Commission Delegated Regulation (EU) 2019/1012 of 12 March 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/1012

of 12 March 2019

supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for 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 Regulation (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 62(3) and Article 64(2) and (5) thereof,

Whereas:

(1) Regulation (EU) 2017/625 establishes, inter alia, the framework for the performance of official controls and other official activities on animals and goods entering the Union from third countries to verify compliance with Union legislation in order to protect human, animal and plant health, animal welfare and, in relation to genetically modified organisms (GMO) and plant protection products, also the environment. It provides that official controls are to be performed on certain consignments of animals and goods at the border control post of first arrival into the Union. To that end, Member States are to designate border control posts.

(2) Regulation (EU) 2017/625 provides that Member States are to notify the Commission before designating border control posts, so that the Commission can verify and, where necessary, carry out controls to check if they comply with the minimum requirements for the designation laid down therein. Regulation (EU) 2017/625 empowers the Commission to lay down certain detailed rules on these minimum requirements. Those

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detailed rules have been laid down in Commission Implementing Regulation (EU) 2019/1014[(2)], (hereinafter collectively referred to as 'the minimum requirements'). Regulation (EU) 2017/625 also provides that Member States are to withdraw the designation of the border control post where it ceases to comply with the requirements for the designation for all or for certain categories of animals and goods for which the designation was made.

(3) However, where the withdrawal of the designation was partial because it concerned a specific category of animals or a specific category of goods, or all categories of animals or all categories of goods where the border control post was designated for categories of animals and goods, Member States should be allowed to re-designate the border control post for those categories of animals or goods for which the designation was withdrawn without being first required to give the Commission the opportunity to carry out controls to verify compliance with the minimum requirements. In such cases, addressing the non-compliance should not involve actions as extensive as those necessary to designate a border control post for the first time. It is therefore appropriate to establish rules whereby Member States are allowed to re-designate the border control post for those categories of animals or goods without being first required to give the Commission the opportunity to carry out controls to verify compliance with the minimum requirements.

(4) In order to enable the Commission to perform a thorough assessment of the measures taken by the Member State to address the non-compliance that caused the partial withdrawal of the designation, Member States should notify those measures to the Commission. They should only proceed with the re-designation where the Commission considers that the measures taken are sufficient to remedy the non-compliance.

(5) The derogation from the rules of Regulation (EU) 2017/625 concerning the designation of border control posts should only apply where the re-designation takes place within two years from the date of the partial withdrawal of the designation. If the re-designation takes place more than two years from the date of the partial withdrawal, in order to assess the changes that occurred at the border control posts, the Commission should retain the possibility to perform controls to verify that the border control post complies with the minimum requirements.

(6) Regulation (EU) 2017/625, in certain cases, allows official controls to be performed at control points other than border control posts and it requires that those control points comply with the minimum requirements and the requirements for the designation and withdrawal of the designation of border control posts. Therefore, it is appropriate that the rules of this Regulation, concerning the re-designation of border control posts also apply to control points.

(7) Regulation (EU) 2017/625 requires border control posts to be located in the immediate vicinity of the point of entry into the Union. However, in order to enable the efficient organisation and performance of official controls and other official activities, rules should be laid down to specify the cases of specific geographical constraints and the conditions under which border control posts can be located at a distance other than in the immediate vicinity of the point of entry into the Union. Geographical constraints should be those that result from the natural characteristics and landscape of the point of entry,

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and the distance from the point of entry should not exceed what is strictly necessary to overcome the difficulties caused by the geographical constraints. Furthermore, that distance should not be such as to pose a risk to human, animal and plant health, animal welfare and the environment. Specific geographical constraints should include those that may cause major transportation constraints like, for example, high passes with roads unsuitable for the movement of animals and goods or causing significant delays in their movement.

(8) Border control posts for imports of consignments of unprocessed logs and sawn and chipped wood, often operate under geographical constraints, which result from long coastlines or long borders of some Member States. As a result of the aforesaid geographical constraints, they are generally only operational at the time of performing official controls. Therefore, certain exemptions from the minimum requirements for border control posts laid down in Article 64(3) of Regulation (EU) 2017/625 should be established for their designation. Nonetheless, in order to ensure the effectiveness of official controls and other official activities, compliance with specific conditions should be fulfilled during the performance of those controls and activities by a mobile official control team of the competent authority of the border control post. In particular, a mobile official control team should be able to provide sufficient and suitably qualified staff and have access to the necessary equipment at the time of official controls or other official activities.

(9) The rules required to be established by the Commission in accordance with Article 62(3), Article 64(2) and Article 64(5) of Regulation (EU) 2017/625 are closely linked since they all concern derogations or exemptions from certain requirements applicable to border control posts. In order to facilitate the correct and comprehensive application of those rules, which should also apply from the same date, it is appropriate to lay them down in one act.

(10) As the specific empowerments granted to the Commission set out in Regulation (EU) 2017/625 begin to apply from 14 December 2019, this Regulation should also apply from the same date,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down rules concerning:

(a) the re-designation of a border control post or of a control point other than a border control post where the designation has been partially withdrawn;

(b) border control posts situated at a distance other than in the immediate vicinity of the point of entry into the Union due to specific geographical constraints;

(c) the designation of border control posts for imports of unprocessed logs and sawn and chipped wood to take account of specific geographical constraints.

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Article 2

Re-designation of a border control post or of a control point other than a border control post following the partial withdrawal of its designation

1 By way of derogation from Article 59(3), (4) and (5) of Regulation (EU) 2017/625, where a Member State has withdrawn the designation of a border control post or of a control point other than a border control post as referred to in Article 53(1)(a) of that Regulation, for certain categories of animals or goods as a result of non-compliance with the minimum requirements referred to in Article 64(3) of that Regulation or with the detailed rules on the minimum requirements laid down in Implementing Regulation (EU) 2019/1014, the Member State may re-designate that border control post or that control point (hereinafter 'the re-designation') in accordance with paragraphs 2 to 5 of this Article.

2 Prior to the re-designation referred to in paragraph 1, the Member State shall notify the Commission of the measures it has taken to remedy the non-compliance with the minimum requirements referred to in paragraph 1.

3 Within a period of one month starting from the date of receipt of the notification, the Commission shall assess whether the measures taken are sufficient to ensure compliance with the minimum requirements and, within that period, it shall inform the Member State of the outcome of its assessment.

4 The Member State shall proceed with the re-designation only where it has been informed by the Commission, in accordance with paragraph 3, that the measures taken by the Member State are sufficient to ensure compliance with the minimum requirements.

5 The re-designation in accordance with paragraph 4 may only take place within a period of two years starting from the date of the partial withdrawal of the designation referred to in paragraph 1.

After that period of two years, the re-designation may only take place in accordance with Article 59 of Regulation (EU) 2017/625.

Article 3

Border control posts situated at a distance other than in the immediate vicinity of the point of entry into the Union

1 By way of derogation from Article 64(1) of Regulation (EU) 2017/625, border control posts may be situated at a distance other than in the immediate vicinity of the point of entry into the Union, provided that:

a this is necessitated by specific geographical constraints in accordance with paragraph 2, and

b the conditions laid down in paragraph 3 are fulfilled.

2 The geographical constraints referred to in paragraph 1 shall be such as to prevent or restrict the efficient performance of official controls and other official activities.

Those geographical constraints shall consist of one or more of the following:

a points of entry with a geographical configuration that imposes major constraints on the transportation system;