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(Acts whose publication is obligatory)

COUNCIL DIRECTIVE 96/43/EC

of 26 June 1996

amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas live animals and animal products are included in the list of products contained in Annex II to the Treaty; whereas such animals and animal products constitute a source of income for part of the agricultural population;

Whereas Council Directive 85/73/EEC of 29 January 1985 on the financing of veterinary inspections and controls of animal products covered by Annex A to Directive 89/662/EEC and by Directive 90/675/EEC [4], laid down the principles governing the charging of fees for such controls;

Whereas Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [5], lays down in particular the requirements for veterinary checks to be carried out in the Member State of dispatch for live animals and certain animal products;

Whereas Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organization of veterinary checks on products entering the Community from third countries [6] and Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC [7], lay down in particular the requirements for documentary, identity and physical checks to be carried out on animals from third countries;

Whereas the financing of such inspections and health checks varies in the different Member States, and is carried out in particular by charging fees which can vary; whereas such differences can affect the conditions of competition between products which are for the most part covered by common organizations of the market;

Whereas, in the case of live animals entering the Community from third countries, the fact that operators are charged different fees can lead to deflections of trade;

Whereas in order to remedy this situation provision should be made for harmonized rules on the financing of such inspections and checks;

Whereas the public authorities are responsible for carrying out such inspections and checks; whereas,

(1) OJ No C 219, 3. 8. 1993, p. 15.
(2) OJ No C 315, 22. 11. 1993, p. 630.
(3) OJ No C 34, 2. 4. 1994, p. 23.
(4) OJ No L 32, 5. 2. 1985, p. 14. Directive as last amended by Directive 96/17/EC (OJ No L 78, 28. 3. 1996, p. 30).
(5) OJ No L 224, 18. 8. 1990, p. 29. Directive as last amended by Directive 92/118/EEC (OJ No L 62, 15. 3. 1993, p. 49).
(6) OJ No L 373, 31. 12. 1990, p. 1. Directive as last amended by Directive 95/52/EC (OJ No L 265, 8. 11. 1995, p. 16).
(7) OJ No L 268, 24. 9. 1991, p. 56. Directive as last amended by Decision 92/438/EEC (OJ No L 243, 25. 8. 1992, p. 27).

however, provision should be made for operators to pay a contribution to the financing of such inspections and checks;

Whereas Directives 90/675/EEC and 91/496/EEC should be adapted to take account of these principles;

Whereas it is necessary to provide for the financing of the checks laid down in Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/496/EEC and Decisions 89/187/EEC and 91/664/EEC(1);

Whereas technical adjustments should also be made to the existing Annexes to Directive 85/73/EEC to take account of experience gained;

Whereas for products of animal origin other than meat referred to in Directives 64/433/EEC(2), 71/118/EEC(3) and 72/462/EEC(4), the detailed rules necessary for the financing of veterinary inspections still need to be laid down;

Whereas, in order to ensure the effective functioning of the inspection system for fishery products and to avoid distortions of competition in this sector, such detailed rules should be laid down for the fishery products covered by Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and placing on the market of fishery products(5);

Whereas the detailed rules proposed take account of the specific nature of fishery products, the nature of the checks provided for in Directive 91/493/EEC and the importance of setting Community fees as regards rules of competition;

Whereas these arrangements should not include fishery products the placing on the market of which is not covered by the rules laid down in Directive 91/493/EEC;

Whereas, for products of animal origin from third countries, a link should be established with the date as from which the agreements on the equivalence of veterinary guarantees should be concluded,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Title, the Articles and the Annexes to Directive 85/73/EEC shall be replaced by the text set out in the Annex to this Directive.

Article 2

1. In Article 3 (ii) of Directive 90/675/EEC the terms 'provided for in Directive 96/23/EC(*)' shall be inserted in the first line after '(ii) that the veterinary checks' and before ... 'have been paid for and that ...'.

'(*) OJ No L 125, 23. 5. 1996, p. 10.'

2. Article 15 of Directive 91/496/EEC shall read as follows:

'*Article 15*

Member States shall collect a fee for veterinary and health checks when the animals referred to in this Directive are imported, in accordance with Directive 96/23/EC(*).

(*) OJ No L 125, 23. 5. 1996, p. 10.'

Article 3

Before 1 January 1999 the Council shall review this Directive on the basis of a report from the Commission together with proposals if appropriate.

Article 4

1. Member States shall bring into force laws, regulations and administrative provisions necessary to comply with:

(i) the provisions of Article 7 and of Chapter I (1) (e) of Annex A by 1 July 1996;

(ii) the provisions of Chapter II, Section II of Chapter III of Annex A and Chapter II of Annex C by 1 January 1997;

(1) OJ No L 125, 23. 5. 1996, p. 10.
(2) OJ No 121, 29. 7. 1964, p. 2012/64. Directive as last amended by Directive 92/5/EEC (OJ No L 57, 2. 3. 1992, p. 1).
(3) OJ No L 55, 8. 3. 1971, p. 23. Directive as last amended by Directive 92/116/EEC (OJ No L 62, 15. 3. 1993, p. 1).
(4) OJ No L 302, 31. 12. 1972, p. 28. Directive as last amended by Regulation (EEC) No 1601/92 (OJ No L 173, 27. 6. 1992, p. 13).
(5) OJ No L 268, 24. 9. 1991, p. 15.

(iii) other amendments by 1 July 1997.

Member States shall have a further period which can extend to 1 July 1999 within which to comply with the provisions of Section I of Chapter III of Annex A.

When Member States adopt these provisions they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive.

Article 5

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 6

This Directive is addressed to the Member States.

Done at Luxembourg, 26 June 1996.

For the Council

The President

M. PINTO

ANNEX

COUNCIL DIRECTIVE 85/73/EEC

of 29 January 1985

on the financing of veterinary inspections and controls covered by Directives 89/662/EEC, 90/425/EEC, 90/675/EEC and 91/496/EEC

(amended and consolidated)

Article 1

Member States shall ensure, in accordance with the arrangements laid down in Annex A, that a Community fee is collected to cover the costs occasioned by inspections of and controls on the products listed in that Annex, including those aimed at ensuring animal production in slaughterhouses, in accordance with the requirements of Directive 93/119/EEC.

Article 2

Member States shall ensure, in accordance with the arrangements laid down in Annex B, that a Community fee is collected to cover the costs occasioned by the inspections and controls provided for by Directive 96/23/EC(1).

Article 3

Member States shall ensure, in accordance with the arrangements laid down in Annex C, that a Community fee is collected to cover the costs occasioned by inspections of and controls on the live animals listed in that Annex.

Article 4

1. Pending the adoption of provisions governing Community fees, Member States shall ensure the financing of inspections and controls not covered by Articles 1, 2 and 3.

2. For the purposes of paragraph 1, Member States may charge national fees in accordance with the principles adopted for Community fees.

Article 5

1. The Community fees shall be set at a level which covers the costs borne by the competent authority in respect of:

— salary costs and social-security costs involved in the inspection service,

— administrative costs incurred in carrying out controls and inspections, which may include the expenditure required for in-service training of inspectors,

for the controls and inspections referred to in Articles 1, 2 and 3.

2. No direct or indirect refund of the fees provided for in this Directive shall be permitted. However the possible application by a Member State of the standard average provided for in Annexes A, B and C shall not be considered an indirect refund in the assessment of individual cases.

3. Member States shall be authorized to charge an amount exceeding the levels of the Community fees provided that the total fees charged by each Member State do not exceed the actual cost of inspection.

4. Without prejudice to the choice of the authority empowered to charge Community fees, Community fees shall replace all other health-inspection charges or fees levied by the Member States' national, regional or local authorities for the inspections and controls referred to in Articles 1, 2 and 3 and the certification thereof.

This Directive shall not prevent Member States from charging fees for combating epizootic and enzootic diseases.

Article 6

1. Member States shall regularly communicate to the Commission

— data concerning the distribution and use of Community fees; they must be able to justify their methods of calculation,

— the conversion rates adopted each year in accordance with Article 7,

(1) OJ No L 125, 23. 5. 1996, p. 10.

— the place or places where Community fees are charged, giving any explanations necessary.

2. As part of the on-the-spot checks to be carried out by the Commission, the Commission may, in collaboration with the competent national authorities, verify whether the provisions of this Directive are being applied.

3. Where a Member State considers that the controls in another Member State are not carried out satisfactorily and that the fees provided for in this Directive do not cover the cost of the controls, or do not cover them adequately, it shall have recourse to the relevant provisions of Directive 89/608/EEC and in particular to Articles 10 and 11 thereof.

Article 7

1. The rate of conversion into national currency of the amounts in ecus specified in this Directive shall be that published annually on the first working day of September in the C series of the *Official Journal of the European Communities*.

The rate shall apply with effect from 1 January in the following year.

2. By way of derogation from paragraph 1:

— for 1994 Member States shall use the conversion rate applicable on 1 September 1992,

— for the years 1995 to 1998 Member States shall use the average of the conversion rates published in accordance with paragraph 1 for the preceding three years.

Article 8

Acting by a qualified majority on a proposal from the Commission, the Council may amend Annexes A, B and C to this Directive with a view, in particular, to establishing standard levels for Community fees, laying down detailed rules for their implementation and providing for exceptions.

Article 9

1. The Hellenic Republic shall be authorized to derogate from the principles laid down in this Directive where, because of geographical characteristics, the costs of charging a fee in geographically remote regions are greater than the yield from the fee.

The Greek authorities shall inform the Commission of the territorial extent of the derogations granted.

That information shall be accompanied by any explanations necessary.

2. In the case of other outermost regions, other Member States may be authorized, in accordance with the procedure laid down in Article 18 of Directive 89/662/EEC, to benefit from the same derogations.