COMMISSION IMPLEMENTING REGULATION (EU) 2022/2389

of 7 December 2022

establishing rules for the uniform application of frequency rates for identity checks and physical checks on consignments of plants, plant products and other objects entering the Union

(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 points (a) and (c) of the first subparagraph of Article 54(3) thereof,

Whereas:

(1) Regulation (EU) 2017/625 establishes rules on the performance of official controls by the competent authorities of the Member States on goods entering the Union in order to verify compliance with Union agri-food chain legislation.

(2) The rules of Council Directive 2000/29/EC ([2]) on frequency rates for identity and physical checks of plants, plant products and other objects entering the Union are to cease to apply on 14 December 2022. Therefore, it is appropriate to establish new rules, taking into account the framework established by Regulation (EU) 2016/2031 of the European Parliament of the Council ([3]) and Regulation (EU) 2017/625, to ensure continuity of the relevant provisions as of 14 December 2022.

(3) The frequency rates for identity checks and physical checks should be established depending on the risk posed by each good or category of goods to plant health.

(4) To ensure that the frequency rates of physical checks required pursuant to this Regulation are complied with in a uniform manner, a provision should be made in this Regulation to make use of the information management system for official controls (IMSOC) referred to in Article 131 of Regulation (EU) 2017/625 for the selection of consignments for physical checks.

(5) The frequency rates established by this Regulation should be applicable for the goods referred to in Article 47(1), point (c), of Regulation (EU) 2017/625 entering the Union with the exception of goods in transit.

(6) In order to ensure the highest possible level of phytosanitary protection, the basic frequency rate for identity checks and for physical checks on consignments of goods referred to in Article 47(1), point (c), of Regulation (EU) 2017/625 should be 100 %.

([1]) OJ L 95, 7.4.2017, p. 1.

([2]) Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 169, 10.7.2000, p. 1).

([3]) Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (OJ L 317, 23.11.2016, p. 4).

(7) However, for reasons of a proportionate response to the respective phytosanitary risk, it should be possible to establish the frequency rate of the identity checks and physical checks of the consignments of certain plants, plant products and other objects at a level lower than 100 %.

(8) The frequency rate of 100 % should nevertheless apply to the identity and physical checks of all plants intended for planting, and to any plant, plant product or other object, which is subject to a measure provided for in acts adopted in accordance with Article 28(1), Article 30(1) and Article 49(1) of Regulation (EU) 2016/2031, due to the increased phytosanitary risk of those commodities.

(9) Since the conditions and criteria for establishing the type and frequency rates for identity and physical checks for plants, plant products and other goods, applicable under Commission Regulation (EC) No 1756/2004 ([4]), have proven to be effective, they should be set out accordingly in this Regulation. Those conditions and criteria include, in particular, selection of consignments for physical checks, the frequency rates for identity checks and physical checks and the criteria for the establishment and modification of the frequency rates for identity checks and physical checks of plants, plant products and other objects, or categories thereof.

(10) Based on information collected by the Commission according to Article 125(1) of Regulation (EU) 2017/625, on the outcome of controls performed by Commission experts in third countries according to Article 120(1) of that Regulation and on information collected through the IMSOC, it should be possible to modify the frequency rates for physical checks on the basis of the criteria for the establishment and modification of the frequency rates for identity checks and physical checks of plants, plant products and other objects, or categories thereof established in this Regulation.

(11) Member States should have the possibility to submit to the Commission an application to modify the frequency rate of identity checks and physical checks on consignments of a plant, plant product or other object, or a category thereof, to ensure the update of those frequency rates based on the newest developments in the field, and in order for the Commission to determine whether such modification would be appropriate.

(12) Frequency rates should be reviewed annually having regard to the elements set out in points (i), (ii), (iv), (v) and (vi) of Article 54(3), point (a) of Regulation (EU) 2017/625, to ensure compliance with the provisions of that Regulation.

(13) In the interest of the efficiency of official controls, the frequency rates determined in accordance with this Regulation should be communicated through the IMSOC.

(14) The official controls, identity checks and physical checks should be carried out in such a way that it is not possible for the operator responsible for the consignment to predict whether any particular consignment will be subject to physical checks.

(15) Since this Regulation lays down provisions in the areas covered by Regulation (EC) No 1756/2004, that Regulation should be repealed with effect from the date specified in this Regulation.

(16) As the rules of Directive 2000/29/EC cease to apply on 14 December 2022, the rules laid down in this Regulation should apply from 14 December 2022. For this reason, this Regulation should enter into force on the first day following that of its publication in the *Official Journal of the European Union*, in order to ensure that date of application.

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

([4]) Commission Regulation (EC) No 1756/2004 of 11 October 2004 specifying the detailed conditions for the evidence required and the criteria for the type and level of the reduction of the plant health checks of certain plants, plant products or other objects listed in Part B of Annex V to Council Directive 2000/29/EC (OJ L 313, 12.10.2004, p. 6).

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down rules for the uniform application of the appropriate frequency rate, and the modifications of that rate, of identity checks and physical checks on consignments of goods referred to in Article 47(1), point (c), of Regulation (EU) 2017/625 entering the Union.

Article 2

Definition

For the purpose of this Regulation:

(1) 'frequency rate' means the minimum percentage of consignments of goods referred to in Article 1, determined in accordance with this Regulation, of the number of consignments arrived at the border control post or control point during the calendar year, for which identity checks and physical checks shall be carried out by the competent authorities;

(2) 'IMSOC' means the information management system for official controls referred to in Article 131 of Regulation (EU) 2017/625.

Article 3

Selection of consignments for physical checks

1. The competent authorities shall select consignments for physical checks in accordance with the following procedure:

(a) a random selection of a consignment shall be automatically generated by IMSOC;

(b) the competent authorities may decide to select the consignment in accordance with point (a) or to select a different consignment of the same category of goods and the same origin of goods.

2. For each consignment selected for physical checks in accordance with paragraph 1, the competent authorities shall perform identity checks as referred to in Article 3(1) of Commission Implementing Regulation (EU) 2019/2130 ([5]).

Article 4

Frequency rates for identity checks and physical checks

1. The competent authorities shall perform identity checks and physical checks on consignments of plants, plant products and other objects, at frequency rates determined in accordance with paragraphs 2 to 6.

2. The basic frequency rate for identity checks and for physical checks on consignments of goods referred to in Article 1 shall be 100 %.

3. By way of derogation from paragraph 2, the identity checks and physical checks of the consignments of certain plants, plant products and other objects, as listed in Annex I with their respective origin from all or certain third countries, shall be subject to the respective frequency rates specified in that Annex.

([5]) Commission Implementing Regulation (EU) 2019/2130 of 25 November 2019 establishing detailed rules on the operations to be carried out during and after documentary checks, identity checks and physical checks on animals and goods subject to official controls at border control posts (OJ L 321, 12.12.2019, p. 128).

4. The frequency rates according to paragraph 3 shall not apply to:

(a) plants intended for planting;

(b) any plant, plant product or other object which is subject to a measure provided for in acts adopted in accordance with Articles 28(1), 30(1) and 49(1) of Regulation (EU) 2016/2031.

5. The frequency rates according to paragraph 3 shall be determined in accordance with the criteria listed in Annex II.

6. Where imports of a plant, plant product or other object, or a category thereof, no longer comply with the criteria set out in Annex II, that plant, plant product or other object shall be removed from Annex I, as determined by the review stipulated in Article 6(2).

Article 5

Applications for the modification of frequency rates for identity checks and physical checks performed on certain plants, plant products and other objects

Member States may submit to the Commission an application to modify the frequency rate of identity checks and physical checks on consignments of a plant, plant product or other object, or a category thereof, entering the Union, in order for the Commission to determine whether such modification is appropriate. The application shall contain the information set out in Annex III.

Article 6

Modification of frequency rates for identity checks and physical checks performed on certain plants, plant products and other objects

1. Frequency rates set out in Annex I shall be modified with regard to the criteria set out in points (i), (ii), (iv), (v) and (vi) of Article 54(3), point (a), of Regulation (EU) 2017/625, the criteria set out in Annex II, and, where appropriate, with regard to the information set out in Annex III.

2. The frequency rates for identity checks and physical checks for plants, plant products and other objects, or categories thereof, shall be reviewed at least annually, in order to take into account new information collected through IMSOC or provided by Member States, and modified accordingly.

3. The Commission shall introduce, where applicable, into the IMSOC every modification made to the list of plants, plant products and other objects, or categories thereof, and to the frequency rates, as set out in Annex I.

Article 7

Repeals

Regulation (EC) No 1756/2004 is repealed with effect from 14 December 2022.

Article 8

Entry into force and date of application

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 14 December 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Frequency rates of identity checks and physical checks of the consignments of certain plants, plant products and other objects, or categories thereof, as referred to in Article 4(3)

Plant, plant products or other object, or a category thereof	Country of origin	Minimum frequency rate of identity & physical checks [%]
CUT FLOWERS		
Aster	Zimbabwe	75
Dianthus	Colombia	3
Dianthus	Ecuador	15
Dianthus	Kenya	5
Dianthus	Türkiye	50
Gypsophila	Ecuador	5
Gypsophila	Kenya	10
Phoenix	Costa Rica	50
Rosa	Colombia	5
Rosa	Ecuador	1
Rosa	Ethiopia	5
Rosa	Kenya	10
Rosa	Tanzania	100
Rosa	Zambia	50
FRUITS		
Actinidia	All third countries	10
Carica papaya	All third countries	10
Fragaria	All third countries	5
Persea americana	All third countries	3
Rubus	All third countries	5
Vitis	All third countries	1
Malus	European third countries ([1])	15
Prunus	European third countries ([1]), ([2])	15
Pyrus	European third countries ([1])	100
Vaccinium	European third countries ([1])	50
Citrus	Egypt	50
Citrus	Israel	35
Citrus	Mexico	25
Citrus	Morocco	3
Citrus	Peru	10
Citrus	Türkiye	7
Citrus	USA	50

Malus	Argentina	35
Malus	Brazil	100
Malus	Chile	5
Malus	New Zealand	10
Malus	South Africa	15
Mangifera	Brazil	75
Passiflora	Colombia	5
Passiflora	Kenya	75
Passiflora	La Réunion	10
Passiflora	South Africa	75
Passiflora	Vietnam	15
Passiflora	Zimbabwe	100
Prunus	Argentina	100
Prunus	Chile	10
Prunus	Morocco	100
Prunus persica	South Africa	50
Prunus – other		10
Prunus	Türkiye	35
Prunus	USA	100
Psidium	Brazil	100
Pyrus	Argentina	25
Pyrus	Chile	15
Pyrus	China	100
Pyrus	South Africa	10
Vaccinium	Argentina	25
Vaccinium	Chile	10
Vaccinium	Peru	10
VEGETABLES		
Capsicum	Israel	100
Capsicum	Morocco	100
Solanum lycopersicum	Canary Islands	25
Solanum lycopersicum	Morocco	1
Solanum melongena	Kenya	100
Solanum melongena	Türkiye	100
Root and tubercle vegetables, other than tubers of *Solanum tuberosum* L. ([3])	All third countries ([4])	5

WOOD		
Conifer wood (excl. *Larix*)	Russia (only the following parts: Central Federal District (Tsentralny federalny okrug), Northwestern Federal District (Severo-Zapadny federalny okrug), Southern Federal District (Yuzhny federalny okrug), North Caucasian Federal District (Severo-Kavkazsky federalny okrug) and Volga Federal District (Privolzhsky federalny okrug))	1
USED MACHINERY		
Machinery and vehicles which have been operated for agricultural or forestry purposes	All third countries	10

([1]) Albania, Andorra, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Canary Islands, Faeroe Islands, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, North Macedonia, Norway, Russia (only the following parts: Central Federal District (Tsentralny federalny okrug), Northwestern Federal District (Severo-Zapadny federalny okrug), Southern Federal District (Yuzhny federalny okrug), North Caucasian Federal District (Severo-Kavkazsky federalny okrug) and Volga Federal District (Privolzhsky federalny okrug)), San Marino, Serbia, Türkiye, Ukraine and United Kingdom.

([2]) Other than Türkiye.

([3]) Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 (OJ L 319, 10.12.2019, p. 103).

([4]) Other than Cameroon.

ANNEX II

Criteria for the establishment and modification of the frequency rates of plants, plant products and other objects, or categories thereof, as referred to in Article 4(5) and (6)

1. A new frequency rate may be established where:

   (a) the average number of consignments entering the Union over the preceding three years is at least 200 per year;

   (b) the minimum number of consignments of plants, plant products and other objects, or categories thereof, entering the Union, for which documentary checks, identity checks and physical checks have been carried out during the previous three years, is at least 600;

   (c) the number of consignments of the plants, plant products and other objects, or categories thereof, which were found infested by Union quarantine pests is each year less than 1 % of the total number of consignments of said plants, plant products and other objects, or categories thereof, imported into the Union;

2. Frequency rates may be modified taking into account:

   (a) the estimated mobility index of the Union quarantine pests at the most mobile stage to which they could develop on the relevant plants, plant product or other objects, or categories thereof;

   (b) the number of consignments of plants, plant products and other objects, or categories thereof, on which identity checks and physical checks have been carried out during the previous year;

   (c) the total number, and the details of, non-compliances due to the presence of Union quarantine pests related to consignments imported pursuant to this Regulation;

   (d) the total number of consignments of the goods concerned notified for other reasons than the presence of the Union quarantine pests and the details thereof; and

   (e) any other factor relevant for the determination of the phytosanitary risk associated with the trade concerned.

ANNEX III

Information required for submission of applications to the Commission as referred to in Article 5

The information referred to in Article 5 shall contain:

(a) a description of the goods concerned;

(b) the origin of the goods concerned;

(c) the volume of import into the Member State of the goods concerned, expressed in number of consignments and weight or pieces or units;

(d) the list of the Union quarantine pests liable to be carried on the product concerned;

(e) the number of consignments of the goods concerned found non-compliant due to the presence of the Union quarantine pests referred to in point (d);

(f) the estimated mobility index of the Union quarantine pests referred to in point (d) at the most mobile stage to which the organism could develop on the relevant plant, plant product or other object;

(g) the number of consignments of the goods concerned intercepted for reasons other than the presence of the Union quarantine pests referred to in point (d);

(h) the number of consignments of the goods concerned on which identity and physical plant health checks have been carried out.

As regards the information mentioned under points (c), (e), (g) and (h), the dossier shall provide data covering the period of at least three years preceding the year in which it is submitted.