Commission Delegated Regulation (EU) 2019/2123 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/2123

of 10 October 2019

supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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)[(1)], and in particular Article 53(1)(a) and (e) thereof,

Whereas:

(1) Regulation (EU) 2017/625 of the European Parliament and of the Council establishes the framework for official controls and other official activities to verify compliance with Union agri-food chain legislation. That framework includes official controls performed on animals and goods entering the Union from third countries.

(2) In this regard, with a view to ensuring an efficient performance of official controls and a proper control of risks, the competent authorities of the border control post should be able to allow the performance of identity and physical checks on consignments of plants, plant products and other objects referred to in points (c) and (e) of Article 47(1) of Regulation (EU) 2017/625 at a control point other than the border control post, subject to certain conditions.

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(3) For the same reasons, this should also be the case for consignments of food and feed of non-animal origin subject to the measures provided for by the acts referred to in points (d), (e) and (f) of Article 47(1) of that Regulation.

(4) Commission Regulation (EC) No 669/2009[(2)] Commission Implementing Regulation and (EU) No 884/2014[(3)] lay down, among others, rules concerning the performance of identity and physical checks on consignments of food and feed of non-animal origin covered by them, at a control point other than the designated point of entry. In particular, Implementing Regulation (EU) No 884/2014 lays down conditions for the authorisation of the transfer of the consignment to a designated point of import for the performance of identity and physical checks, rules concerning documents required to accompany the consignment to the designated point of import, information obligations incumbent on the competent authorities at designated points of entry and on the operators responsible for the consignment, and rules applicable in the case the operator decides to change the designated point of import after the consignment has left the designated point of entry. Those Regulations are repealed with effect from 14 December 2019 and the aforementioned provisions should be replaced by this Regulation. In order to ensure an effective performance of official controls and an adequate traceability of the consignments, the rules laid down in this Regulation should also make full use of the possibilities of exchange of information on official controls and the traceability of the consignments offered by the information management system for official controls ('IMSOC') or existing national systems.

(5) The competent authorities of the border control post should authorise under certain conditions the transfer of a consignment of goods to a control point other than a border control post designated for that category of goods at the request of the operator. In this case, the operator should provide the competent authorities with the name and the Trade Control and Expert System (Traces) code of the control point to which the consignment should be transferred.

(6) To the extent necessary in order to perform effective identity and physical checks, the competent authorities of the border control post should be able to request the operator to transfer the goods to a control point other than the border control post. In such cases, the competent authorities of the border control post should obtain the agreement of the operator before authorising the transfer to the control point. The agreement of the operator should be necessary in view of the transportation costs endured by the operator or to avoid situations where consignments containing perishable goods are transferred to the control point that is not situated at an appropriate distance from the border control post.

(7) In order to limit risks to plant health or to public health the transfer of consignments of plants, plant products and other objects and of food and feed of non-animal origin to the control point should be authorised based on the satisfactory outcome of documentary checks at the border control post.

(8) In order to ensure traceability of consignments, the competent authorities of the control point should inform the competent authorities of the border control post of the arrival of the consignment. In the absence of such information, the competent authorities of

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the border control post should verify with the competent authorities of the control point whether the consignment has arrived at control point and where that verification shows that the consignment has not arrived, they should inform the customs authorities and other authorities referred to in Article 75(1) of Regulation (EU) 2017/625 and undertake further investigation to determine the actual location of the consignment.

(9) In order for the competent authorities to be able to perform efficient identity and physical checks on consignments of plants, plant products and other objects, they should be transferred from the border control post to the control point. The transfer should be done in a way that does not cause infestation of or infection to other plants, plant products or other objects. For that reason, operators should ensure that the packaging or the means of transport are closed or sealed during the transfer to the control point. In specific cases, the competent authorities should be able to allow the packaging or the means of transport of consignments of wood of conifers not to be closed or sealed during their transportation from the border control post to the control point if specific conditions are met. In such cases, the wood of conifers contained in the consignments should have been grown or produced in a geographical area of a third country where that third country shares a land border with the Member State for which the competent authority is responsible and where there is information that the wood has the same phytosanitary status in that third country and that Member State.

(10) In order to organise efficient official controls, the competent authorities, including customs authorities on which the Member State has conferred the responsibility to perform official controls, or the competent authorities at a control point other than the border control post, should be able to perform documentary checks at distance from the border control post.

(11) With a view to ensuring an efficient performance of official controls at the point of entry into the Union other than the border control post, competent authorities, including customs authorities on which the Member State has conferred the responsibility to perform official controls, should be able to perform documentary checks on consignments of plants, plant products and other objects which are subject to a reduced frequency rate as laid down in Commission Regulation (EC) No 1756/2004[(4)].

(12) Commission Decision 2010/313/EU[(5)] authorises physical checks pursuant to Regulation (EC) No 669/2009 to be carried out at approved premises of food and feed business operators in Cyprus. Similarly, Commission Decision 2010/458/EU[(6)] authorises physical checks pursuant to Regulation (EC) No 669/2009 to be carried out at approved premises of food and feed business operators in Malta. Since this Regulation applies to the areas covered by those Decisions it is appropriate to repeal Decisions 2010/313/EU and 2010/458/EU with effect from the date of application of this Regulation.

(13) Since Regulation (EU) 2017/625 applies from 14 December 2019, this Regulation should also apply from that date for reasons of consistency and legal certainty. However, in accordance with Article 165(4) of Regulation (EU) 2017/625, rules laid down under point (e) of Article 53(1) may only become applicable at least 12 months after their adoption insofar as consignments of plants, plant products and other objects referred to

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in point (c) of Article 47(1) of the same Regulation are concerned. For this reason, the transitional measures concerning the corresponding provisions of Directive 2000/29/EC[7] would be required until 13 December 2020. This period of one year is necessary to give additional time to the operators and to the competent authorities to implement specific requirements.

(14) Since this Regulation applies to the areas covered by Commission Directive 2004/103/EC[8] relating to plants, plant products and other objects referred to in point (c) of Article 47(1) of Regulation (EU) 2017/625, it is appropriate to repeal that Directive from 14 December 2020,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

1 This Regulation lays down rules for cases where and conditions under which competent authorities may perform:

a identity checks and physical checks at a control point other than the border control post on:

(i) consignments of plants, plant products, and other objects referred to in Articles 72(1) and 74(1) of Regulation (EU) 2016/2031 of the European Parliament and of the Council[9] and consignments of plants, plant products, and other objects subject to an emergency measure provided for in acts adopted in accordance with Articles 28(1), 30(1), 40(3), 41(3), 49(1), 53(3) and 54(3) of Regulation (EU) 2016/2031.

(ii) consignments of food and feed of non-animal origin subject to the measures provided for by the acts referred to in points (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625;

b documentary checks at distance from a border control post on consignments of plants, plant products, and other objects referred to Articles 72(1) and 74(1) of Regulation (EU) 2016/2031.

2 The competent authorities situated at a distance from the border control post, including at a control point other than the border control post and at an entry point into the Union, shall perform operations during and after documentary, identity and physical checks in accordance with Commission Implementing Regulation 2019/2130[10].

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CHAPTER I

Identity checks and physical checks performed at control points other than the border control posts

Article 2

Conditions for the performance of identity and physical checks at a control point other than the border control post

1 Identity and physical checks may be performed at a control point other than border control post where the following conditions apply:

a the operator when giving the prior notification in accordance with point (a) of Article 56(3) of Regulation (EU) 2017/625 or the competent authority of the border control post has indicated in the Common Health Entry Document ('CHED') the control point where identity checks and physical checks are to be performed;

b the outcome of documentary checks performed by the competent authorities of the border control post is satisfactory;

c the competent authorities of the border control post has recorded in the CHED their authorisation to transfer the consignment to the control point;

d before the consignment leaves the border control post, the operator has notified the competent authorities of the control point where identity and physical checks are to be performed of the expected time of the arrival of the consignment and of the means of transport by completing and submitting a separate CHED into the information management system for official controls ('IMSOC');

e the operator has transported the consignment from the border control post to the control point under customs supervision without the goods being unloaded during the transport;

f the operator has ensured that the consignment is accompanied to the control point by a copy of the CHED referred to in point (c), in paper format or in electronic format;

g the operator has ensured that:

(i) the consignments of plants, plant products, and other objects referred to in Articles 72(1) and 74(1) of Regulation (EU) 2016/2031 and consignments of plants, plant products, and other objects subject to an emergency measure provided for in acts adopted in accordance with Articles 28(1), 30(1), 40(3), 41(3), 49(1), 53(3) and 54(3) of Regulation (EU) 2016/2031 and consignments of food and feed of non-animal origin referred to in points (e) and (f) of Article 47(1) of Regulation (EU) 2017/625 are accompanied to the control point by an authenticated copy of the official certificates referred to in Article 50(1) of Regulation (EU) 2017/625, issued in accordance with Article 50(2) of that Regulation;

(ii) consignments of food and feed of non-animal origin subject to the measures provided for by the acts referred to in points (e) and (f) of Article 47(1) of Regulation (EU) 2017/625 are accompanied to the control point by an authenticated copy of the results of laboratory analysis performed by the competent authorities of the third country, issued in accordance with Article 50(2) of that Regulation.

h the operator has indicated the reference number of the CHED referred to in point (c) in the customs declaration lodged with the customs authorities for the purposes of the transfer of the consignment to the control point and has kept a copy of that CHED at