Commission Implementing Regulation (EU) 2020/1158 of 5 August 2020 on the conditions governing imports of food and feed originating in third countries following the accident at the Chernobyl nuclear power station (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1158

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on the conditions governing imports of food and feed originating in third countries following the accident at the Chernobyl nuclear power station

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety[(1)], and in particular Article 53(1)(b)(ii) thereof,

Having regard to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation)[(2)], and in particular point (b) of the first subparagraph of Article 54(4) and points (a), (c) and (f) of the first paragraph of Article 90 thereof,

Whereas:

(1) Council Regulation (EC) No 733/2008[(3)] had established maximum permitted levels of radioactivity in certain agricultural products originating in third countries. It also established that Member States are required to carry out checks on such products, in order to ensure their compliance with the levels of radioactivity set out in that Regulation, before the product is released for free circulation. That Regulation expired on 31 March 2020. Given that Commission Recommendation 2003/274/Euratom[(4)] refers to the maximum permitted levels of radioactivity established by that Council Regulation, it should be amended to refer the maximum levels established by this Regulation.

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(2) Following the accident at the Chernobyl nuclear power station on 26 April 1986, considerable quantities of radioactive elements were released into the atmosphere and affected a wide range of third countries. Such contamination may still constitute a threat to public and animal health in the Union and it is therefore appropriate to have measures in place at Union level to ensure the safety of the feed and food originating in or consigned from these third countries.

(3) Article 53(1) of Regulation (EC) No 178/2002 provides for the possibility to adopt certain Union measures for food and feed imported from a third country where it is evident that such food or feed is likely to constitute a serious risk to human health, animal health or the environment and such risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned. In line with the practice adopted after the accident at the Fukushima nuclear power station starting with Commission Implementing Regulation (EU) No 297/2011[(5)] to base such measures on Article 53(1)(b)(ii) of Regulation (EC) No 178/2002, the Commission proposes to introduce follow-on measures based on that provision.

(4) In its opinions of 15 November 2018[(6)] and of 13 June 2019[(7)], the Group of Experts referred to in Article 31 of the Euratom Treaty confirmed that the currently applicable maximum permitted levels of radioactivity in terms of radioactive caesium of 370 Bq/kg for milk, milk products and "foodstuffs for infants" and 600 Bq/kg for all other products provide an adequate level of protection. As the term "foodstuffs for infants" in the opinions of the Group of Experts refers to foodstuffs for children up to three years, it is appropriate to use the term "foodstuffs for infants and young children", in accordance with the definitions for infants and young children provided in Article 2(2)(a) and (b) of Regulation (EU) No 609/2013 of the European Parliament and of the Council[(8)]. The other products to which the maximum level of 600 Bq/kg applies are food, including minor food, other than foodstuffs for infants and young children, and feed within the meaning of Article 1 of Council Regulation (Euratom) 2016/52[(9)].

(5) Certain products originating in third countries affected by the Chernobyl accident still show radioactive caesium contamination exceeding the above-mentioned maximum permitted levels. Findings in recent years provide evidence that the caesium-137 contamination following the Chernobyl accident remains high for a number of products originating from species living and growing in forests and wooded areas. This is related to continued significant levels of radioactive caesium in this ecosystem and its physical half-life of 30 years.

(6) While the radionuclide caesium-134, with a physical half-life of about 2 years, has completely decayed since the Chernobyl accident, it is appropriate that the maximum level refers only to caesium-137, as from an analytical point of view the analysis of caesium-134 constitutes an additional burden.

(7) Cases of non-compliance with the maximum levels have been notified in the past 10 years to the Rapid Alert System for Food and Feed (RASFF) in consignments of mushrooms imported from a number of third countries. In the past 10 years, a few non-compliances with the maximum levels have been reported to the RASFF in

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consignments of cranberries, bilberries and other fruits and derived products of the genus *Vaccinium* and no non-compliance in game meat has been reported.

(8) It follows that food and feed imported from certain third countries may contain radioactive contamination and therefore are likely to pose a serious risk to human health, animal health or the environment that requires measures at Union level before those products enter the Union market.

(9) Commission Regulation (EC) No 1635/2006[(10)] lays down detailed rules for the application of Regulation (EC) No 733/2008. It requires Member States to ensure that the competent authorities of third countries affected by the Chernobyl accident issue for certain agricultural products export certificates which attest that the products that they accompany comply with the maximum permitted levels set out in Regulation (EC) No 733/2008. The specific third countries concerned are listed in Annex II to Regulation (EC) No 1635/2006.

(10) Commission Regulation (EC) No 1609/2000[(11)] establishes a list of products to which Regulation (EC) No 733/2008 applied.

(11) Regulation (EU) 2017/625 integrates into a single legislative framework the rules applicable to official controls on animals and goods entering the Union in order to verify compliance with Union agri-food chain legislation and governs obligations to present certain categories of goods from certain third countries at border control posts for official controls to be performed prior to their entry into the Union.

(12) In order to facilitate the performance of official controls at the entry into the Union, it is appropriate to establish a single model official certificate for the entry into the Union of food and feed subject to special conditions for the entry into the Union.

(13) Official certificates should be issued either on paper or in electronic form. Therefore, it is appropriate to establish common requirements as regards issuance of official certificates in both cases, in addition to the requirements laid down in Chapter VII of Title II of Regulation (EU) 2017/625. In this regard, point (f) of the first paragraph of Article 90 of that Regulation provides for the adoption by the Commission of rules for the issuance of electronic certificates and for the use of electronic signatures including in relation to official certificates issued in accordance with that Regulation. In addition, provisions should be made to ensure that the requirements for official certificates not submitted in the Information Management System for Official Controls (IMSOC) laid down in Commission Implementing Regulation (EU) 2019/628[(12)] also apply to official certificates issued in accordance with this Regulation.

(14) To avoid misuse and abuse, it is important to define the cases where a replacement official certificate may be issued and the requirements that need to be met by such certificate. Such cases have been laid down in Implementing Regulation (EU) 2019/628 in relation to official certificates issued in accordance with that Regulation. With a view to ensure a coherent approach, it is appropriate to provide that, in the case of issuing replacement certificates, official certificates issued in accordance with this Regulation should be replaced in accordance with the procedures for the replacement certificates laid down in Implementing Regulation (EU) 2019/628.

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(15) Due to the long lasting effects of radioactive contamination, it is appropriate not to change the list of third countries affected by the Chernobyl incident at this stage. However, Bulgaria and Romania, which have become Member State in the meantime, should therefore not be included in that list. Liechtenstein and Norway, which are part of the European Economic Area (EEA) and therefore not subject to the relevant controls, should not be included in that list either. A review of this Regulation as regards the list of affected third countries should be carried out by 31 March 2030. In parallel, an adjustment to the measures on a country-by-country basis, may take place at an earlier stage, if a more detailed analysis of the level of contamination in a respective country shows lower levels.

(16) The United Kingdom of Great Britain and Northern Ireland had been added to the list of countries covered by Regulation (EC) No 733/2008 through Commission Implementing Regulation (EU) 2019/595 from the day following that on which Union law ceases to apply to and in the United Kingdom.[(13)] Regulation (EC) No 733/2008 was later included in Annex 2 to the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement[(14)]. Pursuant to Article 6(3) of the Withdrawal Agreement this reference also includes Regulation (EC) No 1635/2006. It follows, that for the purposes of the application of Regulations (EC) No 1635/2006, and (EC) No 733/2008 in combination with Regulation (EU) 2019/595, as well as of this Regulation replacing these acts, the United Kingdom in respect of Northern Ireland has to apply this Regulation as if Northern Ireland were a Member State of the Union. Northern Ireland should therefore not be included in Annex I to this Regulation while the rest of the United Kingdom should be included in that Annex. Since this Regulation applies only to third countries, the addition of the United Kingdom to the Annex applies only from the date Union law is no longer applicable to and in the United Kingdom pursuant to the Withdrawal Agreement.

(17) Given the experience with current controls and the low number of cases exceeding the maximum permitted levels, it is considered sufficient to require documentary checks on all consignments of mushrooms except cultivated mushrooms and of wild cranberries, bilberries and other fruits and derived products of the genus *Vaccinium* accompanied by an official certificate, complemented by identity checks and physical checks, including laboratory analysis on the presence of radioactive caesium, of these consignments at a frequency of 20 %.

(18) Since this Regulation replaces Regulations (EC) No 1609/2000 and (EC) No 1635/2006, those Regulations should be repealed.

(19) In order to allow a smooth transition to the new measures, it is appropriate to provide for a transitional measure as regards consignments accompanied by certificates issued in accordance with Regulation (EC) No 1635/2006, provided that such certificates were issued before 1 September 2020.

(20) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

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Article 1

Scope

1 This Regulation shall apply to food, including minor food, and feed within the meaning of Article 1 of Regulation (Euratom) 2016/52 originating in or consigned from third countries listed in Annex I to this Regulation ('the products') intended for placing on the Union market.

2 This Regulation shall not apply to the following categories of consignments of the products, unless their gross weight exceeds 10 kg of fresh product or 2 kg of dry product:

a consignments sent as trade samples, laboratory samples or as display items for exhibitions, which are not intended to be placed on the market;

b consignments which form part of passengers' personal luggage and are intended for personal consumption or use;

c non-commercial consignments sent to natural persons which are not intended to be placed on the market;

d consignments intended for scientific purposes.

In case of doubt on the intended use of the products referred to in points (b) and (c), the burden of proof lies with the owner of the personal luggage and with the recipient of the consignment, respectively.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'border control post' means 'border control post' as defined in point (38) of Article 3 of Regulation (EU) 2017/625;

(2) 'consignment' means 'consignment' as defined in point (37) of Article 3 of Regulation (EU) 2017/625.

Article 3

Conditions for entry into the Union

1 The products may only enter the Union if they comply with this Regulation.

2 The products shall comply with the following accumulated maximum permitted levels of radioactive contamination in terms of caesium-137:

a 370 Bq/kg for milk and milk products and for food for infants and young children as defined in Article 2(2)(a) and (b) of Regulation (EU) No 609/2013;

b 600 Bq/kg for all other products concerned.

3 Each consignment of products listed in Annex II, with reference to the relevant code from the Combined Nomenclature, from third countries listed in Annex I, shall be accompanied by an official certificate referred to in Article 4. Each consignment shall be identified by means of an identification code which shall be indicated on the official certificate and on the Common Health Entry Document (CHED), as provided for in Article 56 of Regulation (EU) 2017/625.