Stadt Kempten*, 2015 E.C.R. 259, ¶ 33.

³⁴ Council Regulation 1/2005, *supra* note 3, art. 14(1).

³⁵ *Id.* art. 14(1)(a)(ii).

³⁶ *Id.* art. 14(1)(c).

³⁷ *Id.* art. 14(1)(b).

B. The Parties' Contentions in the Bavarian Higher Administrative Court

The central dispute in the Bavarian Higher Administrative Court was whether, when a long journey commences within the EU with a destination in a third-party country, Article 14 of the Regulation applies outside the territory of the EU.³⁸ In the Bavarian Higher Administrative Court, Zuchtvieh-Export contended that Article 14 does not apply outside of the EU,³⁹ reasoning that such an application would be unworkable for a number of reasons.⁴⁰ In particular, Zuchtvieh-Export argued that compliance with the Regulation outside of the EU would be “unrealistic and counter-productive” as the Regulation may conflict with third-party country regulations.⁴¹ Furthermore, Zuchtvieh-Export contended that compliance with the Regulation necessarily depends upon the existence of a high-quality animal transportation structure that third-party countries may not have in place.⁴²

The company also relied on specific articles within the Regulation to bolster its position.⁴³ Specifically, Zuchtvieh-Export reasoned that Article 21(1)(e),⁴⁴ which relates to checks at exit points and border inspection posts, suggests that the Regulation does not apply outside of the EU.⁴⁵ Additionally, Zuchtvieh-Export cited Article 30(6)⁴⁶ for support, which acknowledges that exceptions to the Regulation may be granted for journeys involving travel in remote regions.⁴⁷ Zuchtvieh-Export further contended that point six of the planning section of the journey log does not require the journey organizer to enumerate all of the resting points, as it is not possible to predict each resting point due to “geographic conditions.”⁴⁸ Finally, Zuchtvieh-Export asserted that

³⁸ *Zuchtvieh-Export*, 2015 E.C.R. ¶ 20.

³⁹ *Id.* ¶ 26.

⁴⁰ *See id.* ¶¶ 26–31.

⁴¹ *Id.* ¶¶ 27, 30. Zuchtvieh-Export points out, as an example, the regulations of the Russian Federation, which prohibit unloading animals during rest periods. *Id.* ¶ 30.

⁴² *Id.* ¶ 27.

⁴³ *See id.* ¶¶ 26, 28, 29.

⁴⁴ *See* Council Regulation 1/2005, *supra* note 3, art. 21(1)(e). Article 21(1) states that “where animals are presented at exit points or border inspection posts, official veterinarians of the Member States shall check that the animals are transported in compliance with this Regulation . . .” *Id.* Sub-section (e) of Article 21(1) reads as follows: “that, in the case of export, transporters have provided evidence that the journey from the place of departure to the first place of unloading in the country of final destination complies with any international agreement listed in Annex V applicable in the third country concerned.” *Id.*

⁴⁵ *Zuchtvieh-Export*, 2015 E.C.R. ¶ 26.

⁴⁶ Council Regulation 1/2005, *supra* note 3, art. 30(6). Article 30(6) states that “[d]erogations concerning requirements for long journeys to take account of the remoteness of certain regions from the mainland of the [European] Community, may be adopted in accordance with the procedure as referred to in Article 31(2).” *Id.*

⁴⁷ *Zuchtvieh-Export*, 2015 E.C.R. ¶ 28.

⁴⁸ *Id.* ¶ 29.

the principle of territoriality supports the position that the application of the Regulation should be restricted to the EU.⁴⁹

In response to the arguments put forth by Zuchtvieh-Export, Kempton claimed that a lack of resting points outside of the EU did not absolve transporters of their duties under the Regulation.⁵⁰ Furthermore, Kempton argued that because the animals would not be unloaded for rest periods outside of the EU, the transport containers would not be able to be cleaned out, the animals would not be able to be washed, and it would be impossible to inspect the animals' health.⁵¹

After considering both parties' contentions but before referring the two questions to the ECJ, the Bavarian Higher Administrative Court made some preliminary observations.⁵² First, the referring court gave considerable weight to the appendix of Annex II of the Regulation.⁵³ The court inferred that points two through four of the planning section of the journey log, when read in conjunction with the definition of "journey" under Article 2(j), support a finding that the information provided in points two through four apply to the entire journey.⁵⁴ Second, the court found that the journey log at issue was not "realistic" as mandated by Article 14(1)(a)(ii) of the Regulation because it failed to include any resting points outside of the EU.⁵⁵ In sum, the Bavarian court reasoned that under the Regulation, the authority at the departing point may approve the journey log only when the Regulation has been complied with both within the EU and outside of the EU, and that in this instance, Zuchtvieh-Export had not complied with the regulation.⁵⁶

C. *Opinion of Advocate General Bot*

On September 11, 2014, approximately seven months before the ECJ issued its ruling in this case, Advocate General Yves Bot delivered an impartial advisory opinion to the ECJ considering the two questions presented in *Zuchtvieh-Export*.⁵⁷ According to the Advocate General,⁵⁸ the Regulation does not

⁴⁹ *Id.* ¶ 31. The principle of territoriality provides that "a country has the right of sovereignty within its borders." *Territoriality*, BLACK'S LAW DICTIONARY (10th ed. 2014).

⁵⁰ *Zuchtvieh-Export*, 2015 E.C.R. ¶ 32.

⁵¹ *Id.* The Landesanzwaltschaft Bayern (Public Prosecutor's Office for the Land of Bavaria, Germany) also joined in on this point, as well as the preceding point regarding territoriality. *Id.*

⁵² See Opinion of Advocate General Bot, *supra* note 9, ¶¶ 21, 22, 23, 25.

⁵³ *Zuchtvieh-Export*, 2015 E.C.R. ¶ 21. The referring court also viewed Articles 1, 3, 5, and 21(1)(e) of the Regulation as relevant to the dispute. *Id.* Annex II contains the provisions of the journey log as well as the journey log itself. Council Regulation 1/2005, *supra* note 3, Annex 2, at 32–37.

⁵⁴ *Zuchtvieh-Export*, 2015 E.C.R. ¶ 22.

⁵⁵ *Id.* ¶ 25.

⁵⁶ Opinion of Advocate General Bot, *supra* note 9, ¶¶ 22, 25.

⁵⁷ See *id.* ¶¶ 33, 34.

⁵⁸ *Court of Justice: Presentation*, CURIA, http://curia.europa.eu/jcms/jcms/Jo2_7024/en/#composition [<https://perma.cc/UUV7-HECM>]. Advocate Generals, appointed for six-year terms, pro-

apply outside the EU for journeys commencing within the EU.⁵⁹ In reaching this conclusion, the Advocate General read Article 1(1), which states that the regulation is to be applied “within the Community,” to mean that the entire Regulation only applies within the EU.⁶⁰ As for the definitions of “transport” and “journey” in Articles 2(j) and 2(w), respectively, the Advocate General reasoned that such definitions cannot be used to justify an expanded reading of the Regulation.⁶¹ Rather, those definitions must be read in the context of Article 1(1), which defines the scope of the Regulation.⁶² The Advocate General concludes his opinion by stating that while he recognizes the importance of having adequate safeguards in place in the realm of animal transportation, the language used in the Regulation demonstrates that the legislature did not intend for the regulation to apply outside of the EU.⁶³

D. The ECJ's Findings

The ECJ took the opposite view of the Advocate General, holding that the Regulation does apply outside of the EU.⁶⁴ As a preliminary matter, the ECJ observed that the Regulation is based on Protocol No. 33 on the protection and welfare of animals, the substance of which is incorporated in Article 13 of the Treaty on the Functioning of the European Union.⁶⁵ Therefore, the court reasoned, protection of animals is in the public interest and “the transport of animals over long journeys should be limited as far as possible.”⁶⁶ With this in mind, the court turned to the scope of the regulation, finding that the phrase “within the Community” in Article 1(1) relied upon by the Advocate General should not be read in isolation, but rather, must take into account the second clause of Article 1(1).⁶⁷ The ECJ also agreed with the position taken by the Bavarian Higher Administrative Court—in light of the definition of “journey”

vide impartial advisory opinions to the ECJ before the ECJ decides a case. *Id.* There are eleven Advocate Generals currently appointed to the ECJ. *Id.*

⁵⁹ Opinion of Advocate General Bot, *supra* note 9, ¶¶ 4, 5.

⁶⁰ *Id.* ¶¶ 47–48. Article 1(1) states “[t]his regulation shall apply to the transport of live vertebrate animals carried out within the Community, including the specific checks to be carried out by officials on consignments entering or leaving the customs territory of the Community.” Council Regulation 1/2005, *supra* note 3, art. 1(1).

⁶¹ Opinion of Advocate General Bot, *supra* note 9, ¶ 57.

⁶² *Id.*

⁶³ *Id.* ¶¶ 92, 94.

⁶⁴ *See id.*; *Zuchtvieh-Export*, 2015 E.C.R. ¶ 57.

⁶⁵ *Zuchtvieh-Export*, 2015 E.C.R. ¶ 35. Article 13 of the Treaty on the Functioning of the European Union states that “[i]n formulating and implementing [certain types of EU policies, the EU and Member states must] pay full regard to the welfare requirements of animals.” Consolidated Version of the Treaty on the Functioning of the European Union art. 13, Oct. 26, 2012, 2012 O.J. (C 326) 54.

⁶⁶ *Zuchtvieh-Export*, 2015 E.C.R. ¶¶ 35–36.

⁶⁷ *See id.* ¶ 38. The ECJ explained that the second clause in Article 1(1) does take into account transportation in third countries, as that Article recognizes certain checks that must be carried out by customs officials at borders. *Id.*

set out in Article 2(j), the information in the planning section of the journey log must describe the entire journey.⁶⁸ Finally, the ECJ noted that should compliance with the Regulation be unrealistic, the departing authority has the requisite amount of discretion to accept “realistic planning” for the journey—in other words, the animals’ health and safety will be protected at a level equal to that imposed by the Regulation.⁶⁹

III. ANALYSIS

A. A Victory for Animal Welfare, but at What Cost?

The ECJ’s judgment in *Zuchtvieh-Export GmbH v. Stadt Kempten* has garnered widespread approval among animal rights groups as the judgment facilitates improved transport conditions for animals.⁷⁰ Because EU animal welfare legislation is regarded as among the most rigorous and comprehensive in the world,⁷¹ extending it to third-party countries will improve the quality of animal transport conditions in those countries.⁷² Moreover, as over three million animals are exported from the EU to third-party countries each year, this ruling’s impact on transport conditions will be quantitatively significant.⁷³

While the judgment in *Zuchtvieh-Export* is a victory for animal welfare, the decision is not without potentially negative effects.⁷⁴ From an economic standpoint, the ruling could negatively impact transport companies, as complying with the Regulation may raise the cost of shipping animals governed by the Regulation.⁷⁵ In addition to the potentially higher animal transport costs, the ECJ’s judgment may result in an inconsistent and unpredictable application of the Regulation, because it provides the departing authorities with broad discretion in evaluating whether a journey is in compliance with the Regulation.⁷⁶ Giving the departing authority such broad discretion to approve or reject the

⁶⁸ *Id.* ¶ 50.

⁶⁹ *Id.* ¶ 54.

⁷⁰ See Vincent Chapaux, *Welfare vs. Trade: Latest Trends in European Animal Transportation*, INTERNATIONALANIMALS (May 19, 2015), <https://internationalanimals.wordpress.com/2015/05/19/welfare-vs-trade-latest-trends-in-european-animal-transportation/> [<https://perma.cc/FX4U-C537>]; Rosalind English, *Export of Live Animals for Slaughter: European Court Rules That Animal Welfare Laws Apply Outside the EU*, UK HUMAN RIGHTS BLOG (Apr. 29, 2015), <https://ukhumanrightsblog.com/2015/04/29/export-of-live-animals-for-slaughter-european-court-rules-that-animal-welfare-laws-apply-outside-the-eu/> [<https://perma.cc/8FXG-BXTJ>]; Lawrence, *supra* note 5; Ryngaert, *supra* note 5.

⁷¹ *Animal Health and Welfare*, FUR EUROPE, <http://www.fureurope.eu/fur-policies/legislation/animal-welfare/> [<https://perma.cc/39KM-JP4G>].

⁷² See English, *supra* note 70; Lawrence, *supra* note 5; Ryngaert, *supra* note 5.

⁷³ English, *supra* note 70 (citing *Live Exports from the EU*, COMPASSION IN WORLD FARMING, <http://www.civf.org.uk/our-campaigns/live-animal-transport/live-exports-from-the-eu/> [<https://perma.cc/V4ZA-QUKA>]).

⁷⁴ See Lawrence, *supra* note 5; Ryngaert, *supra* note 5.

⁷⁵ See Ryngaert, *supra* note 5.

⁷⁶ See Opinion of Advocate General Bot, *supra* note 9, ¶ 89; Ryngaert, *supra* note 5.

journey plans would result in each departing authority evaluating journey logs in a different manner.⁷⁷ Such differences in evaluation would hinder the uniform application of the Regulation across the EU, which is a primary goal of the legislation.⁷⁸

The mixed effects of the ECJ's judgment are the consequence of pitting two of the fundamental aims of the Regulation against each other.⁷⁹ First, the EU recognizes the importance of protecting animal welfare as it notes in the preamble of the Regulation that "in formulating and implementing . . . transport policies, the Community and the Member States are to pay full regard to the welfare requirements of animals."⁸⁰ However, the preamble to the Regulation also makes clear the importance of facilitating trade through "eliminat[ing] technical barriers to trade in live animals and . . . allow[ing] market organi[z]ations to operate smoothly . . ."⁸¹ In *Zuchtvieh-Export*, the protection of animal welfare took precedence over the facilitation of trade.⁸²

B. Legal Impact of the ECJ's Judgment

In light of the Advocate General's strong influence at the ECJ,⁸³ it is notable that in *Zuchtvieh-Export*, the ECJ did not follow the Advocate General's advisory opinion.⁸⁴ The ECJ's disagreement with the Advocate General is partially explained, however, by the fact that the ECJ's judgment in this case is consistent with recent ECJ case law, which supports a broad reading of EU jurisdiction by allowing activity occurring in third-party countries to be regulated.⁸⁵

⁷⁷ See Opinion of Advocate General Bot, *supra* note 9, ¶ 89.

⁷⁸ See *id.*

⁷⁹ See Chapaux, *supra* note 70.

⁸⁰ See Council Regulation 1/2005, *supra* note 3, para. 1; Chapaux, *supra* note 70.

⁸¹ See Council Regulation 1/2005, *supra* note 3, para. 2; Chapaux, *supra* note 70.

⁸² Chapaux, *supra* note 70. Interestingly, the same regulation at issue in *Zuchtvieh-Export* was also considered in *Danske Svineproducenter v. Justitsministeriet*. See Case C-316/10, 2011 E.C.R. I-13724; Chapaux, *supra* note 70. In *Danske Svineproducenter*, trade facilitation took precedence over animal welfare when the court ruled that increasing the height of transport compartments for pigs on long journeys would be disadvantageous to trade. See 2011 E.C.R. ¶ 69; Chapaux, *supra* note 70.

⁸³ See Carlos Arrebola et al., *An Econometric Analysis of the Influence of the Advocate General on the Court of Justice of the European Union*, 5 CAMBRIDGE J. INT'L & COMP. L. 82, 112 (2016); see also Carlos Arrebola & Ana Julia Mauricio, *Measuring the Influence of the Advocate General on the Court of Justice of the European Union: Correlation or Causation?*, EU LAW ANALYSIS (Jan. 17, 2016), <http://eulawanalysis.blogspot.com/2016/01/measuring-influence-of-advocate-general.html> [https://perma.cc/JW6Q-G6M5].

⁸⁴ See Lawrence, *supra* note 5.

⁸⁵ See *id.* Lawrence cites *Air Transport Ass'n v. Secretary of State for Energy & Climate Change* as an example of this recent trend. See Case C-366/10, 2011 E.C.R. I-13833, ¶¶ 118, 124; Lawrence, *supra* note 5. In *Air Transport*, an alliance of American airline companies challenged the validity of an EU law, which imposes the EU's emissions trading scheme on the stages of airline flights taking place outside of the EU, as long as the airplane lands in the EU. See *Air Transp.*, 2011 E.C.R. ¶¶ 39,

Although *Zuchtvieh-Export* seems to be consistent with the ECJ's recent case law tending to expand EU jurisdiction, *Zuchtvieh-Export* potentially offends traditional international legal norms.⁸⁶ First, the decision seems to conflict with the principle of territoriality, widely recognized in international law.⁸⁷ Second, the judgment of the ECJ appears to go against the intent of the EU legislature.⁸⁸ The language of the Regulation supports the position that the EU legislature intended to limit its scope to the territory of the EU.⁸⁹ For example, Article 1(1), which sets out the scope of the Regulation, states that the Regulation applies "within the Community" and notes that the border checks must be carried out on animals entering or exiting the Community.⁹⁰ Furthermore, although the mention of third-party countries is absent from Article 1(1), the EU legislature nevertheless did contemplate the Regulation's interaction with third-party countries, as other Articles do explicitly reference such interactions.⁹¹ For example, the journey log required by the Regulation recognizes in point 3(e) of annex II that in journeys to third-party countries, the journey log travels with the animals "at least until the exit point" of the EU.⁹²

In conflicting with territoriality, the judgment in *Zuchtvieh-Export* does little to encourage international cooperation, as the Regulation may be incompatible with domestic regulations in third-party countries.⁹³ The application of EU regulations abroad undermines the democratic process in third-party countries, as those countries have at most a minimal role in the formulation and implementation of these regulations.⁹⁴ Moreover, applying such regulations abroad discourages international collaboration by inviting retaliatory conduct from third-party countries.⁹⁵

42, 43; Lawrence, *supra* note 5. The ECJ upheld the validity of the EU law, reasoning that jurisdiction was proper because the airplane would need to land in the EU in order for the law to come into effect. See *Air Transp.*, 2011 E.C.R. ¶¶ 124, 157; Lawrence, *supra* note 5.

⁸⁶ See Lawrence, *supra* note 5; Ryngaert, *supra* note 5.

⁸⁷ See Lawrence, *supra* note 5.

⁸⁸ See Opinion of Advocate General Bot, *supra* note 9, ¶ 94.

⁸⁹ See *id.*

⁹⁰ See Council Regulation 1/2005, *supra* note 3, art. 1(1); see also Opinion of Advocate General Bot, *supra* note 9, ¶ 47.

⁹¹ See Opinion of Advocate General Bot, *supra* note 9, ¶¶ 62–65.

⁹² See Council Regulation 1/2005, *supra* note 3, Annex 2, at 32. Point 3(e) of Annex II requires the organizer of the journey to "ensure that the journey log accompanies the animals during the journey until the point of destination or, in case of export to a third [party] country, at least until the exit point." *Id.*

⁹³ See Ryngaert, *supra* note 5.

⁹⁴ See Austen L. Parrish, *Reclaiming International Law from Extraterritoriality*, 93 MINN. L. REV. 815, 860 (2009) (highlighting the problems caused by "extraterritoriality" and advocating for a return to traditional, international lawmaking).

⁹⁵ See *id.* at 857.

The use of bilateral international agreements could provide an effective and peaceful solution to this problem.⁹⁶ Reliance on international agreements, such as the international agreement referenced in Article 21(1), is founded on “negotiation and consent” and thereby reduces conflict.⁹⁷ Thus, instead of unilaterally applying EU laws in third-party countries, which is the case in *Zuchtvieh-Export*, a more sensible approach involves engaging in traditional treaty-making.⁹⁸ Such international lawmaking stabilizes relations between nations by preserving territorial sovereignty and increases the legitimacy in enforcing international laws.⁹⁹

CONCLUSION

The judgment in *Zuchtvieh-Export GmbH v. Stadt Kempten* was a victory for animal welfare. However, the judgment comes at the expense of transport companies as well as third-party countries, who must accommodate this regulation. The judgment’s legal validity has also been questioned. The judgment stretches the bounds of EU jurisdiction and, according to some, is inconsistent with EU legislative intent. While the protection of animal welfare is an important policy that must be forwarded, this should be done through bilateral agreements between the EU and third-party countries. Doing so will result in a more consistent application of animal welfare laws as well as promote international cooperation.

⁹⁶ See *id.* at 869–70, 874.

⁹⁷ See *id.* at 858; see also Council Regulation 1/2005, *supra* note 3, at 11 & Annex 5, at 43. See generally European Convention for the Protection of Animals During International Transport (Revised), Nov. 6, 2003, E.T.S. No. 193 (providing guidelines to ensure the safe and humane transport of animals across international borders).

⁹⁸ See Parrish, *supra* note 94, at 820–21.

⁹⁹ See *id.* at 874.