

Policy Guideline of the Minister for Agriculture, Fisheries, Food Security and Nature of ..., No WJZ/, amending the Policy Guideline on animal transport at high temperatures

The Minister of Agriculture, Fisheries, Food Security and Nature,

Having regard to Article 4:81 of the General Administrative Law Act and Article 3 of Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations, and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ 2005 L 3);

Hereby decrees the following:

Article I

In Article 1 of the Policy Guideline on High Temperature Animal Transport, 'if the transport takes place at an outdoor temperature of at least 35 degrees Celsius with a means of transport that is not equipped with an active cooling system' is replaced by 'if the transport takes place at an outdoor temperature of at least 30 degrees Celsius with a means of transport that is not equipped with an active cooling system or if the transport involves ornamental fish, reptiles, edible fish, crabs or lobsters, that transport takes place at an outdoor temperature of at least 35 degrees Celsius with a means of transport that is not equipped with an active cooling system'.

Article II

This policy guideline shall come into force on the day following publication of the Government Gazette in which it is included.

This policy guidelines, along with its explanatory notes, shall be published in the Government Gazette.

THE MINISTER OF AGRICULTURE, FISHERIES, FOOD SECURITY AND NATURE,

Explanatory Note

1. Introduction

This policy guideline specifies, for the situation of transport at high ambient temperatures, the prohibition to 'transport or have animals transported in such a way that it is likely to cause injury or unnecessary suffering to the animals' laid down in Article 3 of Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ 2005 L 3) (hereinafter: Transport Regulation). Transporting animals in hot weather conditions can lead to heat stress and suffering, thereby violating this prohibition. The 2020 policy guideline established that this is always the case at an outdoor temperature of 35 degrees or more. With this amendment to the policy guideline, the outside temperature limit is adjusted from 35 degrees Celsius to 30 degrees Celsius, because new scientific insights indicate that animals above this outside temperature are at high risk of experiencing heat stress. The policy guideline applies to all transport in the Netherlands, even if they originate from another country or are en route to another country. For the transport of ornamental fish, reptiles, fish for consumption, crabs and lobsters, the outside temperature limit remains 35 degrees Celsius.

2. Consequences of high temperatures for animal welfare

The scientific report of the European Food Safety Authority (EFSA) on welfare risks in animal transport¹ shows that with the humidity prevailing in the Netherlands, an outdoor temperature of 30 degrees Celsius or higher always poses a significant risk of welfare problems due to heat stress. The same report reveals that there are also increased risks of heat stress at outdoor temperatures lower than 30 degrees Celsius for different animal species. In order to also take into account the practicability of the policy guideline, a generic temperature limit has been chosen for all animal species on all transports subject to the requirements of Article 3 of the Transport Regulation. This limit is the same as the temperature limit that already exists for long-distance transports. The reason for this temperature limit for long-distance transport is a call from the European Commission from 2019 to Member States to no longer allow long transports when an outdoor temperature of 30 degrees Celsius or higher is expected along the way. The Minister of LNVN has responded to this call, as have many other European Member States.

Nevertheless, even at ambient temperatures below 30 degrees, unnecessary suffering due to heat stress can occur in animals being transported. As described in the National Plan for Livestock Transport at Extreme Temperatures, the NVWA carries out additional checks from a predicted outdoor temperature of 27 degrees Celsius in De Bilt. It takes enforcement action if there is heat stress and suffering of animals as a result of transport under warm conditions, and thus an infringement of Article 3 of the Transport Regulation.

The risk of animal suffering in warm conditions is higher during transport than in other situations (e.g. in stables). There are two reasons for this. First, loading and transport cause additional activity, often accompanied by a stress response from animals. Animals are therefore more quickly overheated. Second, during transport, animals are closer to each other compared to the situation in the stable, with less space above them for the necessary ventilation, which means that they are less able to dissipate their body heat. The animals cannot escape from this situation to seek cooling. For the above reasons, it is therefore justified to state that the transport of animals at outdoor temperatures of 30 degrees and above at the humidity prevailing in the Netherlands always poses a high risk of unnecessary suffering.

An exception applies to the transport of ornamental fish, reptiles, consumer fish, crabs and lobsters. The reason for this is that for these animal categories, especially for the many species kept and traded in the Netherlands, it is not plausible that they have an increased chance of experiencing heat stress during transport above 30 degrees Celsius. Ornamental fish and reptiles often live in their natural habitat under warm or even hot living conditions. In addition, ornamental fish are transported in bags with water in polystyrene containers. Consumable fish, crabs and lobsters are also usually transported in water. This water heats up very gradually, so it is not expected that the

¹ European Food Safety Authority, 7 September 2022 'Welfare of pigs during transport' (<https://www.efsa.europa.eu/en/efsajournal/pub/7445>), European Food Safety Authority, 7 September 2022 'Welfare of cattle during transport' (<https://www.efsa.europa.eu/en/efsajournal/pub/7442>), European Food Safety Authority, 7 September 2022 'Welfare of domestic birds and rabbits transported in containers' (<https://www.efsa.europa.eu/en/efsajournal/pub/7441>), European Food Safety Authority, 7 September 2022 'Welfare of small ruminants during transport' (<https://www.efsa.europa.eu/en/efsajournal/pub/7404>), European Food Safety Authority, 7 September 2022 'Welfare of equidae during transport' (<https://www.efsa.europa.eu/en/efsajournal/pub/7444>).

water temperature during transport will rise to critical levels for the fish, crabs and lobsters. Furthermore, no EFSA opinions are available regarding the maximum ambient temperature for the transport of reptiles, ornamental fish, edible fish, crabs and lobsters. There is no scientific justification that lowering the maximum temperature would result in welfare gains for these animals. Neither the European Commission's proposal for the revision of the Transport Regulation does set a maximum temperature for the transport of these animals. Finally, these categories of animals have a different physiology than mammals, meaning that their heat management functions differently and they can withstand higher temperatures. Nevertheless, these animal categories also have maximum temperatures above which they encounter problems. Therefore, the previous limit of 35 degrees remains in force for these animal categories.

3. Planning by transport organiser

The Transport Regulation emphasises the importance of good planning for the transport of animals. Article 5(3), introductory sentence and point (a), requires those organising the transport of animals to ensure, before each transport, that the welfare of the animals is not compromised by insufficient coordination of the different parts of the transport and that weather conditions are taken into account. It is therefore necessary to act in anticipation. This means that animal transport should in any case not take place if there is a risk that a transport en route crosses an area where the outside temperature is 30 degrees Celsius or higher. Even with expected temperatures of below 30 degrees, given the chance of welfare problems in relation to the animal species and category at certain temperatures, it must be carefully considered whether transport can take place. If a transport does take place at outside temperatures of 30 degrees or higher, it is important for the welfare of the animals that the transport is not delayed for a long period and, if necessary, is led to a suitable place where the animals can be unloaded and accommodated. The fact that, in such cases, transport is thus continued – as limited as possible – is of course without prejudice to the fact that there is an infringement of Article 3 of the Transport Regulation and that enforcement action will therefore be taken.

4. Means of transport with refrigeration systems

Because it ultimately concerns the conditions for the animals in the means of transport, this policy guideline only applies to vehicles that are not equipped with an active cooling system in the animal compartments, namely air conditioning. Means of transport with active refrigeration systems are capable of sufficiently cooling (or heating, as is the practice with the conditioned transport of day-old chicks) the temperature in the means of transport, regardless of the outside temperature, to temperatures that are pleasant for the animals. The presence of ventilation (mechanical or otherwise) is insufficient to assume that there is a cooling system within the meaning of this policy guideline, because ventilation blows in warm outside air. While this may be more pleasant for the animals, the temperature for the animals will not be lowered, meaning the risk of suffering remains unchanged. Particularly during times when the cattle truck comes to a standstill, such as during possible traffic jams or the driver's rest periods, the heat in vehicles without active cooling quickly increases, and this is not prevented by ventilation. Animal transports that are not covered by this policy guideline due to the presence of an active refrigeration system must, of course, still comply with the provisions of the Transport Regulation, which means, among other things, that the animals must not be caused unnecessary injury or suffering during transport.

5. Regulatory burden

This policy guideline serves to explain the Transport Regulation; therefore, no regulatory burden analysis has been carried out.

6. Implementation and enforceability test

Test summary

In the Enforcement, Feasibility, and Fraud Resistance Test (HUF test), the NVWA concludes that the policy guideline is limitedly enforceable and feasible. The NVWA states that this limitation stems from the lack of a legal basis to assess the temperature en route prior to long-distance transport and – if this temperature exceeds 30 degrees Celsius en route – to not process the application for transport. The NVWA also states that infringements can only be detected *in flagrante delicto*, meaning that the NVWA cannot act in anticipation of domestic transport. In addition, the NVWA states that the policy guideline does not specify how the NVWA can determine that the policy guideline has been infringed. Furthermore, the NVWA states that – given that days when the

temperature reaches 30 degrees Celsius or more will most likely become more frequent in the future – it will in practice always have to weigh the use of capacity for monitoring animal welfare during transport against monitoring other animal welfare risks. As regards the exception for transport by means of transport equipped with an active cooling system, the NVWA states that no criteria have been included with which such a system must comply. The NVWA is therefore not in a position to assess this. The NVWA also states that it must be made clear in the explanatory memorandum to the policy guideline that the policy guideline is not contrary to the Transport Regulation. Finally, the NVWA indicates that it is uncertain what will happen if the NVWA issues a health certificate when it is cooler than 30 degrees Celsius, and later takes enforcement action during transport in the Netherlands if the temperature exceeds 30 degrees Celsius.

Response

The NVWA must assess, prior to long transport, whether the transport planning provided is realistic and whether it complies with the rules laid down in the Transport Regulation. As indicated above, this policy guideline specifies the prohibition on ‘transporting or having animals transported in such a way that it is likely to cause injury or unnecessary suffering to the animals’ laid down in Article 3 of the Transport Regulation. If, prior to long transport, it is already clear that it will most likely be warmer than 30 degrees Celsius along the way, the NVWA can thus determine that the transport planning does not comply with the rules of the Transport Regulation. For example, the policy guideline provides legal support to the NVWA in assessing the transport planning prior to long-distance transport. Because the policy guideline is an interpretation of the prohibition on ‘transporting or having animals transported in such a way that they are likely to cause injury or unnecessary suffering’ as laid down in Article 3 of the Transport Regulation, it is not contrary to the Transport Regulation.

In the case of short transport and domestic transport, such transport planning is not mandatory under the Transport Regulation. It is therefore indeed not possible to act in anticipation here, and enforcement depends on findings *in flagrante delicto*. In addition, a health certificate issued does not relieve the transporter of their responsibility for animal welfare during transport. The transporter must still carry out the transport in accordance with the rules of the transport regulation, allowing enforcement if the NVWA determines that the transporter is transporting animals at 30 degrees Celsius.

The NVWA can determine for itself how it can demonstrate that the policy guideline has been violated. Such a method can be further elaborated by NVWA in a work instruction, as was done with the 2020 policy guideline in which 35 degrees Celsius is the upper limit for animal transport.

That the NVWA must, in practice, make a decision based on capacity available regarding the deployment of official veterinarians and other supervisors in oversight is understandable.

With regard to the criteria that active cooling must meet, the explanatory memorandum to this policy guideline clarifies that this means air conditioning, which allows the temperature in the means of transport – regardless of the outside temperature – to be sufficiently cooled to temperatures that are pleasant for the animals. It goes without saying that means of transport with such active refrigeration must still comply with the provisions of the Transport Regulation, means – among other things – that the animals must not be caused unnecessary injury or suffering during transport.

7. Notification

PM

In order to comply with Directive 2015/1535 (Notification Directive), the draft Regulation has been notified to the European Commission under number **PM**. During what is known as the standstill period of three months, the European Commission or other Member States: **PM**. Outcome of the notification.

THE MINISTER OF AGRICULTURE, FISHERIES, FOOD SECURITY AND NATURE,