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<sup>(1)</sup> Text with EEA relevance.

## I

(Legislative acts)

## DIRECTIVES

**DIRECTIVE (EU) 2019/2121 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 27 November 2019**  
**amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions**  
**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) and (2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Directive (EU) 2017/1132 of the European Parliament and of the Council <sup>(3)</sup> regulates cross-border mergers of limited liability companies. The rules on cross-border mergers represent a significant milestone in improving the functioning of the internal market for companies and firms and their exercise of the freedom of establishment. However, evaluation of those rules shows that they need to be changed. Furthermore, it is appropriate to provide for rules regulating cross-border conversions and divisions, since Directive (EU) 2017/1132 only provides for rules on domestic divisions of public limited liability companies.
- (2) Freedom of establishment is one of the fundamental principles of Union law. Under the second paragraph of Article 49 of the Treaty on the Functioning of the European Union ("TFEU"), when read in conjunction with Article 54 of the TFEU, the freedom of establishment for companies or firms includes, inter alia, the right to form and manage such companies or firms under the conditions laid down by the legislation of the Member State of establishment. This has been interpreted by the Court of Justice of the European Union as encompassing the right of a company or firm formed in accordance with the legislation of a Member State to convert itself into a company or firm governed by the law of another Member State, provided that the conditions laid down by the legislation of that other Member State are satisfied and, in particular, that the test adopted by the latter Member State to determine the connection of a company or firm with its national legal order is satisfied.
- (3) In the absence of harmonisation of Union law, defining the connecting factor that determines the national law applicable to a company or firm falls, in accordance with Article 54 of the TFEU, within the competence of each Member State. Article 54 of the TFEU places the connecting factors of the registered office, the central administration and the principal place of business of a company or firm on an equal footing. Therefore, as clarified in case-law, the fact that only the registered office, and not the central administration or principal place of business, is transferred does not as such exclude the applicability of the freedom of establishment under Article 49 of the TFEU.

<sup>(1)</sup> OJ C 62, 15.2.2019, p. 24.

<sup>(2)</sup> Position of the European Parliament of 18 April 2019 (not yet published in the Official Journal) and decision of the Council of 18 November 2019.

<sup>(3)</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

- (4) Developments in the case-law have opened up new opportunities for companies in the internal market to foster economic growth, effective competition and productivity. At the same time, the objective of an internal market without internal borders for companies has also to be reconciled with other objectives of European integration, such as social protection as set out in Article 3 of the Treaty on European Union (TEU) and Article 9 of the TFEU, as well as the promotion of social dialogue as set out in Articles 151 and 152 of the TFEU. The rights of companies to convert, merge and divide across borders should go hand in hand, and be properly balanced, with the protection of employees, creditors and members.
- (5) The lack of a legal framework for cross-border conversions and divisions leads to legal fragmentation and legal uncertainty, and thus to barriers to the exercise of the freedom of establishment. It also leads to the suboptimal protection of employees, creditors and minority members within the internal market.
- (6) The European Parliament has called upon the Commission to adopt harmonised rules on cross-border conversions and divisions. A harmonised legal framework would further contribute to the removal of restrictions on the freedom of establishment while at the same time providing adequate protection for stakeholders such as employees, creditors and members.
- (7) The Commission announced in its Communication of 28 October 2015 entitled 'Upgrading the Single Market: more opportunities for people and business' that it would assess the need to update the existing rules on cross-border mergers in order to make it easier for SMEs to choose their preferred business strategies and to better adapt to changes in market conditions, but without weakening existing employment protection. In its Communication of 25 October 2016 entitled 'Commission Work Programme 2017: Delivering a Europe that protects, empowers and defends', the Commission announced an initiative to facilitate cross-border mergers.
- (8) In addition to new rules on conversions, this Directive lays down rules on cross-border divisions, both for partial and full divisions, but those rules only relate to cross-border divisions that involve the formation of new companies. This Directive does not provide a harmonised framework for cross-border divisions in which a company transfers assets and liabilities to one or more existing companies, as such cases have been viewed as being very complex, requiring the involvement of competent authorities from several Member States and entailing additional risks in terms of the circumvention of Union and national rules. The possibility of forming a company through a division by separation as provided for in this Directive offers companies a new harmonised procedure in the internal market. However, companies should be free to directly set up subsidiaries in other Member States.
- (9) This Directive should not apply to companies in liquidation where the distribution of assets has begun. In addition, Member States should be able to choose to exclude companies subject to other liquidation proceedings from the application of this Directive. Member States should also be able to choose not to apply this Directive to companies subject to insolvency proceedings, as defined by national law, or to preventive restructuring frameworks, as defined by national law, irrespective of whether such proceedings are part of a national insolvency framework or regulated outside of it. Also, Member States should be able to choose not to apply this Directive to companies that are subject to crisis prevention measures as defined in Directive 2014/59/EU of the European Parliament and of the Council<sup>(4)</sup>. This Directive should be without prejudice to Directive (EU) 2019/1023 of the European Parliament and of the Council<sup>(5)</sup>.
- (10) Given the complexity of cross-border conversions, mergers and divisions (collectively, 'cross-border operations') and the multitude of the interests concerned, it is appropriate to provide for the scrutiny of the legality of cross-border operations before they take effect, in order to provide legal certainty. To that effect, the competent authorities of the Member States involved should ensure that a decision on the approval of a cross-border operation is taken in a fair, objective and non-discriminatory manner and on the basis of all relevant elements required by Union and national law.

<sup>(4)</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

<sup>(5)</sup> Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) (OJ L 172, 26.6.2019, p. 18).

- (11) This Directive should be without prejudice to Member States' powers to provide strengthened protection for employees in accordance with the existing social *acquis*.
- (12) To allow all stakeholders' legitimate interests to be taken into account in the procedure governing a cross-border operation, the company should draw up and disclose the draft terms of the proposed operation, containing the most important information about it. The administrative or management body should, where provided for in national law or in accordance with national practice, or both, include board level employee representatives in the decision on the draft terms of a cross-border operation. Such information should at least include the legal form envisaged for the company or companies, the instrument of constitution where applicable, the statutes, the proposed indicative timetable for the operation and details of any safeguards offered to members and creditors. A notice should be disclosed in the register informing the members, creditors and representatives of the employees, or, where there are no such representatives, the employees themselves, that they may submit comments with regard to the proposed operation. Member States could also decide that the independent expert report required by this Directive has to be disclosed.
- (13) In order to provide information to its members and employees, the company carrying out the cross-border operation should prepare a report for them. The report should explain and justify the legal and economic aspects of the proposed cross-border operation and the implications of the proposed cross-border operation for employees. In particular, the report should explain the implications of the cross-border operation with regard to the future business of the company, including its subsidiaries. As far as members are concerned, the report should include remedies available to them, especially information about their right to exit the company. For employees, the report should explain the implications of the proposed cross-border operation on the employment situation. In particular, the report should explain whether there would be any material change to the employment conditions laid down by law, to collective agreements or to transnational company agreements, and in the locations of the company's places of business, such as the location of the head office. In addition, the report should include information on the management body and, where applicable, on staff, equipment, premises and assets before and after the cross-border operation and the likely changes to the organisation of work, wages and salaries, the location of specific posts and the expected consequences for the employees occupying those posts, as well as on the company-level social dialogue, including, where applicable, board level employee representation. The report should also explain how those changes would affect any subsidiaries of the company.

No section for employees should be required where the only employees of the company are in its administrative or management body. Furthermore, in order to enhance the protection afforded to employees, either the employees themselves or their representatives should be able to provide their opinion on the report's section setting out the implications of the cross-border operation for them. The provision of the report and of any opinion should be without prejudice to applicable information and consultation procedures provided for at national level including those following the implementation of Directive 2002/14/EC of the European Parliament and of the Council <sup>(6)</sup> or Directive 2009/38/EC of the European Parliament and of the Council <sup>(7)</sup>. The report or, where drawn up separately, the reports, should be available to the members and to the representatives of the employees of the company carrying out the cross-border operation or, where there are no such representatives, the employees themselves.

- (14) The draft terms of the cross-border operation, the offer of cash compensation made by the company to those members who wish to exit the company and, where applicable, the share-exchange ratio, including the amount of any complementary cash payment included in the draft terms, should be examined by an expert who is independent from the company. With regard to the independence of the expert, Member States should take into account the requirements laid down in Articles 22 and 22b of Directive 2006/43/EC of the European Parliament and of the Council <sup>(8)</sup>.

<sup>(6)</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

<sup>(7)</sup> Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ L 122, 16.5.2009, p. 28).

<sup>(8)</sup> Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

- (15) The information disclosed by the company should be comprehensive and make it possible for stakeholders to assess the implications of the intended cross-border operation. However, companies should not be obliged to disclose confidential information, the disclosure of which would be prejudicial to their business position, in accordance with Union or national law. Such non-disclosure should not undermine the other requirements provided for in this Directive.
- (16) On the basis of the draft terms and the reports, the general meeting of the members of the company or companies should decide on whether or not to approve those draft terms and the necessary amendments to the instruments of constitution, including the statutes. It is important that the required majority for the vote be sufficiently large in order to ensure that the decision is taken by a solid majority. In addition, members should also have the right to vote on any arrangements concerning employee participation, if they have reserved that right during the general meeting.
- (17) The lack of harmonisation of safeguards for members has been identified as an obstacle to cross-border operations. Companies and their members face a wide variety of different forms of protection leading to complexity and legal uncertainty. Members should, therefore, be offered the same minimum level of protection regardless of the Member State in which the company is situated. Member States should be able therefore to maintain or introduce additional rules on protection for members, unless such rules conflict with those provided for under this Directive or with the freedom of establishment. Members' individual rights to information should remain unaffected.
- (18) As a consequence of a cross-border operation, members often face a situation whereby the law applicable to their rights changes because they become members of a company governed by the law of a Member State other than the Member State the law of which was applicable to the company before the operation. Member States should, therefore, at least provide for members holding shares with voting rights and who voted against the approval of the draft terms to have the right to exit the company and receive cash compensation for their shares that is equivalent to the value of those shares. However, Member States should be free to decide to extend that right also to other members, for example, to members holding shares without voting rights or members who, as a result of a cross-border division, would acquire shares in the recipient company in proportions different from those they held before the operation, or to members for whom there would be no change of applicable law but for whom certain rights would change due to the operation. This Directive should not affect national rules on the validity of contracts for the sale and transfer of shares in companies or special legal form requirements. Member States should, for example, be able to require a notarial deed or a confirmation of signatures.
- (19) Companies should be able to estimate, to the extent possible, the costs related to the cross-border operation. Members should, therefore, be required to declare to the company whether they have decided to exercise the right to dispose of their shares. That requirement should be without prejudice to any formal requirements laid down in national law. Members might also be required to indicate, together with that declaration or within a specific time limit, whether they intend to dispute the cash compensation offered and claim additional cash compensation.
- (20) The calculation of the offer of cash compensation should be based on generally accepted valuation methods. Members should have a right to dispute the calculation and question the adequacy of the cash compensation before a competent administrative or judicial authority or a body mandated under national law, including arbitral tribunals. Member States should be able to provide that members who have declared their decision to exercise the right to dispose of their shares are entitled to join such proceedings. Member States should also be able to establish time limits in national law for joining those proceedings.
- (21) As far as cross-border mergers or divisions are concerned, members who did not have or did not exercise the right to exit the company should, nevertheless, have a right to dispute the share-exchange ratio. When assessing the adequacy of the share-exchange ratio, the competent administrative or judicial authority or a body mandated under national law should also take into account the amount of any complementary cash payment included in the draft terms.
- (22) Following a cross-border operation, the former creditors of the company or companies carrying out that operation could see their claims affected where the company that is liable for the debt is, following that operation, governed by the law of another Member State. Currently, creditor protection rules vary across Member States, which adds significant complexity to the cross-border operation process and leads to uncertainty both for the companies involved and for their creditors in relation to the recovery or satisfaction of their claim.

- (23) In order to ensure that creditors have appropriate protection in cases where they are not satisfied with the protection offered by the company in the draft terms and where they may not have found a satisfactory solution with the company, creditors, who have notified the company beforehand, should be able to apply for safeguards to the appropriate authority. When assessing such safeguards, the appropriate authority should take into account whether a creditor's claim against the company or a third party is of at least an equivalent value and of a commensurate credit quality as it was before the cross-border operation and whether the claim may be brought in the same jurisdiction.
- (24) Member States should ensure that creditors who entered into a relationship with the company before the company had made public its intention to carry out a cross-border operation have adequate protection. After the draft terms of the cross-border operation have been disclosed, creditors should be able to take into account the potential impact of the change of jurisdiction and applicable law as a result of the cross-border operation. Creditors to be protected could comprise current and former employees with occupational vested pension rights and persons receiving occupational pension benefits. In addition to the general rules set out in Regulation (EU) No 1215/2012 of the European Parliament and of the Council <sup>(9)</sup>, Member States should provide that such creditors have the right to file a claim in the departure Member State for a period of two years after a cross-border conversion has taken effect. The two-year protection period provided for in this Directive with respect to the jurisdiction to which creditors whose claims antedate the disclosure of the draft terms of the cross-border conversion may apply, should be without prejudice to national law determining the limitation periods for claims.
- (25) In addition, in order to protect creditors against the risk of the insolvency of the company following a cross-border operation, Member States should be allowed to require the company or companies to make a declaration of solvency stating that they are not aware of any reason why the company or companies resulting from the cross-border operation would not be able to meet their liabilities. In those circumstances, Member States should be able to make the members of the management body personally liable for the accuracy of that declaration. As legal traditions vary amongst Member States with regard to the use of solvency declarations and their possible consequences, it should be up to the Member States to decide on the appropriate consequences of providing inaccurate or misleading declarations, which should include effective and proportionate penalties and liabilities in compliance with Union law.
- (26) It is important to ensure that the rights of employees to be informed and consulted in the context of cross-border operations are fully respected. The information and consultation of employees in the context of cross-border operations should be carried out in accordance with the legal framework provided for in Directive 2002/14/EC and, where applicable for Community-scale undertakings or Community-scale groups of undertakings, in accordance with Directive 2009/38/EC, as well as, where the cross-border merger or cross-border division is considered to be a transfer of an undertaking within the meaning of Council Directive 2001/23/EC <sup>(10)</sup>, in accordance with Directive 2001/23/EC. This Directive does not affect Council Directive 98/59/EC <sup>(11)</sup>, Directive 2001/23/EC, Directive 2002/14/EC or Directive 2009/38/EC. However, given that this Directive lays down a harmonised procedure for cross-border operations, it is appropriate to specify, in particular, the time frame within which the information and consultation of employees related to the cross-border operation should take place.
- (27) Employee representatives provided for in national law or, where applicable, in accordance with national practice should also include any relevant bodies established in accordance with Union law, such as the European Works Council established in accordance with Directive 2009/38/EC and the representative body established in accordance with Council Directive 2001/86/EC <sup>(12)</sup>.
- (28) Member States should ensure that employee representatives, when carrying out their functions, enjoy adequate protection and guarantees in accordance with Article 7 of Directive 2002/14/EC to enable them to perform properly the duties which have been assigned to them.

<sup>(9)</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

<sup>(10)</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

<sup>(11)</sup> Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998, p. 16).

<sup>(12)</sup> Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, 10.11.2001, p. 22).

- (29) In order to conduct an analysis of the report for employees, a company carrying out a cross-border operation should provide employee representatives with the resources necessary to enable them to exercise the rights arising from this Directive in an appropriate manner.
- (30) In order to ensure that employee participation is not unduly prejudiced as a result of the cross-border operation, where the company carrying out the cross-border operation has implemented an employee participation system, the company or companies resulting from the cross-border operation should be obliged to take a legal form allowing for the exercise of such participation rights, including through the presence of representatives of the employees in the appropriate management or supervisory body of the company or companies. Moreover, in such a case, where a bona fide negotiation between the company and its employees takes place, it should be carried out in line with the procedure provided for in Directive 2001/86/EC, with a view to finding an amicable solution that reconciles the right of the company to carry out a cross-border operation with the employees' rights of participation. As a result of those negotiations, either a bespoke and agreed solution or, in the absence of an agreement, standard rules as set out in the Annex to Directive 2001/86/EC should apply, *mutatis mutandis*. In order to protect the agreed solution or the application of those standard rules, the company should not be able to remove the participation rights through carrying out a subsequent conversion, merger or division, be it cross-border or domestic, within four years.
- (31) In order to prevent the circumvention of employee participation rights by means of a cross-border operation, the company or companies carrying out the cross-border operation and registered in the Member State which provides for the employee participation rights, should not be able to perform a cross-border operation without first entering into negotiations with its employees or their representatives when the average number of employees employed by that company is equivalent to four fifths of the national threshold for triggering such employee participation.
- (32) The involvement of all stakeholders in cross-border operations, in particular the involvement of employees, contributes to a long-term and sustainable approach being taken by companies across the internal market. In this regard, safeguarding and promoting the participation rights of employees within the board of a company plays an important role, in particular when a company moves or restructures across borders. Therefore, the successful completion of negotiations on participation rights in the context of cross-border operations is essential and should be encouraged.
- (33) To ensure that there is proper allocation of tasks among Member States and an efficient and effective ex-ante control of cross-border operations, the competent authorities of the Member States of the company or companies carrying out the cross-border operation should have the power to issue a pre-conversion, pre-merger or pre-division certificate (hereinafter referred to as 'pre-operation certificate'). The competent authorities of the Member States of the company or companies resulting from the cross-border operation should not be able to approve the cross-border operation without such a certificate.
- (34) In order to issue a pre-operation certificate, the Member States of the company or companies carrying out the cross-border operation should designate, in accordance with national law, an authority or authorities competent to scrutinise the legality of the operation. The competent authority could comprise courts, notaries or other authorities, a tax authority or a financial service authority. Where there is more than one competent authority, the company should be able to apply for the pre-operation certificate to one single competent authority, as designated by the Member States, which should co-ordinate with the other competent authorities. The competent authority should assess compliance with all relevant conditions and the proper completion of all procedures and formalities in that Member State, and should decide whether to issue a pre-operation certificate within three months of the application by the company, unless the competent authority has serious doubts indicating that the cross-border operation is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes, and the assessment requires additional information to be considered or additional investigative activities to be performed.
- (35) In certain circumstances, the right of companies to carry out a cross-border operation could be used for abusive or fraudulent purposes, such as for the circumvention of the rights of employees, social security payments or tax obligations, or for criminal purposes. In particular, it is important to counteract 'shell' or 'front' companies set up for the purpose of evading, circumventing or infringing Union or national law. Where, in the course of the scrutiny of the legality of a cross-border operation, the competent authority becomes aware, including through consultation of relevant authorities, that the cross-border operation is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes, it should not issue the pre-operation certificate. The relevant procedures, including any assessment, should be carried out in accordance



with national law. In such cases, the competent authority should be able to extend the period of assessment by a maximum of three months.

- (36) Where the competent authority has serious doubts indicating that the cross-border operation is set up for abusive or fraudulent purposes, the assessment should consider all relevant facts and circumstances, and should take into account, where relevant, at a minimum, indicative factors relating to the characteristics of the establishment in the Member State in which the company or companies are to be registered after the cross-border operation, including the intention of the operation, the sector, the investment, the net turnover and profit or loss, the number of employees, the composition of the balance sheet, the tax residence, the assets and their location, equipment, the beneficial owners of the company, the habitual places of work of the employees and of specific groups of employees, the place where social contributions are due, the number of employees posted in the year prior to the cross-border operation within the meaning of Regulation (EC) No 883/2004 of the European Parliament and of the Council <sup>(13)</sup> and of Directive 96/71/EC of the European Parliament and of the Council <sup>(14)</sup>, the number of employees working simultaneously in more than one Member State within the meaning of Regulation (EC) No 883/2004, and the commercial risks assumed by the company or companies before and after the cross-border operation.

The assessment should also take into account relevant facts and circumstances related to employee participation rights, in particular as regards negotiations on such rights where those negotiations were triggered by reaching four fifths of the applicable national threshold. All of those elements should be considered only as indicative factors in the overall assessment and therefore should not be regarded in isolation. The competent authority may consider that if the cross-border operation were to result in the company having its place of effective management or place of economic activity in the Member State in which the company or companies are to be registered after the cross-border operation, that would be an indication of an absence of circumstances leading to abuse or fraud.

- (37) The competent authority should also be able to obtain from the company carrying out the cross-border operation, or from other competent authorities, including those of the destination Member State, all relevant information and documents, with a view to carrying out the scrutiny of the legality of the cross-border operation within the procedural framework laid down in national law. Member States should be able to stipulate the possible consequences for the issuance of the pre-operation certificate of the procedures initiated by members and creditors in accordance with this Directive.
- (38) In the assessment required to obtain a pre-operation certificate, the competent authority should be able to have recourse to an independent expert. Member States should lay down rules to ensure that the expert, or the legal person on whose behalf the expert is operating, is independent from the company applying for the pre-operation certificate. The expert should be appointed by the competent authority and should have no past or current link with the company concerned which might affect the expert's independence.
- (39) In order to ensure that the company carrying out the cross-border operation does not prejudice its creditors, the competent authority should be able to check, in particular, whether the company has fulfilled its obligations towards public creditors and whether any open obligations have been sufficiently secured. In particular, the competent authority should be able to check whether the company is the subject of any ongoing court proceedings concerning, for example, infringement of social, labour or environmental law, the outcome of which might lead to further obligations being imposed on the company, including in respect of citizens and private entities.
- (40) Member States should provide for procedural safeguards in line with the general principles of access to justice, including providing for the possibility of reviewing the decisions of the competent authorities in the proceedings concerning cross-border operations, the possibility of delaying the time when a pre-operation certificate takes effect in order to allow parties to bring an action before the competent court and the possibility of having interim measures granted, where appropriate.

<sup>(13)</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

<sup>(14)</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

- (41) Member States should ensure that the completion of certain procedural steps, namely, the disclosure of the draft terms, the application for a pre-operation certificate as well as the submission of any information and documents for the scrutiny of the legality of the cross-border operation by the destination Member State, can be completed fully online, without the necessity for the applicants to appear in person before a competent authority in the Member States. The rules on the use of digital tools and processes in company law, including the relevant safeguards, should apply as appropriate. The competent authority should be able to receive the application for the pre-operation certificate online, including the submission of any information and documents, unless, exceptionally, it is technically impossible for the competent authority.
- (42) In order to cut costs and reduce the length of the procedures and administrative burden for companies, Member States should apply the 'once-only' principle in the area of company law, which entails that companies are not required to submit the same information to more than one public authority. For example, companies should not have to submit the same information both to the national register and to the national gazette.
- (43) In order to provide for an appropriate level of transparency and the use of digital tools and processes, the pre-operation certificates issued by the competent authorities in different Member States should be shared through the system of interconnection of registers and should be made publicly available. In accordance with the general principle underlying Directive (EU) 2017/1132, such exchange of information should always be free of charge.
- (44) The carrying out of a cross-border conversion entails a change of the legal form of a company without that company losing its legal personality. However, neither a cross-border conversion nor a cross-border merger or division should lead to the circumvention of the requirements for incorporation in the Member State in which the company is to be registered after that cross-border operation. Such conditions, including the requirements to have the head office in the destination Member State and those relating to the disqualification of directors, should be fully respected by the company. However, in the case of cross-border conversions, the application of such conditions by the destination Member State should not affect the continuity of the converted company's legal personality.
- (45) Once a pre-operation certificate has been received, and after verifying that the legal requirements of the Member State in which the company is to be registered after the cross-border operation are fulfilled, including a possible check as to whether the cross-border operation constitutes a circumvention of Union or national law, the competent authorities should register the company in the register of that Member State. Only after this registration should the competent authority of the former Member State of the company or companies carrying out the cross-border operation strike the company off its own register. It should not be possible for the competent authorities of the Member State in which the company is to be registered after the cross-border operation to dispute the information provided by the pre-operation certificate.
- (46) To enhance the transparency of cross-border operations, it is important that the registers of the Member States involved contain the necessary information from other registers about the companies involved in those operations in order to be able to track the history of those companies. In particular, the file in the register in which the company was registered prior to the cross-border operation should contain the new registration number attributed to that company after the cross-border operation. Similarly, the file in the register in which the company is registered after the cross-border operation should contain the initial registration number attributed to the company prior to the cross-border operation.
- (47) As a consequence of the cross-border conversion, the company resulting from the conversion (the 'converted company') should retain its legal personality, its assets and liabilities, and all its rights and obligations, including any rights and obligations arising from contracts, acts or omissions. In particular, the converted company should respect any rights and obligations arising from contracts of employment or from employment relationships, including any collective agreements.
- (48) As a consequence of the cross-border merger, the assets and liabilities and all rights and obligations, including any rights and obligations arising from contracts, acts or omissions, should be transferred to the acquiring company or to the new company, and the members of the merging companies who do not exercise their exit rights should become members of the acquiring company or the new company respectively. In particular, the acquiring company or the new company should respect any rights and obligations arising from contracts of employment or from employment relationships, including any collective agreements.

- (49) As a consequence of the cross-border division, the assets and liabilities and all rights and obligations, including any rights and obligations arising from contracts, acts or omissions, should be transferred to the recipient companies in accordance with the allocation specified in the draft terms of division, and the members of the company being divided who do not exercise their exit rights should become members of the recipient companies, should remain members of the company being divided or should become members of both. In particular, recipient companies should respect any rights and obligations arising from contracts of employment or from employment relationships, including any collective agreements.
- (50) In order to ensure legal certainty, it should not be possible to declare a cross-border operation which has taken effect in accordance with the procedure laid down in this Directive null and void. That restriction should be without prejudice to Member States' powers, inter alia, in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement under national laws, in particular in the event that the competent or other relevant authorities establish, in particular through new substantive information, after the cross-border operation took effect, that the cross-border operation was set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law or for criminal purposes. In this context, the competent authorities could also assess whether the applicable national threshold for employee participation of the Member State of the company carrying out the cross-border operation was met or exceeded in the years following the cross-border operation.
- (51) Any cross-border operation should be without prejudice to liability for tax obligations related to a company's activity before that operation.
- (52) To guarantee the rights of employees other than rights of participation, Directives 98/59/EC, 2001/23/EC, 2002/14/EC and 2009/38/EC are not affected by this Directive. National laws should also apply to matters outside the scope of this Directive such as tax or social security.
- (53) This Directive does not affect the legal or administrative provisions of national law relating to the taxes of Member States or their territorial and administrative subdivisions, including the enforcement of tax rules in cross-border operations.
- (54) This Directive is without prejudice to Council Directives 2009/133/EC <sup>(15)</sup>, (EU) 2015/2376 <sup>(16)</sup>, (EU) 2016/881 <sup>(17)</sup>, (EU) 2016/1164 <sup>(18)</sup> and (EU) 2018/822 <sup>(19)</sup>.
- (55) This Directive is without prejudice to the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council <sup>(20)</sup> that address risks of money laundering and terrorist financing, in particular the obligations provided for therein relating to the carrying out of appropriate customer due diligence measures on a risk-sensitive basis, and those relating to identifying and registering the beneficial owner of any newly created entity in the Member State of its incorporation.
- (56) This Directive does not affect Union law concerning transparency and the rights of shareholders in listed companies, or national rules laid down or introduced pursuant to such Union law.
- (57) This Directive does not affect Union law regulating credit intermediaries and other financial undertakings, or national rules laid down or introduced pursuant to such Union law.

<sup>(15)</sup> Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (OJ L 310, 25.11.2009, p. 34).

<sup>(16)</sup> Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 332, 18.12.2015, p. 1).

<sup>(17)</sup> Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 146, 3.6.2016, p. 8).

<sup>(18)</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

<sup>(19)</sup> Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (OJ L 139, 5.6.2018, p. 1).

<sup>(20)</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (58) Since the objectives of this Directive, namely to facilitate and regulate cross-border conversions, mergers and divisions, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (59) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (60) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents <sup>(21)</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (61) The Commission should carry out an evaluation of this Directive, including an evaluation of the implementation of the provisions on employee information, consultation and participation in the context of cross-border operations. The evaluation should, in particular, aim to assess cross-border operations where negotiations on employee participation were triggered by reaching four fifths of the applicable threshold, and to see whether, after the cross-border operation, those companies met or exceeded the applicable threshold for employee participation of the Member State of the company which carried out the cross-border operation. Pursuant to paragraph 22 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making <sup>(22)</sup> (the 'Interinstitutional Agreement'), that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and value added, and should provide the basis for impact assessments of possible further measures.
- (62) Information should be collected in order to assess the performance of the provisions of this Directive in relation to the objectives it pursues and in order to provide the basis for an evaluation of Directive (EU) 2017/1132 in accordance with paragraph 22 of the Interinstitutional Agreement.
- (63) Directive (EU) 2017/1132 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Amendments to Directive (EU) 2017/1132**

Directive (EU) 2017/1132 is amended as follows:

- (1) in Article 1, the sixth indent is replaced by the following:
- ‘– cross-border conversions, cross-border mergers and cross-border divisions of limited liability companies;’
- (2) in Article 18(3), the following point is inserted:
- ‘(aa) the documents and information referred to in Articles 86g, 86n, 86p, 123, 127a, 130, 160g, 160n and 160p;’
- (3) Article 24 is amended as follows:
- (a) point (e) is replaced by the following:
- ‘(e) the detailed list of data to be transmitted for the purpose of exchanging information between registers, as referred to in Articles 20, 28a, 28c, 30a and 34;’
- (b) the following point is inserted:
- ‘(ea) the detailed list of data to be transmitted for the purpose of exchanging information between registers and for the purposes of disclosure, as referred to in Articles 86g, 86n, 86p, 123, 127a, 130, 160g, 160n and 160p;’

<sup>(21)</sup> OJ C 369, 17.12.2011, p. 14.

<sup>(22)</sup> OJ L 123, 12.5.2016, p. 1.

(c) in the third paragraph, the following sentence is added:

‘The Commission shall adopt the implementing acts referred to in point (ea) by 2 July 2020.’;

(4) the title of Title II is replaced by the following:

**‘CONVERSIONS, MERGERS AND DIVISIONS OF LIMITED LIABILITY COMPANIES’;**

(5) in Title II, the following Chapter is inserted before Chapter I:

‘CHAPTER -I

### ***Cross-border conversions***

*Article 86a*

#### **Scope**

1. This Chapter shall apply to conversions of limited liability companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union, into limited liability companies governed by the law of another Member State.

2. This Chapter shall not apply to cross-border conversions involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders’ request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption.

3. Member States shall ensure that this Chapter does not apply to companies in either of the following circumstances:

- (a) the company is in liquidation and has begun to distribute assets to its members;
- (b) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU.

4. Member States may decide not to apply this Chapter to companies which are:

- (a) the subject of insolvency proceedings or subject to preventive restructuring frameworks;
- (b) the subject of liquidation proceedings other than those referred to in point (a) of paragraph 3, or
- (c) the subject of crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU.

*Article 86b*

#### **Definitions**

For the purposes of this Chapter:

- (1) “company” means a limited liability company of a type listed in Annex II that carries out a cross-border conversion;
- (2) “cross-border conversion” means an operation whereby a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of the destination Member State, as listed in Annex II, and transfers at least its registered office to the destination Member State, while retaining its legal personality;
- (3) “departure Member State” means a Member State in which a company is registered prior to a cross-border conversion;
- (4) “destination Member State” means a Member State in which a converted company is registered as a result of a cross-border conversion;
- (5) “converted company” means a company formed in a destination Member State as a result of a cross-border conversion.

*Article 86c***Procedures and formalities**

In compliance with Union law, the law of the departure Member State shall govern those parts of the procedures and formalities to be complied with in connection with the cross-border conversion in order to obtain the pre-conversion certificate, and the law of the destination Member State shall govern those parts of the procedures and formalities to be complied with following receipt of the pre-conversion certificate.

*Article 86d***Draft terms of cross-border conversions**

The administrative or management body of the company shall draw up the draft terms of a cross-border conversion. The draft terms of a cross-border conversion shall include at least the following particulars:

- (a) the legal form and name of the company in the departure Member State and the location of its registered office in that Member State;
- (b) the legal form and name proposed for the converted company in the destination Member State and the proposed location of its registered office in that Member State;
- (c) the instrument of constitution of the company in the destination Member State, where applicable, and the statutes if they are contained in a separate instrument;
- (d) the proposed indicative timetable for the cross-border conversion;
- (e) the rights conferred by the converted company on members enjoying special rights or on holders of securities other than shares representing the company capital, or the measures proposed concerning them;
- (f) any safeguards offered to creditors, such as guarantees or pledges;
- (g) any special advantages granted to members of the administrative, management, supervisory or controlling bodies of the company;
- (h) whether any incentives or subsidies were received by the company in the departure Member State in the preceding five years;
- (i) details of the offer of cash compensation for members in accordance with Article 86i;
- (j) the likely repercussions of the cross-border conversion on employment;
- (k) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the converted company are determined pursuant to Article 86l.

*Article 86e***Report of the administrative or management body for members and employees**

1. The administrative or management body of the company shall draw up a report for members and employees, explaining and justifying the legal and economic aspects of the cross-border conversion, as well as explaining the implications of the cross-border conversion for employees.

It shall, in particular, explain the implications of the cross-border conversion for the future business of the company.

2. The report shall also include a section for members and a section for employees.

The company may decide either to draw up one report containing those two sections or to draw up separate reports for members and employees, respectively, containing the relevant section.

3. The section of the report for members shall, in particular, explain the following:

- (a) the cash compensation and the method used to determine the cash compensation;
- (b) the implications of the cross-border conversion for members;
- (c) the rights and remedies available to members in accordance with Article 86i.

4. The section of the report for members shall not be required where all the members of the company have agreed to waive that requirement. Member States may exclude single-member companies from the provisions of this Article.

5. The section of the report for employees shall, in particular, explain the following:
- (a) the implications of the cross-border conversion for employment relationships, as well as, where applicable, any measures for safeguarding those relationships;
  - (b) any material changes to the applicable conditions of employment or to the location of the company's places of business;
  - (c) how the factors set out in points (a) and (b) affect any subsidiaries of the company.
6. The report or reports shall be made available in any case electronically, together with the draft terms of the cross-border conversion, if available, to the members and to the representatives of the employees or, where there are no such representatives, to the employees themselves, not less than six weeks before the date of the general meeting referred to in Article 86h.
7. Where the administrative or management body of the company receives an opinion on the information referred to in paragraphs 1 and 5 in good time from the representatives of the employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to the report.
8. The section of the report for employees shall not be required where a company and its subsidiaries, if any, have no employees other than those who form part of the administrative or management body.
9. Where the section of the report for members referred to in paragraph 3 is waived in accordance with paragraph 4 and the section for employees referred to in paragraph 5 is not required under paragraph 8, the report shall not be required.
10. Paragraphs 1 to 9 of this Article shall be without prejudice to the applicable information and consultation rights and procedures provided for at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.

#### *Article 86f*

#### **Independent expert report**

1. Member States shall ensure that an independent expert examines the draft terms of cross-border conversion and draws up a report for members. That report shall be made available to the members not less than one month before the date of the general meeting referred to in Article 86h. Depending on the law of the Member State, the expert may be a natural or legal person.
2. The report referred to in paragraph 1 shall in any case include the expert's opinion as to whether the cash compensation is adequate. When assessing the cash compensation, the expert shall consider any market price of the shares in the company prior to the announcement of the conversion proposal or the value of the company excluding the effect of the proposed conversion, as determined in accordance with generally accepted valuation methods. The report shall at least:
- (a) indicate the method or methods used to determine the cash compensation proposed;
  - (b) state whether the method or methods used are adequate for the assessment of the cash compensation, indicate the value arrived at using such methods and give an opinion on the relative importance attributed to those methods in arriving at the value decided on; and
  - (c) describe any special valuation difficulties which have arisen.

The expert shall be entitled to obtain from the company all information necessary for the discharge of the duties of the expert.

3. Neither an examination of the draft terms of cross-border conversion by an independent expert nor an independent expert report shall be required if all the members of the company have so agreed.

Member States may exclude single-member companies from the application of this Article.

*Article 86g***Disclosure**

1. Member States shall ensure that the following documents are disclosed by the company and made publicly available in the register of the departure Member State, at least one month before the date of the general meeting referred to in Article 86h:

- (a) the draft terms of the cross-border conversion; and
- (b) a notice informing the members, creditors and representatives of the employees of the company, or, where there are no such representatives, the employees themselves, that they may submit to the company, at the latest five working days before the date of the general meeting, comments concerning the draft terms of the cross-border conversion.

Member States may require that the independent expert report be disclosed and made publicly available in the register.

Member States shall ensure that the company is able to exclude confidential information from the disclosure of the independent expert report.

The documents disclosed in accordance with this paragraph shall also be accessible through the system of interconnection of registers.

2. Member States may exempt a company from the disclosure requirement referred to in paragraph 1 of this Article where, for a continuous period beginning at least one month before the date fixed for the general meeting referred to in Article 86h and ending not earlier than the conclusion of that meeting, that company makes the documents referred to in paragraph 1 of this Article available on its website free of charge to the public.

However, Member States shall not subject that exemption to any requirements or constraints other than those which are necessary to ensure the security of the website and the authenticity of the documents, and which are proportionate to achieving those objectives.

3. Where the company makes the draft terms of the cross-border conversion available in accordance with paragraph 2 of this Article, it shall submit to the register of the departure Member State, at least one month before the date of the general meeting referred to in Article 86h, the following information:

- (a) the legal form and name of the company and the location of its registered office in the departure Member State and the legal form and name proposed for the converted company in the destination Member State and the proposed location of its registered office in that Member State;
- (b) the register in which the documents referred to in Article 14 are filed in respect of the company and its registration number in that register;
- (c) an indication of the arrangements made for the exercise of the rights of creditors, employees and members; and
- (d) details of the website from which the draft terms of the cross-border conversion, the notice referred to in paragraph 1, the independent expert report and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge.

The register of the departure Member State shall make publicly available the information referred to in points (a) to (d) of the first subparagraph.

4. Member States shall ensure that the requirements referred to in paragraphs 1 and 3 can be fulfilled fully online without the necessity for the applicants to appear in person before any competent authority in the departure Member State, in accordance with the relevant provisions of Chapter III of Title I.

5. Member States may require, in addition to the disclosure referred to in paragraphs 1, 2 and 3 of this Article, that the draft terms of the cross-border conversion, or the information referred to in paragraph 3 of this Article, be published in their national gazette or through a central electronic platform in accordance with Article 16(3). In that instance, Member States shall ensure that the register transmits the relevant information to the national gazette or to a central electronic platform.

6. Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible to the public free of charge through the system of interconnection of registers.

Member States shall further ensure that any fees charged to the company by the registers for the disclosure referred to in paragraphs 1 and 3 and, where applicable, for the publication referred to in paragraph 5 do not exceed the recovery of the cost of providing such services.



*Article 86h***Approval by the general meeting**

1. After taking note of the reports referred to in Articles 86e and 86f, where applicable, employees' opinions submitted in accordance with Article 86e and comments submitted in accordance with Article 86g, the general meeting of the company shall decide, by means of a resolution, whether to approve the draft terms of the cross-border conversion and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate instrument.
2. The general meeting of the company may reserve the right to make implementation of the cross-border conversion conditional on express ratification by it of the arrangements referred to in Article 86l.
3. Member States shall ensure that the approval of the draft terms of the cross-border conversion, and of any amendment to those draft terms, requires a majority of not less than two thirds but not more than 90 % of the votes attached either to the shares or to the subscribed capital represented at the general meeting. In any event, the voting threshold shall not be higher than that provided for in national law for the approval of cross-border mergers.
4. Where a clause in the draft terms of the cross-border conversion or any amendment to the instrument of constitution of the converting company leads to an increase of the economic obligations of a member towards the company or third parties, Member States may require, in such specific circumstances, that such clause or the amendment to the instrument of constitution be approved by the member concerned, provided that such member is unable to exercise the rights laid down in Article 86i.
5. Member States shall ensure that the approval of the cross-border conversion by the general meeting cannot be challenged solely on the following grounds:
  - (a) the cash compensation referred to in point (i) of Article 86d has been inadequately set; or
  - (b) the information given with regard to the cash compensation referred to in point (a) did not comply with the legal requirements.

*Article 86i***Protection of members**

1. Member States shall ensure that at least the members of a company who voted against the approval of the draft terms of the cross-border conversion have the right to dispose of their shares for adequate cash compensation, under the conditions laid down in paragraphs 2 to 5.

Member States may also provide for other members of the company to have the right referred to in the first subparagraph.

Member States may require that express opposition to the draft terms of the cross-border conversion, the intention of members to exercise their right to dispose of their shares, or both, be appropriately documented, at the latest at the general meeting referred to in Article 86h. Member States may allow the recording of opposition to the draft terms of the cross-border conversion to be considered proper documentation of a negative vote.

2. Member States shall establish the period within which the members referred to in paragraph 1 have to declare to the company their decision to exercise the right to dispose of their shares. That period shall not exceed one month after the general meeting referred to in Article 86h. Member States shall ensure that the company provides an electronic address for receiving that declaration electronically.
3. Member States shall further establish the period within which the cash compensation specified in the draft terms of the cross-border conversion is to be paid. That period shall not end later than two months after the cross-border conversion takes effect in accordance with Article 86q.
4. Member States shall ensure that any members who have declared their decision to exercise the right to dispose of their shares, but who consider that the cash compensation offered by the company has not been adequately set, are entitled to claim additional cash compensation before the competent authority or body mandated under national law. Member States shall establish a time limit for the claim for additional cash compensation.

Member States may provide that the final decision to provide additional cash compensation is valid for all members who have declared their decision to exercise the right to dispose of their shares in accordance with paragraph 2.

5. Member States shall ensure that the law of the departure Member State governs the rights referred to in paragraphs 1 to 4 and that the exclusive competence to resolve any disputes relating to those rights lies within the jurisdiction of that departure Member State.

#### *Article 86j*

#### **Protection of creditors**

1. Member States shall provide for an adequate system of protection of the interests of creditors whose claims antedate the disclosure of the draft terms of the cross-border conversion and have not fallen due at the time of such disclosure.

Member States shall ensure that creditors who are dissatisfied with the safeguards offered in the draft terms of the cross-border conversion, as provided for in point (f) of Article 86d, may apply, within three months of the disclosure of the draft terms of the cross-border conversion referred to in Article 86g, to the appropriate administrative or judicial authority for adequate safeguards, provided that such creditors can credibly demonstrate that, due to the cross-border conversion, the satisfaction of their claims is at stake and that they have not obtained adequate safeguards from the company.

Member States shall ensure that the safeguards are conditional on the cross-border conversion taking effect in accordance with Article 86q.

2. Member States may require that the administrative or management body of the company provide a declaration that accurately reflects its current financial status at a date no earlier than one month before the disclosure of that declaration. The declaration shall state that, on the basis of the information available to the administrative or management body of the company at the date of that declaration, and after having made reasonable enquiries, that administrative or management body is unaware of any reason why the company would, after the conversion takes effect, be unable to meet its liabilities when those liabilities fall due. The declaration shall be disclosed together with the draft terms of the cross-border conversion in accordance with Article 86g.

3. Paragraphs 1 and 2 shall be without prejudice to the application of the law of the departure Member State concerning the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies.

4. Member States shall ensure that creditors whose claims antedate the disclosure of the draft terms of the cross-border conversion are able to institute proceedings against the company also in the departure Member State within two years of the date the conversion has taken effect, without prejudice to the jurisdiction rules arising from Union or national law or from a contractual agreement. The option of instituting such proceedings shall be in addition to other rules on the choice of jurisdiction that are applicable pursuant to Union law.

#### *Article 86k*

#### **Employee information and consultation**

1. Member States shall ensure that employees' rights to information and consultation are respected in relation to the cross-border conversion and are exercised in accordance with the legal framework provided for in Directive 2002/14/EC and, where applicable for Community-scale undertakings or Community-scale groups of undertakings, in accordance with Directive 2009/38/EC. Member States may decide that employees' rights to information and consultation apply with respect to the employees of companies other than those referred to in Article 3(1) of Directive 2002/14/EC.

2. Notwithstanding Article 86e(7) and point (b) of Article 86g(1), Member States shall ensure that employees' rights to information and consultation are respected, at least before the draft terms of the cross-border conversion or the report referred to in Article 86e are decided upon, whichever is earlier, in such a way that a reasoned response is given to the employees before the general meeting referred to in Article 86h.

3. Without prejudice to any provisions or practices in force more favourable to employees, Member States shall determine the practical arrangements for exercising the right to information and consultation in accordance with Article 4 of Directive 2002/14/EC.

*Article 86l***Employee participation**

1. Without prejudice to paragraph 2, the converted company shall be subject to the rules in force concerning employee participation, if any, in the destination Member State.
2. However, the rules in force concerning employee participation, if any, in the destination Member State shall not apply where the company has, in the six months prior to the disclosure of the draft terms of the cross-border conversion, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in the law of the departure Member State, for triggering the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the law of the destination Member State does not:
  - (a) provide for at least the same level of employee participation as operated in the company prior to the cross-border conversion, measured by reference to the proportion of employee representatives among the members of the administrative or supervisory body or their committees or of the management group which covers the profit units of the company, subject to employee representation; or
  - (b) provide for employees of establishments of the converted company that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees employed in the destination Member State.
3. In the cases referred to in paragraph 2 of this Article, the participation of employees in the converted company and their involvement in the definition of such rights shall be regulated by the Member States, *mutatis mutandis* and subject to paragraphs 4 to 7 of this Article, in accordance with the principles and procedures laid down in Article 12 (2) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:
  - (a) Article 3(1), points (a)(i) and (b) of Article 3(2), Article 3(3), the first two sentences of Article 3(4), and Article 3(5) and (7);
  - (b) Article 4(1), points (a), (g) and (h) of Article 4(2), and Article 4(3) and (4);
  - (c) Article 5;
  - (d) Article 6;
  - (e) Article 7(1), with the exception of the second indent of point (b);
  - (f) Articles 8, 10, 11 and 12; and
  - (g) point (a) of Part 3 of the Annex.
4. When regulating the principles and procedures referred to in paragraph 3, Member States:
  - (a) shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the destination Member State;
  - (b) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative body of the converted company. However, if, in the company, employee representatives constituted at least one third of the administrative or supervisory body, the limitation may never result in a lower proportion of employee representatives in the administrative body than one third;
  - (c) shall ensure that the rules on employee participation that applied prior to the cross-border conversion continue to apply until the date of application of any subsequently agreed rules or, in the absence of agreed rules, until the application of standard rules in accordance with point (a) of Part 3 of the Annex to Directive 2001/86/EC.
5. The extension of participation rights to employees of the converted company employed in other Member States, as referred to in point (b) of paragraph 2, shall not entail any obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.
6. Where the converted company is to be governed by an employee participation system, in accordance with the rules referred to in paragraph 2, it shall be obliged to take a legal form allowing for the exercise of participation rights.

7. Where the converted company is operating under an employee participation system, it shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent conversion, merger or division, be it cross-border or domestic, for a period of four years after the cross-border conversion has taken effect, by applying *mutatis mutandis* the rules laid down in paragraphs 1 to 6.

8. A company shall communicate to its employees or their representatives the outcome of the negotiations concerning employee participation without undue delay.

#### Article 86m

##### **Pre-conversion certificate**

1. Member States shall designate the court, notary or other authority or authorities competent to scrutinise the legality of cross-border conversions as regards those parts of the procedure which are governed by the law of the departure Member State and to issue a pre-conversion certificate attesting to compliance with all relevant conditions and to the proper completion of all procedures and formalities in the departure Member State ("the competent authority").

Such completion of procedures and formalities may comprise the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies or compliance with specific sectoral requirements, including securing obligations arising from ongoing proceedings.

2. Member States shall ensure that the application to obtain a pre-conversion certificate by the company is accompanied by the following:

- (a) the draft terms of the cross-border conversion;
- (b) the report and the appended opinion, if any, referred to in Article 86e, as well as the report referred to in Article 86f, where they are available;
- (c) any comments submitted in accordance with Article 86g(1); and
- (d) information on the approval by the general meeting referred to in Article 86h.

3. Member States may require that the application to obtain a pre-conversion certificate by the company is accompanied by additional information, such as, in particular:

- (a) the number of employees at the time of the drawing up of the draft terms of the cross-border conversion;
- (b) the existence of subsidiaries and their respective geographical location;
- (c) information regarding the satisfaction of obligations due to public bodies by the company.

For the purposes of this paragraph, competent authorities may request such information, if not provided by the company, from other relevant authorities.

4. Member States shall ensure that the application referred to in paragraphs 2 and 3, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the competent authority, in accordance with the relevant provisions of Chapter III of Title I.

5. In respect of compliance with the rules concerning employee participation as laid down in Article 86l, the competent authority of the departure Member State shall verify that the draft terms of the cross-border conversion include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

6. As part of the scrutiny referred to in paragraph 1, the competent authority shall examine the following:

- (a) all documents and information submitted to the competent authority in accordance with paragraphs 2 and 3;
- (b) an indication by the company that the procedure referred to in Article 86l(3) and (4) has started, where relevant.

7. Member States shall ensure that the scrutiny referred to in paragraph 1 is carried out within three months of the date of receipt of the documents and information concerning the approval of the cross-border conversion by the general meeting of the company. That scrutiny shall have one of the following outcomes:

- (a) where it is determined that the cross-border conversion complies with all the relevant conditions and that all necessary procedures and formalities have been completed, the competent authority shall issue the pre-conversion certificate;
- (b) where it is determined that the cross-border conversion does not comply with all the relevant conditions or that not all necessary procedures and formalities have been completed, the competent authority shall not issue the pre-conversion certificate and shall inform the company of the reasons for its decision; in that case, the competent authority may give the company the opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.

8. Member States shall ensure that the competent authority does not issue the pre-conversion certificate where it is determined in compliance with national law that a cross-border conversion is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes.

9. Where the competent authority, during the scrutiny referred to in paragraph 1, has serious doubts indicating that the cross-border conversion is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes, it shall take into consideration relevant facts and circumstances, such as, where relevant and not considered in isolation, indicative factors of which the competent authority has become aware, in the course of the scrutiny referred to in paragraph 1, including through consultation of relevant authorities. The assessment for the purposes of this paragraph shall be conducted on a case-by-case basis, through a procedure governed by national law.

10. Where it is necessary for the purposes of the assessment under paragraphs 8 and 9 to take into account additional information or to perform additional investigative activities, the period of three months provided for in paragraph 7 may be extended by a maximum of three months.

11. Where, due to the complexity of the cross-border procedure, it is not possible to carry out the assessment within the deadlines provided for in paragraphs 7 and 10, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of those deadlines.

12. Member States shall ensure that the competent authority may consult other relevant authorities with competence in the different fields concerned by the cross-border conversion, including those of the destination Member State, and obtain from those authorities and from the company information and documents necessary to scrutinise the legality of the cross-border conversion, within the procedural framework laid down in national law. For the purposes of the assessment, the competent authority may have recourse to an independent expert.

#### *Article 86n*

##### **Transmission of the pre-conversion certificate**

1. Member States shall ensure that the pre-conversion certificate is shared with the authorities referred to in Article 86o(1) through the system of interconnection of registers.

Member States shall also ensure that the pre-conversion certificate is available through the system of interconnection of registers.

2. Access to the pre-conversion certificate shall be free of charge for the authorities referred to in Article 86o(1) and for the registers.

#### *Article 86o*

##### **Scrutiny of the legality of the cross-border conversion by the destination Member State**

1. Member States shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border conversion as regards that part of the procedure which is governed by the law of the destination Member State and to approve the cross-border conversion.

That authority shall in particular ensure that the converted company complies with provisions of national law on the incorporation and registration of companies and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 86l.

2. For the purposes of paragraph 1 of this Article, the company shall submit to the authority referred to in paragraph 1 of this Article the draft terms of the cross-border conversion approved by the general meeting referred to in Article 86h.

3. Each Member State shall ensure that any application for the purposes of paragraph 1, by the company, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the authority referred to in paragraph 1, in accordance with the relevant provisions of Chapter III of Title I.

4. The authority referred to in paragraph 1 shall approve the cross-border conversion as soon as it has determined that all relevant conditions have been properly fulfilled and formalities properly completed in the destination Member State.

5. The pre-conversion certificate shall be accepted by the authority referred to in paragraph 1 as conclusively attesting to the proper completion of the applicable pre-conversion procedures and formalities in the departure Member State, without which the cross-border conversion cannot be approved.

*Article 86p***Registration**

1. The laws of the departure Member State and of the destination Member State shall determine, with regard to their respective territories, the arrangements, in accordance with Article 16, for disclosing the completion of the cross-border conversion in their registers.
2. Member States shall ensure that at least the following information is entered in their registers:
  - (a) in the register of the destination Member State, that the registration of the converted company is the result of a cross-border conversion;
  - (b) in the register of the destination Member State, the date of registration of the converted company;
  - (c) in the register of the departure Member State, that the striking off or removal of the company from the register is the result of a cross-border conversion;
  - (d) in the register of the departure Member State, the date of striking off or removal of the company from the register;
  - (e) in the registers of the departure Member State and of the destination Member State, respectively, the registration number, name and legal form of the company and the registration number, name and legal form of the converted company.

The registers shall make the information referred to in the first subparagraph publicly available and accessible through the system of interconnection of registers.

3. Member States shall ensure that the register in the destination Member State notifies the register in the departure Member State, through the system of interconnection of registers, that the cross-border conversion has taken effect. Member States shall also ensure that the registration of the company is struck off or removed from the register immediately upon receipt of that notification.

*Article 86q***Date on which the cross-border conversion takes effect**

The law of the destination Member State shall determine the date on which the cross-border conversion takes effect. That date shall be after the scrutiny referred to in Articles 86m and 86o has been carried out.

*Article 86r***Consequences of a cross-border conversion**

A cross-border conversion shall, from the date referred to in Article 86q, have the following consequences:

- (a) all the assets and liabilities of the company, including all contracts, credits, rights and obligations, shall be those of the converted company;
- (b) the members of the company shall continue to be members of the converted company, unless they have disposed of their shares as referred to in Article 86i(1);
- (c) the rights and obligations of the company arising from contracts of employment or from employment relationships and existing at the date on which the cross-border conversion takes effect shall be those of the converted company.

*Article 86s***Independent experts**

1. Member States shall lay down rules governing at least the civil liability of the independent expert responsible for drawing up the report referred to in Article 86f.
2. Member States shall have rules in place to ensure that:
  - (a) the expert, or the legal person on whose behalf the expert is operating, is independent from and has no conflict of interest with the company applying for the pre-conversion certificate; and
  - (b) the expert's opinion is impartial and objective, and is given with a view to providing assistance to the competent authority in accordance with the independence and impartiality requirements under the law and professional standards to which the expert is subject.

*Article 86t***Validity**

A cross-border conversion which has taken effect in compliance with the procedures transposing this Directive may not be declared null and void.

The first paragraph does not affect Member States' powers, inter alia, in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, to impose measures and penalties, under national law, after the date on which the cross-border conversion took effect.;

(6) in Article 119, point (2) is amended as follows:

(a) at the end of point (c) ' ; or' is added;

(b) the following point is added:

'(d) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company, the acquiring company, without the issue of any new shares by the acquiring company, provided that one person holds directly or indirectly all the shares in the merging companies or the members of the merging companies hold their securities and shares in the same proportion in all merging companies.;

(7) Article 120 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. Member States shall ensure that this Chapter does not apply to companies in either of the following circumstances:

(a) the company is in liquidation and has begun to distribute assets to its members;

(b) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU.;

(b) the following paragraph is added:

'5. Member States may decide not to apply this Chapter to companies which are:

(a) the subject of insolvency proceedings or subject to preventive restructuring frameworks;

(b) the subject of liquidation proceedings other than those referred to in point (a) of paragraph 4, or

(c) the subject of crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU.;

(8) Article 121 is amended as follows:

(a) in paragraph 1, point (a) is deleted;

(b) paragraph 2 is replaced by the following:

'2. The provisions and formalities referred to in point (b) of paragraph 1 of this Article shall, in particular, include those concerning the decision-making process relating to the merger and the protection of employees as regards rights other than those governed by Article 133.;

(9) Article 122 is amended as follows:

(a) points (a) and (b) are replaced by the following:

'(a) for each of the merging companies, its legal form and name, and the location of its registered office, and the legal form and name proposed for the company resulting from the cross-border merger and the proposed location of its registered office;

(b) the ratio applicable to the exchange of securities or shares representing the company capital and the amount of any cash payment, where appropriate.;

(b) points (h) and (i) are replaced by the following:

'(h) any special advantages granted to members of the administrative, management, supervisory or controlling bodies of the merging companies;

(i) the instrument of constitution of the company resulting from the cross-border merger, where applicable, and the statutes if they are contained in a separate instrument.;

(c) the following points are added:

‘(m) details of the offer of cash compensation for members in accordance with Article 126a;

(n) any safeguards offered to creditors, such as guarantees or pledges.’;

(10) Articles 123 and 124 are replaced by the following:

*‘Article 123*

### **Disclosure**

1. Member States shall ensure that the following documents are disclosed by the company and made publicly available in the register of the Member State of each of the merging companies, at least one month before the date of the general meeting referred to in Article 126:

(a) the common draft terms of the cross-border merger; and

(b) a notice informing the members, creditors and representatives of the employees of the merging company, or, where there are no such representatives, the employees themselves, that they may submit to their respective company, at the latest five working days before the date of the general meeting, comments concerning the common draft terms of the cross-border merger.

Member States may require that the independent expert report be disclosed and made publicly available in the register.

Member States shall ensure that the company is able to exclude confidential information from the disclosure of the independent expert report.

The documents disclosed in accordance with this paragraph shall also be accessible through the system of interconnection of registers.

2. Member States may exempt merging companies from the disclosure requirement referred to in paragraph 1 of this Article where, for a continuous period beginning at least one month before the date fixed for the general meeting referred to in Article 126 and ending not earlier than the conclusion of that meeting, those companies make the documents referred to in paragraph 1 of this Article available on their websites free of charge to the public.

However, Member States shall not subject that exemption to any requirements or constraints other than those which are necessary to ensure the security of the website and the authenticity of the documents, and which are proportionate to achieving those objectives.

3. Where merging companies make the common draft terms of the cross-border merger available in accordance with paragraph 2 of this Article, they shall submit to their respective register, at least one month before the date of the general meeting referred to in Article 126, the following information:

(a) for each of the merging companies its legal form and name and the location of its registered office and the legal form and name proposed for any newly created company and the proposed location of its registered office;

(b) the register in which the documents referred to in Article 14 are filed in respect of each of the merging companies, and the registration number of the respective company in that register;

(c) an indication, for each of the merging companies, of the arrangements made for the exercise of the rights of creditors, employees and members; and

(d) details of the website from which the common draft terms of the cross-border merger, the notice referred to in paragraph 1, the independent expert report and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge.

The register of the Member State of each of the merging companies shall make publicly available the information referred to in points (a) to (d) of the first subparagraph.

4. Member States shall ensure that the requirements referred to in paragraphs 1 and 3 can be fulfilled fully online without the necessity for the applicants to appear in person before any competent authority in the Member States of the merging companies, in accordance with the relevant provisions of Chapter III of Title I.

5. Where the approval of the merger is not required by the general meeting of the acquiring company in accordance with Article 126(3), the disclosure referred to in paragraphs 1, 2 and 3 of this Article shall be made at least one month before the date of the general meeting of the other merging company or companies.

6. Member States may require, in addition to the disclosure referred to in paragraphs 1, 2 and 3 of this Article, that the common draft terms of the cross-border merger, or the information referred to in paragraph 3 of this Article, be published in their national gazette or through a central electronic platform in accordance with Article 16(3). In that instance, Member States shall ensure that the register transmits the relevant information to the national gazette or to a central electronic platform.



7. Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible to the public free of charge through the system of interconnection of registers.

Member States shall further ensure that any fees charged to the company by the registers for the disclosure referred to in paragraphs 1 and 3 and, where applicable, for the publication referred to in paragraph 6 do not exceed the recovery of the cost of providing such services.

#### Article 124

### **Report of the administrative or management body for members and employees**

1. The administrative or management body of each of the merging companies shall draw up a report for members and employees explaining and justifying the legal and economic aspects of the cross-border merger, as well as explaining the implications of the cross-border merger for employees.

It shall, in particular, explain the implications of the cross-border merger for the future business of the company.

2. The report shall also include a section for members and a section for employees.

The company may decide either to draw up one report containing those two sections or to draw up separate reports for members and employees, respectively, containing the relevant section.

3. The section of the report for members shall, in particular, explain the following:

- (a) the cash compensation and the method used to determine the cash compensation;
- (b) the share exchange ratio and the method or methods used to arrive at the share exchange ratio, where applicable;
- (c) the implications of the cross-border merger for members;
- (d) the rights and remedies available to members in accordance with Article 126a.

4. The section of the report for members shall not be required where all the members of the company have agreed to waive that requirement. Member States may exclude single-member companies from the provisions of this Article.

5. The section of the report for employees shall, in particular, explain the following:

- (a) the implications of the cross-border merger for employment relationships, as well as, where applicable, any measures for safeguarding those relationships;
- (b) any material changes to the applicable conditions of employment or to the location of the company's places of business;
- (c) how the factors set out in points (a) and (b) affect any subsidiaries of the company.

6. The report or reports shall be made available in any case electronically, together with the common draft terms of the cross-border merger, if available, to the members and to the representatives of the employees of each of the merging companies or, where there are no such representatives, to the employees themselves, not less than six weeks before the date of the general meeting referred to in Article 126.

However, where the approval of the merger is not required by the general meeting of the acquiring company in accordance with Article 126(3), the report shall be made available at least six weeks before the date of the general meeting of the other merging company or companies.

7. Where the administrative or management body of the merging company receives an opinion on the information referred to in paragraphs 1 and 5 in good time from the representatives of the employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to the report.

8. The section of the report for employees shall not be required where a merging company and its subsidiaries, if any, have no employees other than those who form part of the administrative or management body.

9. Where the section of the report for members referred to in paragraph 3 is waived in accordance with paragraph 4 and the section for employees referred to in paragraph 5 is not required under paragraph 8, the report shall not be required.

10. Paragraphs 1 to 9 of this Article shall be without prejudice to the applicable information and consultation rights and procedures provided for at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.;

(11) Article 125 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘However, where the approval of the merger is not required by the general meeting of the acquiring company in accordance with Article 126(3), the report shall be made available at least one month before the date of the general meeting of the other merging company or companies.’;

(b) paragraph 3 is replaced by the following:

‘3. The report referred to in paragraph 1 shall in any case include the expert’s opinion as to whether the cash compensation and the share exchange ratio are adequate. When assessing the cash compensation, the expert shall consider any market price of the shares in the merging companies prior to the announcement of the merger proposal or the value of the companies excluding the effect of the proposed merger, as determined in accordance with generally accepted valuation methods. The report shall at least:

- (a) indicate the method or methods used to determine the cash compensation proposed;
- (b) indicate the method or methods used to arrive at the share exchange ratio proposed;
- (c) state whether the method or methods used are adequate for the assessment of the cash compensation and the share exchange ratio, indicate the value arrived at using such methods and give an opinion on the relative importance attributed to those methods in arriving at the value decided on, and in the event that different methods are used in the merging companies, state also whether the use of different methods was justified; and
- (d) describe any special valuation difficulties which have arisen.

The expert shall be entitled to obtain from the merging companies all information necessary for the discharge of the duties of the expert.’;

(c) in paragraph 4, the following subparagraph is added:

‘Member States may exclude single-member companies from the application of this Article.’;

(12) Article 126 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. After taking note of the reports referred to in Articles 124 and 125, where applicable, employees’ opinions submitted in accordance with Article 124 and comments submitted in accordance with Article 123, the general meeting of each of the merging companies shall decide, by means of a resolution, whether to approve the common draft terms of the cross-border merger and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate instrument.’;

(b) the following paragraph is added:

‘4. Member States shall ensure that the approval of the cross-border merger by the general meeting cannot be challenged solely on the following grounds:

- (a) the share exchange ratio referred to in point (b) of Article 122 has been inadequately set;
- (b) the cash compensation referred to in point (m) of Article 122 has been inadequately set; or
- (c) the information given with regard to the share exchange ratio referred to in point (a) or the cash compensation referred to in point (b) did not comply with the legal requirements.’;

(13) the following Articles are inserted:

*Article 126a*

### **Protection of members**

1. Member States shall ensure that at least the members of the merging companies who voted against the approval of the common draft-terms of the cross-border merger have the right to dispose of their shares for adequate cash compensation, under the conditions laid down in paragraphs 2 to 6, provided that as a result of the merger they would acquire shares in the company resulting from the merger which would be governed by the law of a Member State other than the Member State of their respective merging company.

Member States may also provide for other members of the merging companies to have the right referred to in the first subparagraph.

Member States may require that express opposition to the common draft terms of the cross-border merger, the intention of members to exercise their right to dispose of their shares, or both, be appropriately documented, at the latest at the general meeting referred to in Article 126. Member States may allow the recording of opposition to the common draft terms of the cross-border merger to be considered proper documentation of a negative vote.

2. Member States shall establish the period within which the members referred to in paragraph 1 have to declare to the merging company concerned their decision to exercise the right to dispose of their shares. That period shall not exceed one month after the general meeting referred to in Article 126. Member States shall ensure that the merging companies provide an electronic address for receiving that declaration electronically.

3. Member States shall further establish the period within which the cash compensation specified in the common draft terms of the cross-border merger is to be paid. That period shall not end later than two months after the cross-border merger takes effect in accordance with Article 129.

4. Member States shall ensure that any members who have declared their decision to exercise the right to dispose of their shares, but who consider that the cash compensation offered by the merging company concerned has not been adequately set, are entitled to claim additional cash compensation before the competent authority or body mandated under national law. Member States shall establish a time limit for the claim for additional cash compensation.

Member States may provide that the final decision to provide additional cash compensation is valid for all members of the merging company concerned who have declared their decision to exercise the right to dispose of their shares in accordance with paragraph 2.

5. Member States shall ensure that the law of the Member State to which a merging company is subject governs the rights referred to in paragraphs 1 to 4 and that the exclusive competence to resolve any disputes relating to those rights lies within the jurisdiction of that Member State.

6. Member States shall ensure that members of the merging companies who did not have or did not exercise the right to dispose of their shares, but who consider that the share exchange ratio set out in the common draft terms of the cross-border merger is inadequate, may dispute that ratio and claim a cash payment. Proceedings in that regard shall be initiated before the competent authority or body mandated under the law of the Member State to which the relevant merging company is subject, within the time limit laid down in that national law and such proceedings shall not prevent the registration of the cross-border merger. The decision shall be binding on the company resulting from the cross-border merger.

Member States may also provide that the share exchange ratio as established in that decision is valid for any members of the merging company concerned who did not have or did not exercise their right to dispose of their shares.

7. Member States may also provide that the company resulting from the cross-border merger can provide shares or other compensation instead of a cash payment.

*Article 126b***Protection of creditors**

1. Member States shall provide for an adequate system of protection of the interests of creditors whose claims antedate the disclosure of the common draft terms of the cross-border merger and have not fallen due at the time of such disclosure.

Member States shall ensure that creditors who are dissatisfied with the safeguards offered in the common draft terms of the cross-border merger, as provided for in point (n) of Article 122, may apply, within three months of the disclosure of the common draft terms of the cross-border merger referred to in Article 123, to the appropriate administrative or judicial authority for adequate safeguards, provided that such creditors can credibly demonstrate that, due to the cross-border merger, the satisfaction of their claims is at stake and that they have not obtained adequate safeguards from the merging companies.

Member States shall ensure that the safeguards are conditional on the cross-border merger taking effect in accordance with Article 129.

2. Member States may require that the administrative or management body of each of the merging companies provides a declaration that accurately reflects its current financial status at a date no earlier than one month before the disclosure of that declaration. The declaration shall state that, on the basis of the information available to the administrative or management body of the merging companies at the date of that declaration, and after having made reasonable enquiries, that administrative or management body is unaware of any reason why the company resulting from the merger would be unable to meet its liabilities when those liabilities fall due. The declaration shall be disclosed together with the common draft terms of the cross-border merger in accordance with Article 123.

3. Paragraphs 1 and 2 shall be without prejudice to the application of the laws of the Member States of the merging companies concerning the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies.

*Article 126c***Employee information and consultation**

1. Member States shall ensure that employees' rights to information and consultation are respected in relation to the cross-border merger and are exercised in accordance with the legal framework provided for in Directive 2002/14/EC, and Directive 2001/23/EC where the cross-border merger is considered to be a transfer of an undertaking within the meaning of Directive 2001/23/EC, and, where applicable for Community-scale undertakings or Community-scale groups of undertakings, in accordance with Directive 2009/38/EC. Member States may decide that employees' rights to information and consultation apply with respect to the employees of companies other than those referred to in Article 3(1) of Directive 2002/14/EC.

2. Notwithstanding point (b) of Article 123(1) and Article 124(7), Member States shall ensure that employees' rights to information and consultation are respected, at least before the common draft terms of the cross-border merger or the report referred to in Article 124 are decided upon, whichever is earlier, in such a way that a reasoned response is given to the employees before the general meeting referred to in Article 126.

3. Without prejudice to any provisions or practices in force more favourable to employees, Member States shall determine the practical arrangements for exercising the right to information and consultation in accordance with Article 4 of Directive 2002/14/EC.;

(14) Article 127 is replaced by the following:

*'Article 127***Pre-merger certificate**

1. Member States shall designate the court, notary or other authority or authorities competent to scrutinise the legality of cross-border mergers as regards those parts of the procedure which are governed by the law of the Member State of the merging company and to issue a pre-merger certificate attesting to compliance with all relevant conditions and to the proper completion of all procedures and formalities in the Member State of the merging company ("the competent authority").

Such completion of procedures and formalities may comprise the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies or compliance with specific sectoral requirements, including securing obligations arising from ongoing proceedings.

2. Member States shall ensure that the application to obtain a pre-merger certificate by the merging company is accompanied by the following:

- (a) the common draft terms of the cross-border merger;
- (b) the report and the appended opinion, if any, referred to in Article 124, as well as the report referred to in Article 125, where they are available;
- (c) any comments submitted in accordance with Article 123(1); and
- (d) information on the approval by the general meeting referred to in Article 126.

3. Member States may require that the application to obtain a pre-merger certificate by the merging company is accompanied by additional information, such as, in particular:

- (a) the number of employees at the time of the drawing up of the common draft terms of the cross-border merger;
- (b) the existence of subsidiaries and their respective geographical location;
- (c) information regarding the satisfaction of obligations due to public bodies by the merging company.

For the purposes of this paragraph, competent authorities may request such information, if not provided by the merging company, from other relevant authorities.

4. Member States shall ensure that the application referred to in paragraphs 2 and 3, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the competent authority, in accordance with the relevant provisions of Chapter III of Title I.

5. In respect of compliance with the rules concerning employee participation as laid down in Article 133, the competent authority in the Member State of the merging company shall verify that the common draft terms of the cross-border merger include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

6. As part of the scrutiny referred to in paragraph 1, the competent authority shall examine the following:

- (a) all documents and information submitted to the competent authority in accordance with paragraphs 2 and 3;
- (b) an indication by the merging companies that the procedure referred to in Article 133(3) and (4) has started, where relevant.

7. Member States shall ensure that the scrutiny referred to in paragraph 1 is carried out within three months of the date of receipt of the documents and information concerning the approval of the cross-border merger by the general meeting of the merging company. That scrutiny shall have one of the following outcomes:

- (a) where it is determined that the cross-border merger complies with all the relevant conditions and that all necessary procedures and formalities have been completed, the competent authority shall issue the pre-merger certificate;
- (b) where it is determined that the cross-border merger does not comply with all the relevant conditions or that not all necessary procedures and formalities have been completed, the competent authority shall not issue the pre-merger certificate and shall inform the company of the reasons for its decision; in that case, the competent authority may give the company the opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.

8. Member States shall ensure that the competent authority does not issue the pre-merger certificate where it is determined in compliance with national law that a cross-border merger is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes.

9. Where the competent authority, during the scrutiny referred to in paragraph 1, has serious doubts indicating that the cross-border merger is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes, it shall take into consideration relevant facts and circumstances, such as, where relevant and not considered in isolation, indicative factors of which the competent authority has become aware, in the course of the scrutiny referred to in paragraph 1, including through consultation of relevant authorities. The assessment for the purposes of this paragraph shall be conducted on a case-by-case basis, through a procedure governed by national law.

10. Where it is necessary for the purposes of the assessment under paragraphs 8 and 9 to take into account additional information or to perform additional investigative activities, the period of three months provided for in paragraph 7 may be extended by a maximum of three months.

11. Where, due to the complexity of the cross-border procedure, it is not possible to carry out the assessment within the deadlines provided for in paragraphs 7 and 10, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of those deadlines.

12. Member States shall ensure that the competent authority may consult other relevant authorities with competence in the different fields concerned by the cross-border merger, including those of the Member State of the company resulting from the merger, and obtain from those authorities and from the merging company information and documents necessary to scrutinise the legality of the cross-border merger, within the procedural framework laid down in national law. For the purposes of the assessment, the competent authority may have recourse to an independent expert.;

(15) the following article is inserted:

*'Article 127a*

#### **Transmission of the pre-merger certificate**

1. Member States shall ensure that the pre-merger certificate is shared with the authorities referred to in Article 128(1) through the system of interconnection of registers.

Member States shall also ensure that the pre-merger certificate is available through the system of interconnection of registers.

2. Access to the pre-merger certificate shall be free of charge for the authorities referred to in Article 128(1) and for the registers.;

(16) Article 128 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. For the purposes of paragraph 1 of this Article, each merging company shall submit to the authority referred to in paragraph 1 of this Article the common draft terms of the cross-border merger approved by the general meeting referred to in Article 126 or, in the event that the approval by the general meeting is not required in accordance with Article 132(3), the common draft terms of the cross-border merger approved by each merging company in accordance with national law.;

(b) the following paragraphs are added:

'3. Each Member State shall ensure that any application for the purposes of paragraph 1, by any of the merging companies, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the authority referred to in paragraph 1, in accordance with the relevant provisions of Chapter III of Title I.

4. The authority referred to in paragraph 1 shall approve the cross-border merger as soon as it has determined that all relevant conditions have been fulfilled.

5. The pre-merger certificate shall be accepted by the authority referred to in paragraph 1 as conclusively attesting to the proper completion of the applicable pre-merger procedures and formalities in its respective Member State, without which the cross-border merger cannot be approved.;

(17) Article 130 is replaced by the following:

*'Article 130*

#### **Registration**

1. The laws of the Member States of the merging companies and of the company resulting from the merger shall determine, with regard to their respective territories, the arrangements, in accordance with Article 16, for disclosing the completion of the cross-border merger in their registers.

2. Member States shall ensure that at least the following information is entered in their registers:

(a) in the register of the Member State of the company resulting from the merger, that the registration of the company resulting from the merger is the result of a cross-border merger;

- (b) in the register of the Member State of the company resulting from the merger, the date of registration of the company resulting from the merger;
- (c) in the register of the Member State of each merging company, that the striking off or removal of the merging company from the register is the result of a cross-border merger;
- (d) in the register of the Member State of each merging company, the date of striking off or removal of the merging company from the register;
- (e) in the registers of the Member States of each merging company and of the Member State of the company resulting from the merger, respectively, the registration number, name and legal form of each merging company and of the company resulting from the merger.

The registers shall make the information referred to in the first subparagraph publicly available and accessible through the system of interconnection of registers.

3. Member States shall ensure that the register in the Member State of the company resulting from the cross-border merger notifies the register in the Member State of each of the merging companies, through the system of interconnection of registers, that the cross-border merger has taken effect. Member States shall also ensure that the registration of the merging company is struck off or removed from the register immediately upon receipt of that notification.’;

(18) Article 131 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A cross-border merger carried out as laid down in subpoints (a), (c) and (d) of point (2) of Article 119 shall, from the date referred to in Article 129, have the following consequences:

- (a) all the assets and liabilities of the company being acquired, including all contracts, credits, rights and obligations, shall be transferred to the acquiring company;
- (b) the members of the company being acquired shall become members of the acquiring company, unless they have disposed of their shares as referred to in Article 126a(1);
- (c) the company being acquired shall cease to exist.’;

(b) in paragraph 2, points (a) and (b) are replaced by the following:

- ‘(a) all the assets and liabilities of the merging companies, including all contracts, credits, rights and obligations, shall be transferred to the new company;
- (b) the members of the merging companies shall become members of the new company, unless they have disposed of their shares as referred to in Article 126a(1);’;

(19) Article 132 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where a cross-border merger by acquisition is carried out either by a company which holds all the shares and other securities conferring the right to vote at general meetings of the company or companies being acquired or by a person who holds directly or indirectly all the shares in the acquiring company and in the company or companies being acquired, and the acquiring company does not allot any shares under the merger:

- points (b), (c), (e) and (m) of Article 122, Article 125, and point (b) of Article 131(1) shall not apply;
- Article 124 and Article 126(1) shall not apply to the company or companies being acquired.’;

(b) the following paragraph is added:

‘3. Where the laws of the Member States of all of the merging companies provide for the exemption from the approval by the general meeting in accordance with Article 126(3) and paragraph 1 of this Article, the common draft terms of cross-border merger or the information referred to in Article 123(1) to (3) respectively and the reports referred to in Articles 124 and 125, shall be made available at least one month before the decision on the merger is taken by the company in accordance with national law.’;

(20) Article 133 is amended as follows:

(a) in paragraph 2, the introductory part is replaced by the following:

‘2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border merger has its registered office shall not apply where at least one of the merging companies has, in the six months prior to the disclosure of the common draft terms of the cross-border merger, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in the

law of the Member State to whose jurisdiction the merging company is subject, for triggering the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law applicable to the company resulting from the cross-border merger does not;

(b) in paragraph 4, point (a) is replaced by the following:

‘(a) shall confer on the relevant bodies of the merging companies, in the event that at least one of the merging companies is operating under an employee participation system within the meaning of point (k) of Article 2 of Directive 2001/86/EC, the right to choose without any prior negotiation to be directly subject to the standard rules for participation referred to in point (b) of Part 3 of the Annex to that Directive, as laid down by the legislation of the Member State in which the company resulting from the cross-border merger is to have its registered office, and to abide by those rules from the date of registration;’

(c) paragraph 7 is replaced by the following:

‘7. Where the company resulting from the cross-border merger is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees’ participation rights are protected in the event of any subsequent conversion, merger or division, be it cross-border or domestic, for a period of four years after the cross-border merger has taken effect, by applying *mutatis mutandis* the rules laid down in paragraphs 1 to 6.’

(d) the following paragraph is added:

‘8. A company shall communicate to its employees or their representatives whether it chooses to apply standard rules for participation referred to in point (h) of paragraph 3 or whether it enters into negotiations within the special negotiating body. In the latter case, the company shall communicate to its employees or their representatives the outcome of the negotiations without undue delay.’

(21) the following Article is inserted:

‘Article 133a

#### **Independent experts**

1. Member States shall lay down rules governing at least the civil liability of the independent expert responsible for drawing up the report referred to in Article 125.

2. Member States shall have rules in place to ensure that:

(a) the expert, or the legal person on whose behalf the expert is operating, is independent from and has no conflict of interest with the company applying for the pre-merger certificate; and

(b) the expert’s opinion is impartial and objective, and is given with a view to providing assistance to the competent authority in accordance with the independence and impartiality requirements under the law and professional standards to which the expert is subject.’

(22) in Article 134, the following paragraph is added:

‘The first paragraph does not affect Member States’ powers, inter alia, in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, to impose measures and penalties, under national law, after the date on which the cross-border merger took effect.’

(23) in Title II, the following Chapter is added:

‘CHAPTER IV

#### **Cross-border divisions of limited liability companies**

Article 160a

#### **Scope**

1. This Chapter shall apply to cross-border divisions of limited liability companies formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union, provided that at least two of the limited liability companies involved in the division are governed by the laws of different Member States (hereinafter referred to as “cross-border division”).

2. Notwithstanding point 4 of Article 160b, this Chapter shall also apply to cross-border divisions where the law of at least one of the Member States concerned allows the cash payment referred to in points (a) and (b) of point 4 of



Article 160b to exceed 10 % of the nominal value, or, in the absence of a nominal value, 10 % of the accounting par value of the securities or shares representing the capital of the recipient companies.

3. This Chapter shall not apply to cross-border divisions involving a company the object of which is the collective investment of capital provided by the public, which operates on the principle of risk-spreading and the units of which are, at the holders' request, repurchased or redeemed, directly or indirectly, out of the assets of that company. Action taken by such a company to ensure that the stock exchange value of its units does not vary significantly from its net asset value shall be regarded as equivalent to such repurchase or redemption.

4. Member States shall ensure that this Chapter does not apply to companies in either of the following circumstances:

- (a) the company is in liquidation and has begun to distribute assets to its members;
- (b) the company is subject to resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU.

5. Member States may decide not to apply this Chapter to companies which are:

- (a) the subject of insolvency proceedings or subject to preventive restructuring frameworks;
- (b) the subject of liquidation proceedings other than those referred to in point (a) of paragraph 4; or
- (c) the subject of crisis prevention measures as defined in point (101) of Article 2(1) of Directive 2014/59/EU.

#### *Article 160b*

#### **Definitions**

For the purposes of this Chapter:

- (1) "company" means a limited liability company of a type listed in Annex II;
- (2) "company being divided" means a company which, in the process of a cross-border division, transfers all its assets and liabilities to two or more companies in the case of a full division, or transfers part of its assets and liabilities to one or more companies in the case of a partial division or division by separation;
- (3) "recipient company" means a company newly formed in the course of a cross-border division;
- (4) "division" means an operation whereby:
  - (a) a company being divided, on being dissolved without going into liquidation, transfers all its assets and liabilities to two or more recipient companies, in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, a cash payment not exceeding 10 % of the accounting par value of those securities or shares ("full division");
  - (b) a company being divided transfers part of its assets and liabilities to one or more recipient companies, in exchange for the issue to the members of the company being divided of securities or shares in the recipient companies, in the company being divided or in both the recipient companies and the company being divided, and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, a cash payment not exceeding 10 % of the accounting par value of those securities or shares ("partial division"); or
  - (c) a company being divided transfers part of its assets and liabilities to one or more recipient companies, in exchange for the issue to the company being divided of securities or shares in the recipient companies ("division by separation").

#### *Article 160c*

#### **Procedures and formalities**

In compliance with Union law, the law of the Member State of the company being divided shall govern those parts of the procedures and formalities to be complied with in connection with the cross-border division in order to obtain the

pre-division certificate, and the laws of the Member States of the recipient companies shall govern those parts of the procedures and formalities to be complied with following receipt of the pre-division certificate.

#### *Article 160d*

##### **Draft terms of cross-border divisions**

The administrative or management body of the company being divided shall draw up the draft terms of a cross-border division. The draft terms of a cross-border division shall include at least the following particulars:

- (a) the legal form and name of the company being divided and the location of its registered office, and the legal form and name proposed for the new company or companies resulting from the cross-border division and the proposed location of their registered offices;
- (b) the ratio applicable to the exchange of securities or shares representing the companies' capital and the amount of any cash payment, where appropriate;
- (c) the terms for the allotment of securities or shares representing the capital of the recipient companies or of the company being divided;
- (d) the proposed indicative timetable for the cross-border division;
- (e) the likely repercussions of the cross-border division on employment;
- (f) the date from which the holding of securities or shares representing the companies' capital will entitle the holders to share in profits, and any special conditions affecting that entitlement;
- (g) the date or dates from which the transactions of the company being divided will be treated for accounting purposes as being those of the recipient companies;
- (h) any special advantages granted to members of the administrative, management, supervisory or controlling bodies of the company being divided;
- (i) the rights conferred by the recipient companies on members of the company being divided enjoying special rights or on holders of securities other than shares representing the divided company capital, or the measures proposed concerning them;
- (j) the instruments of constitution of the recipient companies, where applicable, and the statutes if they are contained in a separate instrument, and any changes to the instrument of constitution of the company being divided in the case of a partial division or a division by separation;
- (k) where appropriate, information on the procedures by which arrangements for the involvement of employees in the definition of their rights to participation in the recipient companies are determined pursuant to Article 160l;
- (l) a precise description of the assets and liabilities of the company being divided and a statement of how those assets and liabilities are to be allocated between the recipient companies, or are to be retained by the company being divided in the case of a partial division or a division by separation, including provisions on the treatment of assets or liabilities not explicitly allocated in the draft terms of cross-border division, such as assets or liabilities which are unknown on the date on which the draft terms of cross-border division are drawn up;
- (m) information on the evaluation of the assets and liabilities which are to be allocated to each company involved in the cross-border division;
- (n) the date of the accounts of the company being divided used to establish the conditions of the cross-border division;
- (o) where appropriate, the allocation to the members of the company being divided of shares and securities in the recipient companies, in the company being divided or in both, and the criterion upon which such allocation is based;
- (p) details of the offer of cash compensation for members in accordance with Article 160i;
- (q) any safeguards offered to creditors, such as guarantees or pledges.

#### *Article 160e*

##### **Report of the administrative or management body for members and employees**

1. The administrative or management body of the company being divided shall draw up a report for members and employees, explaining and justifying the legal and economic aspects of the cross-border division, as well as explaining the implications of the cross-border division for employees.

It shall, in particular, explain the implications of the cross-border division for the future business of the companies.

2. The report shall also include a section for members and a section for employees.

The company may decide either to draw up one report containing those two sections or to draw up separate reports for members and employees, respectively, containing the relevant section.

3. The section of the report for members shall, in particular, explain the following:

- (a) the cash compensation and the method used to determine the cash compensation;
- (b) the share exchange ratio and the method or methods used to arrive at the share exchange ratio, where applicable;
- (c) the implications of the cross-border division for members;
- (d) the rights and remedies available to members in accordance with Article 160i.

4. The section of the report for members shall not be required where all the members of the company have agreed to waive that requirement. Member States may exclude single-member companies from the provisions of this Article.

5. The section of the report for employees shall, in particular, explain the following:

- (a) the implications of the cross-border division for employment relationships, as well as, where applicable, any measures for safeguarding those relationships;
- (b) any material changes to the applicable conditions of employment or to the location of the company's places of business;
- (c) how the factors set out in points (a) and (b) affect any subsidiaries of the company.

6. The report or reports shall be made available in any case electronically, together with the draft terms of the cross-border division, if available, to the members and to the representatives of the employees of the company being divided or, where there are no such representatives, to the employees themselves, not less than six weeks before the date of the general meeting referred to in Article 160h.

7. Where the administrative or management body of the company being divided receives an opinion on the information referred to in paragraphs 1 and 5 in good time from the representatives of the employees or, where there are no such representatives, from the employees themselves, as provided for under national law, the members shall be informed thereof and that opinion shall be appended to the report.

8. The section of the report for employees shall not be required where a company being divided and its subsidiaries, if any, have no employees other than those who form part of the administrative or management body.

9. Where the section of the report for members referred to in paragraph 3 is waived in accordance with paragraph 4 and the section for employees referred to in paragraph 5 is not required under paragraph 8, the report shall not be required.

10. Paragraphs 1 to 9 of this Article shall be without prejudice to the applicable information and consultation rights and procedures provided for at national level following the transposition of Directives 2002/14/EC and 2009/38/EC.

#### *Article 160f*

#### **Independent expert report**

1. Member States shall ensure that an independent expert examines the draft terms of the cross-border division and draws up a report for members. That report shall be made available to the members not less than one month before the date of the general meeting referred to in Article 160h. Depending on the law of the Member State, the expert may be a natural or legal person.

2. The report referred to in paragraph 1 shall in any case include the expert's opinion as to whether the cash compensation and the share exchange ratio are adequate. When assessing the cash compensation, the expert shall consider any market price of the shares in the company being divided prior to the announcement of the division proposal or the value of the company excluding the effect of the proposed division, as determined in accordance with generally accepted valuation methods. The report shall at least:

- (a) indicate the method or methods used to determine the cash compensation proposed;
- (b) indicate the method or methods used to arrive at the share exchange ratio proposed;
- (c) state whether the method or methods are adequate for the assessment of the cash compensation and the share exchange ratio, indicate the value arrived at using such methods and give an opinion on the relative importance attributed to those methods in arriving at the value decided on; and
- (d) describe any special valuation difficulties which have arisen.

The expert shall be entitled to obtain from the company being divided all information necessary for the discharge of the duties of the expert.

3. Neither an examination of the draft terms of cross-border division by an independent expert nor an independent expert report shall be required if all the members of the company being divided have so agreed.

Member States may exclude single-member companies from the application of this Article.

#### *Article 160g*

#### **Disclosure**

1. Member States shall ensure that the following documents are disclosed by the company and made publicly available in the register of the Member State of the company being divided, at least one month before the date of the general meeting referred to in Article 160h:

- (a) the draft terms of the cross-border division; and
- (b) a notice informing the members, creditors and representatives of the employees of the company being divided, or, where there are no such representatives, the employees themselves, that they may submit to the company, at the latest five working days before the date of the general meeting, comments concerning the draft terms of the cross-border division.

Member States may require that the independent expert report be disclosed and made publicly available in the register.

Member States shall ensure that the company is able to exclude confidential information from the disclosure of the independent expert report.

The documents disclosed in accordance with this paragraph shall be also accessible through the system of interconnection of registers.

2. Member States may exempt a company being divided from the disclosure requirement referred to in paragraph 1 of this Article where, for a continuous period beginning at least one month before the date fixed for the general meeting referred to in Article 160h and ending not earlier than the conclusion of that meeting, that company makes the documents referred to in paragraph 1 of this Article available on its website free of charge to the public.

However, Member States shall not subject that exemption to any requirements or constraints other than those which are necessary to ensure the security of the website and the authenticity of the documents, and which are proportionate to achieving those objectives.

3. Where the company being divided makes the draft terms of the cross-border division available in accordance with paragraph 2 of this Article, it shall submit to the register, at least one month before the date of the general meeting referred to in Article 160h, the following information:

- (a) the legal form and name of the company being divided and the location of its registered office and the legal form and name proposed for the newly created company or companies resulting from the cross-border division and the proposed location of their registered office;
- (b) the register in which the documents referred to in Article 14 are filed in respect of the company being divided, and its registration number in that register;
- (c) an indication of the arrangements made for the exercise of the rights of creditors, employees and members; and
- (d) details of the website from which the draft terms of the cross-border division, the notice referred to in paragraph 1, the independent expert report and complete information on the arrangements referred to in point (c) of this paragraph may be obtained online and free of charge.

The register shall make publicly available the information referred to in points (a) to (d) of the first subparagraph.

4. Member States shall ensure that the requirements referred to in paragraphs 1 and 3 can be fulfilled fully online without the necessity for the applicants to appear in person before any competent authority in the Member State concerned, in accordance with the relevant provisions of Chapter III of Title I.

5. Member States may require, in addition to the disclosure referred to in paragraphs 1, 2 and 3 of this Article, that the draft terms of the cross-border division, or the information referred to in paragraph 3 of this Article, be published in their national gazette or through a central electronic platform in accordance with Article 16(3). In that instance, Member States shall ensure that the register transmits the relevant information to the national gazette or to a central electronic platform.

6. Member States shall ensure that the documentation referred to in paragraph 1 or the information referred to in paragraph 3 is accessible to the public free of charge through the system of interconnection of registers.

Member States shall further ensure that any fees charged to the company by the registers for the disclosure referred to in paragraphs 1 and 3 and, where applicable, for the publication referred to in paragraph 5 do not exceed the recovery of the cost of providing such services.

#### *Article 160h*

##### **Approval by the general meeting**

1. After taking note of the reports referred to in Articles 160e and 160f, where applicable, employees' opinions submitted in accordance with Article 160e and comments submitted in accordance with Article 160g, the general meeting of the company being divided shall decide, by means of a resolution, whether to approve the draft terms of cross-border division and whether to adapt the instrument of constitution, and the statutes if they are contained in a separate instrument.

2. The general meeting of the company being divided may reserve the right to make implementation of the cross-border division conditional on express ratification by it of the arrangements referred to in Article 160l.

3. Member States shall ensure that the approval of the draft terms of the cross-border division, and of any amendment to those draft terms, requires a majority of not less than two thirds but not more than 90 % of the votes attached either to the shares or to the subscribed capital represented at the general meeting. In any event, the voting threshold shall not be higher than that provided for in national law for the approval of cross-border mergers.

4. Where a clause in the draft terms of the cross-border division or any amendment to the instrument of constitution of the company being divided leads to an increase of the economic obligations of a member towards the company or third parties, Member States may require, in such specific circumstances, that such clause or the amendment to the instrument of constitution of the company being divided be approved by the member concerned, provided that such member is unable to exercise the rights laid down in Article 160i.

5. Member States shall ensure that the approval of the cross-border division by the general meeting cannot be challenged solely on the following grounds:

- (a) the share exchange ratio referred to in point (b) of Article 160d has been inadequately set;
- (b) the cash compensation referred to in point (p) of Article 160d has been inadequately set; or
- (c) the information given with regard to the share exchange ratio referred to in point (a) or the cash compensation referred to in point (b) did not comply with the legal requirements.

#### *Article 160i*

##### **Protection of members**

1. Member States shall ensure that at least the members of a company being divided who voted against the approval of the draft terms of the cross-border division have the right to dispose of their shares for adequate cash compensation, under the conditions laid down in paragraphs 2 to 6, provided that, as a result of the cross-border division, they would acquire shares in the recipient companies which would be governed by the law of a Member State other than the Member State of the company being divided.

Member States may also provide for other members of the company being divided to have the right referred to in the first subparagraph.

Member States may require that express opposition to the draft terms of the cross-border division, the intention of members to exercise their right to dispose of their shares, or both, be appropriately documented at the latest at the general meeting referred to in Article 160h. Member States may allow the recording of opposition to the draft terms of the cross-border division to be considered proper documentation of a negative vote.

2. Member States shall establish the period within which the members referred to in paragraph 1 have to declare to the company being divided their decision to exercise the right to dispose of their shares. That period shall not exceed one month after the general meeting referred to in Article 160h. Member States shall ensure that the company being divided provides an electronic address for receiving that declaration electronically.

3. Member States shall further establish the period within which the cash compensation specified in the draft terms of the cross-border division is to be paid. That period shall not end later than two months after the cross-border division takes effect in accordance with Article 160q.

4. Member States shall ensure that any members who have declared their decision to exercise the right to dispose of their shares, but who consider that the cash compensation offered by the company being divided has not been adequately set, are entitled to claim additional cash compensation before the competent authority or body mandated under national law. Member States shall establish a time limit for the claim for additional cash compensation.

Member States may provide that the final decision to provide additional cash compensation is valid for all members of the company being divided who have declared their decision to exercise the right to dispose of their shares in accordance with paragraph 2.

5. Member States shall ensure that the law of the Member State of a company being divided governs the rights referred to in paragraphs 1 to 4 and that the exclusive competence to resolve any disputes relating to those rights lies within the jurisdiction of that Member State.

6. Member States shall ensure that members of the company being divided who did not have or did not exercise the right to dispose of their shares, but who consider that the share-exchange ratio set out in the draft terms of the cross-border division is inadequate, may dispute that ratio and claim a cash payment. Proceedings in that regard shall be initiated before the competent authority or body mandated under the law of the Member State to which the company being divided is subject, within the time limit laid down in that national law and such proceedings shall not prevent the registration of the cross-border division. The decision shall be binding on the recipient companies and, in the event of a partial division, also on the company being divided.

7. Member States may also provide that the recipient company concerned and, in the event of a partial division, also the company being divided, can provide shares or other compensation instead of a cash payment.

#### *Article 160j*

#### **Protection of creditors**

1. Member States shall provide for an adequate system of protection of the interests of creditors whose claims antedate the disclosure of the draft terms of the cross-border division and have not fallen due at the time of such disclosure.

Member States shall ensure that creditors who are dissatisfied with the safeguards offered in the draft terms of the cross-border division, as provided for in point (q) of Article 160d, may apply, within three months of the disclosure of the draft terms of cross-border division referred to in Article 160g, to the appropriate administrative or judicial authority for adequate safeguards, provided that such creditors can credibly demonstrate that, due to the cross-border division, the satisfaction of their claims is at stake and that they have not obtained adequate safeguards from the company.

Member States shall ensure that the safeguards are conditional on the cross-border division taking effect in accordance with Article 160q.

2. Where a creditor of the company being divided does not obtain satisfaction from the company to which the liability is allocated, the other recipient companies, and in the case of a partial division or a division by separation, the company being divided, shall be jointly and severally liable with the company to which the liability is allocated for that obligation. However, the maximum amount of joint and several liability of any company involved in the division shall be limited to the value, at the date on which the division takes effect, of the net assets allocated to that company.

3. Member States may require that the administrative or management body of the company being divided provide a declaration that accurately reflects its current financial status at a date no earlier than one month before the disclosure of that declaration. The declaration shall state that, on the basis of the information available to the administrative or management body of the company being divided at the date of that declaration, and after having made reasonable enquiries, that administrative or management body is unaware of any reason why any recipient company and, in the case of a partial division, the company being divided, would, after the division takes effect, be unable to meet the liabilities allocated to them under the draft terms of the cross-border division when those liabilities fall due. The declaration shall be disclosed together with the draft terms of the cross-border division in accordance with Article 160g.

4. Paragraphs 1, 2 and 3 shall be without prejudice to the application of the law of the Member State of the company being divided concerning the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies.

#### *Article 160k*

### **Employee information and consultation**

1. Member States shall ensure that employees' rights to information and consultation are respected in relation to the cross-border division and are exercised in accordance with the legal framework provided for in Directive 2002/14/EC, and Directive 2001/23/EC where the cross-border division is considered to be a transfer of an undertaking within the meaning of Directive 2001/23/EC, and, where applicable for Community-scale undertakings or Community-scale groups of undertakings, in accordance with Directive 2009/38/EC. Member States may decide that employees' rights to information and consultation apply with respect to the employees of companies other than those referred to in Article 3(1) of Directive 2002/14/EC.

2. Notwithstanding Article 160e(7) and point (b) of Article 160g(1), Member States shall ensure that employees' rights to information and consultation are respected, at least before the draft terms of the cross-border division or the report referred to in Article 160e are decided upon, whichever is earlier, in such a way that a reasoned response is given to the employees before the general meeting referred to in Article 160h.

3. Without prejudice to any provisions or practices in force more favourable to employees, Member States shall determine the practical arrangements for exercising the right to information and consultation in accordance with Article 4 of Directive 2002/14/EC.

#### *Article 160l*

### **Employee participation**

1. Without prejudice to paragraph 2, each recipient company shall be subject to the rules in force concerning employee participation, if any, in the Member State where it has its registered office.

2. However, the rules in force concerning employee participation, if any, in the Member State where the company resulting from the cross-border division has its registered office shall not apply where the company being divided has, in the six months prior to the disclosure of the draft terms of the cross-border division, an average number of employees equivalent to four fifths of the applicable threshold, as laid down in the law of the Member State of the company being divided, for triggering the participation of employees within the meaning of point (k) of Article 2 of Directive 2001/86/EC, or where the national law applicable to each of the recipient companies does not:

- (a) provide for at least the same level of employee participation as operated in the company being divided prior to its cross-border division, measured by reference to the proportion of employee representatives among the members of the administrative or supervisory body or their committees or of the management group which covers the profit units of the company, subject to employee representation; or
- (b) provide for employees of establishments of the recipient companies that are situated in other Member States the same entitlement to exercise participation rights as is enjoyed by those employees employed in the Member State where the recipient company has its registered office.

3. In the cases referred to in paragraph 2 of this Article, the participation of employees in the companies resulting from the cross-border division and their involvement in the definition of such rights shall be regulated by the Member States, *mutatis mutandis* and subject to paragraphs 4 to 7 of this Article, in accordance with the principles and procedures laid down in Article 12(2) and (4) of Regulation (EC) No 2157/2001 and the following provisions of Directive 2001/86/EC:

- (a) Article 3(1), points (a)(i) and (b) of Article 3(2), Article 3(3), the first two sentences of Article 3(4), and Article 3(5) and (7);
- (b) Article 4(1), points (a), (g) and (h) of Article 4(2), and Article 4(3) and (4);
- (c) Article 5;
- (d) Article 6;
- (e) Article 7(1), with the exception of the second indent of point (b);
- (f) Articles 8, 10, 11 and 12; and
- (g) point (a) of Part 3 of the Annex.

4. When regulating the principles and procedures referred to in paragraph 3, Member States:

- (a) shall confer on the special negotiating body the right to decide, by a majority of two thirds of its members representing at least two thirds of the employees, not to open negotiations or to terminate negotiations already opened and to rely on the rules on participation in force in the Member States of each of the recipient companies;
- (b) may, in the case where, following prior negotiations, standard rules for participation apply and notwithstanding such rules, decide to limit the proportion of employee representatives in the administrative body of the recipient companies. However, if, in the company being divided, employee representatives constituted at least one third of the administrative or supervisory body, the limitation may never result in a lower proportion of employee representatives in the administrative body than one third;
- (c) shall ensure that the rules on employee participation that applied prior to the cross-border division continue to apply until the date of application of any subsequently agreed rules or, in the absence of agreed rules, until the application of standard rules in accordance with point (a) of Part 3 of the Annex to Directive 2001/86/EC.

5. The extension of participation rights to employees of the recipient companies employed in other Member States, as referred to in point (b) of paragraph 2, shall not entail any obligation for Member States which choose to do so to take those employees into account when calculating the size of workforce thresholds giving rise to participation rights under national law.

6. Where any of the recipient companies is to be governed by an employee participation system in accordance with the rules referred to in paragraph 2, that company shall be obliged to take a legal form allowing for the exercise of participation rights.

7. Where the recipient company is operating under an employee participation system, that company shall be obliged to take measures to ensure that employees' participation rights are protected in the event of any subsequent conversion, merger or division, be it cross-border or domestic, for a period of four years after the cross-border division has taken effect, by applying, *mutatis mutandis*, the rules laid down in paragraphs 1 to 6.

8. A company shall communicate to its employees or their representatives the outcome of the negotiations concerning employee participation without undue delay.

#### Article 160m

##### **Pre-division certificate**

1. Member States shall designate the court, notary or other authority or authorities competent to scrutinise the legality of cross-border divisions as regards those parts of the procedure which are governed by the law of the Member State of the company being divided, and to issue a pre-division certificate attesting to compliance with all relevant conditions and to the proper completion of all procedures and formalities in that Member State ("the competent authority").

Such completion of procedures and formalities may comprise the satisfaction or securing of pecuniary or non-pecuniary obligations due to public bodies or compliance with specific sectoral requirements, including securing obligations arising from ongoing proceedings.



2. Member States shall ensure that the application to obtain a pre-division certificate by the company being divided is accompanied by the following:

- (a) the draft terms of the cross-border division;
- (b) the report and the appended opinion, if any, referred to in Article 160e, as well as the report referred to in Article 160f, where they are available;
- (c) any comments submitted in accordance with Article 160g(1); and
- (d) information on the approval by the general meeting referred to in Article 160h.

3. Member States may require that the application to obtain a pre-division certificate by the company being divided is accompanied by additional information, such as, in particular:

- (a) the number of employees at the time of the drawing up of the draft terms of the cross-border division;
- (b) the existence of subsidiaries and their respective geographical location;
- (c) information regarding the satisfaction of obligations due to public bodies by the company being divided.

For the purposes of this paragraph, competent authorities may request such information, if not provided by the company being divided, from other relevant authorities.

4. Member States shall ensure that the application referred to in paragraphs 2 and 3, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the competent authority, in accordance with the relevant provisions of Chapter III of Title I.

5. In respect of compliance with the rules concerning employee participation as laid down in Article 160l, the competent authority of the Member State of the company being divided shall verify that the draft terms of the cross-border division include information on the procedures by which the relevant arrangements are determined and on the possible options for such arrangements.

6. As part of the scrutiny referred to in paragraph 1, the competent authority shall examine the following:

- (a) all documents and information submitted to the competent authority in accordance with paragraphs 2 and 3;
- (b) an indication by the company being divided that the procedure referred to in Article 160l(3) and (4) has started, where relevant.

7. Member States shall ensure that the scrutiny referred to in paragraph 1 is carried out within three months of the date of receipt of the documents and information concerning the approval of the cross-border division by the general meeting of the company being divided. That scrutiny shall have one of the following outcomes:

- (a) where it is determined that the cross-border division complies with all the relevant conditions and that all necessary procedures and formalities have been completed, the competent authority shall issue the pre-division certificate;
- (b) where it is determined that the cross-border division does not comply with all the relevant conditions or that not all necessary procedures and formalities have been completed, the competent authority shall not issue the pre-division certificate and shall inform the company of the reasons for its decision; in that case, the competent authority may give the company the opportunity to fulfil the relevant conditions or to complete the procedures and formalities within an appropriate period of time.

8. Member States shall ensure that the competent authority does not issue the pre-division certificate where it is determined in compliance with national law that a cross-border division is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes.

9. Where the competent authority, during the scrutiny referred to in paragraph 1, has serious doubts indicating that the cross-border division is set up for abusive or fraudulent purposes leading to or aimed at the evasion or circumvention of Union or national law, or for criminal purposes, it shall take into consideration relevant facts and circumstances, such as, where relevant and not considered in isolation, indicative factors of which the competent authority has become aware, in the course of the scrutiny referred to in paragraph 1, including through consultation of relevant authorities. The assessment for the purposes of this paragraph shall be conducted on a case-by-case basis, through a procedure governed by national law.

10. Where it is necessary for the purposes of the assessment under paragraphs 8 and 9 to take into account additional information or to perform additional investigative activities, the period of three months provided for in paragraph 7 may be extended by a maximum of three months.

11. Where, due to the complexity of the cross-border procedure, it is not possible to carry out the assessment within the deadlines provided for in paragraphs 7 and 10, Member States shall ensure that the applicant is notified of the reasons for any delay before the expiry of those deadlines.

12. Member States shall ensure that the competent authority may consult other relevant authorities with competence in the different fields concerned by the cross-border division, including those of the Member State of the recipient companies, and obtain from those authorities and from the company being divided information and documents necessary to scrutinise the legality of the cross-border division, within the procedural framework laid down in national law. For the purposes of the assessment, the competent authority may have recourse to an independent expert.

#### *Article 160n*

##### **Transmission of the pre-division certificate**

1. Member States shall ensure that the pre-division certificate is shared with the authorities referred to in Article 160o(1) through the system of interconnection of registers.

Member States shall also ensure that the pre-division certificate is available through the system of interconnection of registers.

2. Access to the pre-division certificate shall be free of charge for the authorities referred to in Article 160o(1) and for the registers.

#### *Article 160o*

##### **Scrutiny of the legality of the cross-border division**

1. Member States shall designate the court, notary or other authority competent to scrutinise the legality of the cross-border division as regards that part of the procedure which concerns the completion of the cross-border division governed by the law of the Member States of the recipient companies and to approve the cross-border division.

That authority or authorities shall in particular ensure that the recipient companies comply with provisions of national law on the incorporation and registration of companies and, where appropriate, that arrangements for employee participation have been determined in accordance with Article 160l.

2. For the purposes of paragraph 1 of this Article, the company being divided shall submit to each authority referred to in paragraph 1 of this Article the draft terms of the cross-border division approved by the general meeting referred to in Article 160h.

3. Each Member State shall ensure that any application for the purposes of paragraph 1, by the company being divided, including the submission of any information and documents, may be completed fully online without the necessity for the applicants to appear in person before the authority referred to in paragraph 1, in accordance with the relevant provisions of Chapter III of Title I.

4. The authority referred to in paragraph 1 shall approve the cross-border division as soon as it has determined that all relevant conditions have been properly fulfilled and formalities properly completed in the Member States of the recipient companies.

5. The pre-division certificate shall be accepted by the authority referred to in paragraph 1 as conclusively attesting to the proper completion of the applicable pre-division procedures and formalities in the Member State of the company being divided, without which the cross-border division cannot be approved.

#### *Article 160p*

##### **Registration**

1. The laws of the Member States of the company being divided and of the recipient companies shall determine, with regard to their respective territories, the arrangements, in accordance with Article 16, for disclosing the completion of the cross-border division in their registers.

2. Member States shall ensure that at least the following information is entered in their registers:

- (a) in the register of the Member States of the recipient companies, that the registration of the recipient company is the result of a cross-border division;
- (b) in the register of the Member States of the recipient companies, the dates of registration of the recipient companies;

- (c) in the register of the Member State of the company being divided in the event of a full division, that the striking off or removal of the company being divided from the register is the result of a cross-border division;
- (d) in the register of the Member State of the company being divided in the event of a full division, the date of striking off or removal of the company being divided from the register;
- (e) in the registers of the Member State of the company being divided and of the Member States of the recipient companies, respectively, the registration number, name and legal form of the company being divided and of the recipient companies.

The registers shall make the information referred to in the first subparagraph publicly available and accessible through the system of interconnection of registers.

3. Member States shall ensure that the registers in the Member States of the recipient companies notify the register in the Member State of the company being divided, through the system of interconnection of registers, that the recipient companies have been registered. Member States shall also ensure that, in the event of a full division, the company being divided is struck off or removed from the register immediately upon receipt of all those notifications.

4. Member States shall ensure that the register in the Member State of the company being divided notifies the registers in the Member States of the recipient companies, through the system of interconnection of registers, that the cross-border division has taken effect.

#### *Article 160q*

#### **Date on which the cross-border division takes effect**

The law of the Member State of the company being divided shall determine the date on which the cross-border division takes effect. That date shall be after the scrutiny referred to in Articles 160m and 160o has been carried out and after the registers have received all notifications referred to in Article 160p(3).

#### *Article 160r*

#### **Consequences of a cross-border division**

1. A cross-border full division shall, from the date referred to in Article 160q, have the following consequences:
  - (a) all the assets and liabilities of the company being divided, including all contracts, credits, rights and obligations, shall be transferred to the recipient companies in accordance with the allocation specified in the draft terms of the cross-border division;
  - (b) the members of the company being divided shall become members of the recipient companies in accordance with the allocation of shares specified in the draft terms of the cross-border division, unless they have disposed of their shares as referred to in Article 160i(1);
  - (c) the rights and obligations of the company being divided arising from contracts of employment or from employment relationships and existing at the date on which the cross-border division takes effect shall be transferred to the recipient companies;
  - (d) the company being divided shall cease to exist.
2. A cross-border partial division shall, from the date referred to in Article 160q, have the following consequences:
  - (a) part of the assets and liabilities of the company being divided, including contracts, credits, rights and obligations, shall be transferred to the recipient company or companies, while the remaining part shall continue to be that of the company being divided in accordance with the allocation specified in the draft terms of the cross-border division;
  - (b) at least some of the members of the company being divided shall become members of the recipient company or companies and at least some of the members shall remain in the company being divided or shall become members of both in accordance with the allocation of shares specified in the draft terms of the cross-border division, unless those members have disposed of their shares as referred to in Article 160i(1);
  - (c) the rights and obligations of the company being divided arising from contracts of employment or from employment relationships and existing at the date on which the cross-border division takes effect, allocated to the recipient company or companies under the draft terms of the cross-border division, shall be transferred to the respective recipient company or companies.

3. A cross-border division by separation shall, from the date referred to in Article 160q, have the following consequences:

- (a) part of the assets and liabilities of the company being divided, including contracts, credits, rights and obligations, shall be transferred to the recipient company or companies, while the remaining part shall continue to be that of the company being divided, in accordance with the allocation specified in the draft terms of the cross-border division;
- (b) the shares of the recipient company or companies shall be allocated to the company being divided;
- (c) the rights and obligations of the company being divided arising from contracts of employment or from employment relationships and existing at the date on which the cross-border division takes effect, allocated to the recipient company or companies under the draft terms of the cross-border division, shall be transferred to the respective recipient company or companies.

4. Without prejudice to Article 160j(2), Member States shall ensure that where an asset or a liability of the company being divided is not explicitly allocated under the draft terms of the cross-border division, as referred to in point (l) of Article 160d, and where the interpretation of those terms does not make a decision on its allocation possible, the asset, the consideration therefor or the liability is allocated to all the recipient companies or, in the case of a partial division or a division by separation, to all the recipient companies and the company being divided in proportion to the share of the net assets allocated to each of those companies under the draft terms of the cross-border division.

5. Where, in the case of a cross-border division, the laws of the Member States require the completion of special formalities before the transfer of certain assets, rights and obligations by the company being divided becomes effective as against third parties, those formalities shall be carried out by the company being divided or by the recipient companies, as appropriate.

6. Member States shall ensure that shares in a recipient company cannot be exchanged for shares in the company being divided which are either held by the company itself or through a person acting in his or her own name but on behalf of the company.

#### *Article 160s*

#### **Simplified formalities**

Where a cross-border division is carried out as a division by separation, points (b), (c), (f), (i), (o) and (p) of Article 160d and Articles 160e, 160f and 160i shall not apply.

#### *Article 160t*

#### **Independent experts**

1. Member States shall lay down rules governing at least the civil liability of the independent expert responsible for drawing up the report referred to in Article 160f.

2. Member States shall have rules in place to ensure that:

- (a) the expert, or the legal person on whose behalf the expert is operating, is independent from and has no conflict of interest with the company applying for the pre-division certificate; and
- (b) the expert's opinion is impartial and objective, and is given with a view to providing assistance to the competent authority in accordance with the independence and impartiality requirements under the law and professional standards to which the expert is subject.

#### *Article 160u*

#### **Validity**

A cross-border division which has taken effect in compliance with the procedures transposing this Directive may not be declared null and void.

The first paragraph does not affect Member States' powers, inter alia, in relation to criminal law, the prevention and combatting of terrorist financing, social law, taxation and law enforcement, to impose measures and penalties, under national law, after the date on which the cross-border division took effect.;

(24) the title of Annex II is replaced by the following:

‘Types of companies referred to in Articles 7(1), 13, 29(1), 36(1), 67(1), points (1) and (2) of Article 86b, point (a) of Article 119(1), and point (1) of Article 160b’.

#### *Article 2*

### **Penalties**

Member States shall lay down the rules on measures and penalties to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. Member States may provide for criminal penalties for serious infringements.

The measures and penalties provided for shall be effective, proportionate and dissuasive.

#### *Article 3*

### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 January 2023. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a 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 measures of national law which they adopt in the field covered by this Directive.

#### *Article 4*

### **Reporting and review**

1. The Commission shall, no later than 1 February 2027, carry out an evaluation of this Directive, including an evaluation of the implementation of the provisions on employee information, consultation and participation in the context of cross-border operations, including an assessment of the rules on the proportion of employee representatives in the administrative body of the company resulting from the cross-border operation, and of the effectiveness of the safeguards regarding negotiations of employee participation rights, taking into consideration the dynamic nature of companies growing cross-border, and shall present a report to the European Parliament, the Council and the European Economic and Social Committee on the findings of that evaluation, in particular considering the possible need to introduce a harmonised framework on board level employee representation in Union law, accompanied, where appropriate, by a legislative proposal.

Member States shall provide the Commission with the information necessary for the preparation of that report, in particular by providing data on the number of cross-border conversions, mergers and divisions, their duration and related costs, data on the cases in which a pre-operation certificate was refused, as well as statistical aggregated data on the number of negotiations on employee participation rights in cross-border operations. The Member States shall also provide the Commission with data on the functioning and effects of jurisdiction rules applicable in cross-border operations.

2. The report shall in particular evaluate the procedures referred to in Chapters -I and IV of Title II of Directive (EU) 2017/1132, notably in terms of their duration and costs.

3. The report shall include an assessment of the feasibility of providing rules for types of cross-border divisions which are not covered by this Directive, including in particular cross-border divisions by acquisition.

*Article 5***Entry into force**

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

*Article 6***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 27 November 2019.

*For the European Parliament*  
*The President*  
D.M. SASSOLI

*For the Council*  
*The President*  
T. TUPPURAINEN

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## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2019/2122

of 10 October 2019

**supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market and amending Commission Regulation (EU) No 142/2011**

(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) <sup>(1)</sup>, and in particular Article 48(b), (c), (d), (e) and (f), point (d)(ii) of Article 53(1) and point (k) of Article 77(1) thereof,

Whereas:

- (1) Article 48 of Regulation (EU) 2017/625 empowers the Commission to adopt rules exempting certain categories of animals and goods from official controls at border control posts, when such an exemption is justified. Point (d)(ii) of Article 53(1) of Regulation (EU) 2017/625 empowers the Commission to adopt rules concerning specific official control tasks performed by customs authorities or other public authorities, insofar as those tasks are not already falling under the responsibility of those authorities, on passengers' personal luggage.
- (2) These rules are substantially linked and many are intended to be applied in tandem. In the interest of simplicity and transparency, as well as to facilitate their application and avoid a multiplication of rules, they should therefore be laid down in a single act rather than in a number of separate acts with many cross-references and the risk of duplication. These rules often serve common purposes and refer to complementary activities of operators and competent authorities. Therefore, it is appropriate to group together these rules in a single Delegated Regulation.
- (3) Where rules establishing exemptions from official controls at border control posts are adopted, conditions, such as adequate control arrangements, should be established to ensure that no unacceptable risks to public, animal and plant health are incurred where such animals and goods enter the Union

<sup>(1)</sup> OJ L 95, 7.4.2017, p. 1.

- (4) Exemptions from official controls at border control posts for products which form part of travellers' personal luggage, for products for consumption by the crew and passengers on board means of transport operating internationally, and for products sent as small consignments to private persons already exist under Council Directive 97/78/EC <sup>(2)</sup>. For the sake of legal clarity and in order to ensure a consistent application of those exemptions given that Directive 97/78/EC is repealed with effect from 14 December 2019, it is appropriate to lay down provisions on such exemptions in this Regulation. Those exemptions concern certain categories of animals and goods which, although they enter the Union, are not to be placed on the market.
- (5) In order to ensure consistency of Union legislation, Member States should continue to carry out appropriate risk-based controls with a view to preventing the introduction into the Union of certain invasive alien species, as required by Regulation (EU) No 1143/2014 of the European Parliament and of the Council <sup>(3)</sup>.
- (6) In the interest of facilitating the promotion of scientific activities, it is justified to exempt certain categories of animals and goods intended for scientific purposes from official controls at border control posts.
- (7) Plants, plant products and other objects referred to in Article 47(1)(c) of Regulation (EU) 2017/625 intended for scientific purposes should be exempted from identity and physical checks at border control posts, under certain conditions, since adequate protection measures are laid down in accordance with Article 48 of Regulation (EU) 2016/2031 of the European Parliament and of the Council <sup>(4)</sup>.
- (8) Pursuant to Article 48(d) and (e) of Regulation (EU) 2017/625, products which form part of passenger's personal luggage and are intended for their personal consumption or use and small consignments of goods sent to natural persons which are not intended to be placed on the market should be exempted from official controls at border control posts. Concerning small consignments of goods sent to natural persons which are not intended to be placed on the market, Member States should carry-out risk-based controls. The possible risk of introducing pathogenic agents or diseases into the Union through the introduction of products of animal origin should be considered in measures regulating the introduction of such consignments or products.
- (9) To ensure that risks to public health, animal health and plant health are minimised Member States should review at least once per year their specific control mechanisms and actions for goods which form part of passengers' personal luggage and update these mechanisms and actions annually after the main travelling season.
- (10) Regulation (EU) No 576/2013 of the European Parliament and of the Council <sup>(5)</sup> and Commission Implementing Regulation (EU) No 577/2013 <sup>(6)</sup> provide rules concerning certain species of pet animals accompanying their owner or an authorised person during non-commercial movements into the Union from third countries. Administrative burden related to such movements should be minimised while a sufficient level of safety should be ensured with regard to the public and animal health risks involved. Furthermore, Member States should only authorise the movement into the Union of pet birds in accordance with Commission Decision 2007/25/EC <sup>(7)</sup>.
- (11) Article 48(f) of Regulation (EU) 2017/625 empowers the Commission to adopt rules exempting pet animals kept for private non-commercial purposes from official controls at border control posts. The rules on exemption in this Regulation should not affect the obligation of Member States to carry out official controls to ensure compliance with Regulation (EU) No 1143/2014 and Commission Regulation (EC) No 865/2006 <sup>(8)</sup>.

<sup>(2)</sup> Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (OJ L 24, 30.1.1998, p. 9).

<sup>(3)</sup> Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ L 317, 4.11.2014, p. 35).

<sup>(4)</sup> Regulation (EU) 2016/2031 of the European Parliament and 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).

<sup>(5)</sup> Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 (OJ L 178, 28.6.2013, p. 1).

<sup>(6)</sup> Commission Implementing Regulation (EU) No 577/2013 of 28 June 2013 on the model identification documents for the non-commercial movement of dogs, cats and ferrets, the establishment of lists of territories and third countries and the format, layout and language requirements of the declarations attesting compliance with certain conditions provided for in Regulation (EU) No 576/2013 of the European Parliament and of the Council (OJ L 178, 28.6.2013, p. 109).

<sup>(7)</sup> Commission Decision 2007/25/EC of 22 December 2006 as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community (OJ L 8, 13.1.2007, p. 29).

<sup>(8)</sup> Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (OJ L 166, 19.6.2006, p. 1).



- (12) With a view to providing citizens with clear and accessible information concerning the rules that apply to the non-commercial movement into the Union of certain species of pet animals, Member States should be required to make that information available to the public.
- (13) The level of public and animal health risk arising from the introduction of animal diseases and pathogenic agents varies according to different factors, such as the type of product, the animal species from which the products have been obtained, and the likelihood of the presence of pathogenic agents. Comprehensive Union rules to prevent the introduction of animal diseases and pathogenic agents exist in Commission Regulation (EC) No 206/2009 <sup>(9)</sup> to address such risks. Given that this Regulation lays down rules covered by Regulation (EC) No 206/2009, that Regulation should be repealed from the date of application of this Regulation.
- (14) Commission Regulation (EU) No 142/2011 <sup>(10)</sup> should be amended as regards the exemption of certain research and diagnostic samples from veterinary checks at the border inspection posts as the subject matter is covered by this Regulation.
- (15) Regulation (EU) 2017/625 applies from 14 December 2019. Accordingly, the rules laid down in this Regulation should also apply from that date,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Subject matter**

This Regulation lays down rules for the cases where and the conditions under which certain categories of animals and goods are exempted from official controls at border control posts and the cases where and the conditions under which specific control tasks may be performed by customs authorities or other public authorities, insofar as those tasks are not already falling under the responsibility of those authorities, on passengers' personal luggage.

#### *Article 2*

#### **Definitions**

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

- (1) 'research and diagnostic samples' means research and diagnostic samples as defined in point (38) of Annex I to Regulation (EU) No 142/2011;
- (2) 'IMSOC' means the information management system for official controls referred to in Article 131 of Regulation (EU) 2017/625;
- (3) 'fresh fishery products' means fresh fishery products as defined in point 3.5 of Annex I to Regulation (EC) No 853/2004 of the European Parliament and of the Council <sup>(11)</sup>;
- (4) 'prepared fishery products' means prepared fishery products as defined in point 3.6 of Annex I to Regulation (EC) No 853/2004;
- (5) 'processed fishery products' means 'processed fishery products' as defined in point 7.4 of Annex I to Regulation (EC) No 853/2004;
- (6) 'pet animal' means pet animal as defined in point (11) of Article 4 of Regulation (EU) 2016/429 of the European Parliament and of the Council <sup>(12)</sup>;

<sup>(9)</sup> Commission Regulation (EC) No 206/2009 of 5 March 2009 on the introduction into the Community of personal consignments of products of animal origin and amending Regulation (EC) No 136/2004 (OJ L 77, 24.3.2009, p. 1).

<sup>(10)</sup> Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ L 54, 26.2.2011, p. 1).

<sup>(11)</sup> Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55).

<sup>(12)</sup> Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') (OJ L 84, 31.3.2016, p. 1).

- (7) 'non-commercial movement' means non-commercial movement as defined in point (14) of Article 4 of Regulation (EU) 2016/429;
- (8) 'petfood' means petfood as defined in point (19) of Annex I to Regulation (EU) No 142/2011.

### Article 3

#### **Animals intended for scientific purposes**

1. Invertebrates intended for scientific purposes such as research, educational activities or research related to product development activities shall be exempted from official controls at border control posts other than controls carried out in accordance with Article 15(2) of Regulation (EU) No 1143/2014, provided that:
  - (a) they comply with the animal health requirements set out in the rules referred to in point (d) of Article 1(2) of Regulation (EU) 2017/625;
  - (b) their entry into the Union is authorised in advance for that purpose by the competent authority of the Member State of destination;
  - (c) when the activities related to the scientific purposes have been carried out, they and products derived from them, with the exception of the quantities used for the scientific purposes, shall be disposed of or re-dispatched to the third country of origin.
2. Paragraph 1 shall not apply to honey bees (*Apis mellifera*), bumble bees (*Bombus* spp.), molluscs belonging to the phylum *Mollusca* and crustaceans belonging to the subphylum *Crustacea*.

### Article 4

#### **Research and diagnostic samples**

1. The competent authority may exempt research and diagnostic samples from official controls at border control posts provided that:
  - (a) the competent authority of the Member State of destination has issued to the user of the samples an authorisation in advance for their introduction into the Union in accordance with Article 27(1) of Regulation (EU) No 142/2011 and this authorisation is recorded in an official document delivered by that authority;
  - (b) they are accompanied by the official document referred to in point (a) or by a copy thereof until they reach the user referred to in point (a) or in the case referred to in point (c) the border control post of entry;
  - (c) in the case of entry into the Union via a Member State other than the Member State of destination, the operator presents the samples at a border control post.
2. In the case referred in paragraph 1(c), the competent authority of the border control post shall inform through the IMSOC the competent authority of the Member State of destination of the introduction of the samples.

### Article 5

#### **Plants, plant products and other objects intended for scientific purposes**

1. Plants, plant products and other objects are exempted from identity and physical checks at border control posts other than controls carried out pursuant to Article 15(2) of Regulation (EU) No 1143/2014, provided that they are intended for scientific purposes in accordance with Article 48(1) of Regulation (EU) 2016/2031.
2. The competent authority of the border control post of first arrival of the consignment shall perform documentary checks on the authorisation referred to in Article 48(1) of Regulation (EU) 2016/2031. In case of identified or suspected non-compliance, the competent authority of the border control post of first arrival may perform identity and physical checks on the consignment or request such checks to be carried out by the person responsible for the quarantine station or the confinement facility that has been designated by the competent authority.

3. If the competent authority of the border control post of first arrival of the consignment requests identity and physical checks to be carried out by the person responsible for the quarantine station or the confinement facility that has been designated by the competent authority, the competent authority of the border control post of first arrival of the consignment shall inform through the IMSOC the competent authority of the quarantine station or the confinement facility of the results of the documentary checks and of the subsequent departure of the consignment for the quarantine station or the confinement facility. The competent authority of the quarantine station or the confinement facility shall inform through the IMSOC the competent authority of the border control post of first arrival of the consignment of the arrival of the consignment at the quarantine station or the confinement facility. The competent authority of the quarantine station or the confinement facility shall carry out identity and physical checks.

#### Article 6

##### **Products of animal origin and composite products on board means of transport operating internationally which are not unloaded and are intended for consumption by the crew and passengers**

1. Products of animal origin and composite products are exempted from official controls at border control posts provided that:

- (a) they are intended for consumption by the crew and passengers on board means of transport operating internationally; and
- (b) they are not unloaded on Union territory.

2. Direct transfer of goods referred to in paragraph 1 unloaded at a port from one means of transport operating internationally to another means of transport operating internationally is exempted from official controls at border control posts provided that:

- (a) it takes place in accordance with the agreement of the competent authority of the border control post; and
- (b) it takes place under customs supervision.

3. The operator responsible for the goods referred to in paragraph 1 shall request the agreement referred to in paragraph 2(a) prior to the transfer of these goods from one means of transport operating internationally to another means of transport operating internationally.

#### Article 7

##### **Goods which form part of passengers' personal luggage and are intended for personal consumption or use**

Products of animal origin, composite products, products derived from animal by-products, plants, plant products and other objects which form part of passengers' personal luggage and which are intended for personal consumption or use, are exempted from official controls at border control posts provided that they belong to at least one of the following categories:

- (a) goods listed in Part 1 of Annex I provided that their combined quantity does not exceed the weight limit of 2 kg;
- (b) eviscerated fresh fishery products or prepared fishery products, or processed fishery products provided that their combined quantity does not exceed the weight limit of 20 kg or the weight of one fish, whichever weight is the highest;
- (c) goods other than those referred to in points (a) and (b) of this article and other than those referred to in Part 2 of Annex I, provided that their combined quantity does not exceed the weight limit of 2 kg;
- (d) plants, other than plants for planting, plant products and other objects;
- (e) goods, other than plants for planting, coming from Andorra, Iceland, Liechtenstein, Norway, San Marino or Switzerland;
- (f) fishery products coming from the Faroe Islands or Greenland;
- (g) goods, other than plants for planting and other than fishery products, coming from the Faroe Islands or Greenland provided that their combined quantity does not exceed the weight limit of 10 kg.

*Article 8***Information on goods which form part of passengers' personal luggage and are intended for personal consumption or use**

1. In all points of entry into the Union, the competent authority shall display information by means of one of the posters set out in Annex II, in at least one of the official languages of the Member State of introduction into the Union, placed in locations which are easily visible to passengers arriving from third countries.
2. The competent authority may complement the information referred to in paragraph 1 with additional information, including:
  - (a) the information set out in Annex III;
  - (b) information appropriate to the local conditions.
3. International passenger transport operators, including airport, port and rail operators and travel agencies shall:
  - (a) draw the attention of their customers to the rules laid down in Article 7 and in this Article, in particular by providing the information set out in Annexes II and III;
  - (b) accept that the competent authority displays the information referred to in paragraphs 1 and 2 within their premises in locations which are easily visible to passengers arriving from third countries.

*Article 9***Specific official controls on goods which form part of passengers' personal luggage**

1. For goods which form part of passengers' personal luggage, the competent authorities, the customs authorities or other public authorities responsible, in cooperation with port, airport and rail operators and with operators responsible for other points of entry shall organise specific official controls at points of entry into the Union. These specific official controls shall be risk-based and effective.
2. The controls referred to in paragraph 1 of this Article shall:
  - (a) aim in particular at detecting the presence of goods referred to in Article 7;
  - (b) aim at verifying that the conditions laid down in Article 7 are met; and
  - (c) be carried out by appropriate means, which may include the use of scanning equipment or specifically trained detector dogs, to screen large volumes of goods.
3. The competent authorities, the customs authorities or other public authorities responsible, which carry out specific official controls shall:
  - (a) aim at identifying the goods which are non-compliant with the rules laid down in Article 7;
  - (b) ensure that the non-compliant goods identified are seized and destroyed in accordance with national legislation and, where applicable, in accordance with Articles 197 to 199 of Regulation (EU) No 952/2013 of the European Parliament and of the Council <sup>(13)</sup>;
  - (c) review, at least once per year and before 1 October, their applied mechanisms and actions, establish the level of compliance achieved, and, on a risk-basis, adapt those mechanisms and actions if necessary, to achieve the objectives laid down in points (a) and (b) of paragraph 2.
4. The review referred to in point (c) of paragraph 3 shall ensure that risks to public health, animal health and plant health are minimised.

The review shall take into account:

- (a) data collected on the approximate number of consignments which are in breach of the rules laid down in Article 7;
- (b) the number of specific official controls done;
- (c) the total quantified amount of seized and destroyed consignments which were found in passengers' personal luggage and which were not in compliance with Article 7; and
- (d) any other relevant information.

<sup>(13)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

*Article 10***Small consignments of goods sent to natural persons which are not intended to be placed on the market**

1. Small consignments of products of animal origin, composite products, products derived from animal by-products, plants, plant products and other objects sent to natural persons, which are not intended to be placed on the market, are exempted from official controls at border control posts provided that they belong to a least one of the categories listed in Article 7.
2. Member States shall carry out specific official controls on those goods in accordance with Article 9.
3. Postal services shall draw the attention of their customers to the rules laid down in paragraph 1, in particular by providing the information set out in Annexe III.

*Article 11***Pet animals**

Pet animals entering the Union during a non-commercial movement are exempted from official controls at border control posts other than official controls carried out in accordance with Article 15(2) of Regulation (EU) No 1143/2014 and other than official controls carried out to verify compliance with Article 57(1) of Regulation (EC) No 865/2006, as follows:

- (a) animals of species listed in Part A of Annex I to Regulation (EU) No 576/2013 which:
  - (i) meet the conditions laid down in Article 5(1) or Article 5(2) of Regulation (EU) No 576/2013 and are being moved from a territory or a third country listed in Part 1 of Annex II to Implementing Regulation (EU) No 577/2013, provided that they undergo documentary and identity checks in accordance with Article 33 and, where relevant, standard spot checks in accordance with Article 5(3) of Regulation (EU) No 576/2013; or
  - (ii) meet the conditions laid down in Article 5(1) or Article 5(2) of Regulation (EU) No 576/2013 and are being moved from a territory or a third country listed in Part 2 of Annex II to Implementing Regulation (EU) No 577/2013, provided that they undergo documentary and identity checks in accordance with Article 34 and, where relevant, standard spot checks in accordance with Article 5(3) of Regulation (EU) No 576/2013; or
  - (iii) meet the conditions laid down in Article 10(3) of Regulation (EU) No 576/2013, provided that they undergo checks in accordance with the permit referred to in point (a) of Article 10(3) of that Regulation and with the requirements in point (b) of Article 10(3) of that Regulation; or
  - (iv) meet the conditions laid down in Article 32 of Regulation (EU) No 576/2013, provided that they undergo checks in accordance with the permit referred to in point (a) of Article 32(1) of that Regulation;
- (b) birds listed in Part B of Annex I to Regulation (EU) No 576/2013 provided that:
  - (i) their movement has been authorised by Member States in accordance with Article 1(1) of Decision 2007/25/EC; and
  - (ii) they undergo veterinary checks in accordance with Article 2 of Decision 2007/25/EC;
- (c) birds listed in Part B of Annex I to Regulation (EU) No 576/2013 moving into the Union from Andorra, the Faroe Islands, Greenland, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland and the Vatican City State;
- (d) animals of species other than birds, listed in Part B of Annex I to Regulation (EU) No 576/2013.

*Article 12***Information on pet animals**

1. In all points of entry into the Union, the competent authority shall display information in the poster set out in Annex IV, in at least one of the official languages of the Member State of introduction into the Union, by prominent notices placed in locations which are easily visible to passengers arriving from third countries.

2. International passenger transport operators, including airport, port and rail operators shall accept that the competent authority displays the information referred to in paragraph 1 within their premises in locations which are easily visible to passengers arriving from third countries.

*Article 13*

**Repeal of Regulation (EC) No 206/2009**

1. Regulation (EC) No 206/2009 is repealed with effect from 14 December 2019.
2. References to the repealed act shall be construed as references to this Regulation and read in accordance with the correlation table in Annex V.

*Article 14*

**Amendment to Regulation (EU) No 142/2011**

In Article 27 of Regulation (EU) No 142/2011, paragraph 2 is deleted.

*Article 15*

**Entry into force and date of application**

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

It shall apply from 14 December 2019.

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

Done at Brussels, 10 October 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

## ANNEX I

## PART 1

**List of goods referred to in Article 7(a)**

1. Powdered infant milk, infant food and special foods required for medical reasons, under the conditions that these products:
  - (i) do not require refrigeration before opening;
  - (ii) are packaged proprietary brand products for direct sale to the final consumer; and
  - (iii) that the packaging is unbroken unless in current use.
  
2. Petfood required for health-related reasons, under the conditions that these products:
  - (i) are intended for the pet accompanying the passenger;
  - (ii) are shelf-stable;
  - (iii) are packaged proprietary brand products for direct sale to the final consumer; and
  - (iv) that the packaging is unbroken unless in current use.

## PART 2

**List of goods which are not exempted from official controls at border control posts provided for in Article 7(c)**

Combined Nomenclature code <sup>(1)</sup>	Description	Qualification and explanation
ex Chapter 2 (0201-0210)	Meat and edible meat offal	All, excluding frogs' legs (CN code 0208 90 70)
0401-0406	Dairy produce	All
ex 0504 00 00	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked	All, excluding casings
ex 0511	Animal products not elsewhere specified or included; dead animals of Chapters 1 or 3 of Section 1 of Part 2 of Annex I to Regulation (EEC) No 2658/87, unfit for human consumption	Only petfood
1501 00	Pig fat (including lard) and poultry fat, other than that of heading 0209 or 1503	All
1502 00	Fats of bovine animals, sheep or goats, other than those of heading 1503	All
1503 00	Lard stearin, lard oil, oleostearin, oleo-oil and tallow oil, not emulsified or mixed or otherwise prepared	All
1506 00 00	Other animal fats and oils and their fractions, whether or not refined, but not chemically modified	All
1601 00	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products	All
1602	Other prepared or preserved meat, meat offal or blood	All

Combined Nomenclature code <sup>(1)</sup>	Description	Qualification and explanation
1702 11 00 1702 19 00	Lactose and lactose syrup	All
ex 1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included	Only those preparations containing meat or milk, or both
ex 1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared	Only those preparations containing meat or milk, or both
ex 1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products	Only those preparations containing meat or milk, or both
ex 2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006 <sup>(2)</sup>	Only those preparations containing meat or milk, or both
ex 2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006	Only those preparations containing meat or milk, or both
ex 2103	Sauces and preparations thereof; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard	Only those preparations containing meat or milk, or both
ex 2104	Soups and broths and preparations thereof; homogenised composite food preparations	Only those preparations containing meat or milk, or both
ex 2105 00	Ice cream and other edible ice, whether or not containing cocoa	Only those preparations containing milk
ex 2106	Food preparations not elsewhere specified or included	Only those preparations containing meat or milk, or both
ex 2309	Preparations of a kind used in animal feeding	Only petfood, dog chews and mixtures of meals containing meat or milk, or both

<sup>(1)</sup> Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

<sup>(2)</sup> Heading 2006 reads: 'Vegetables, fruit, nuts, fruit-peel and other parts of plants, preserved by sugar (drained, glacé or crystallised)'.

Notes:

1. Column 1: Where only certain products under any code are required to be examined and no specific subdivision under this code exists in the goods nomenclature, the code is marked 'ex' (e.g. ex 1901: only those preparations containing meat or milk, or both should be included).
2. Column 2: The description of the goods is as laid down in the description column of Annex I to Regulation (EEC) No 2658/87.
3. Column 3: This column gives details of the products covered.



## ANNEX II

## Posters referred to in Article 8(1)

The posters can be found at:

[https://ec.europa.eu/food/animals/animalproducts/personal\\_imports\\_en](https://ec.europa.eu/food/animals/animalproducts/personal_imports_en)



**Keep animal diseases  
out of the  
European Union!**



 **Travellers must surrender  
these products for official controls\***

Products of animal origin may  
carry pathogens that cause infectious diseases in animals

There are strict procedures and veterinary controls on  
the introduction of products of animal origin into the European Union

\*Other than those arriving with small quantities for personal consumption from :  
Andorra, the Faroe Islands, Greenland, Iceland, Liechtenstein, Norway, San Marino and Switzerland





## **Diseases don't respect borders**



If you bring in meat or dairy products from outside the EU,  
you risk importing animal diseases.

If you do not declare such items, you may be fined or  
face criminal prosecution.

These products will be seized and destroyed on arrival.

You may bring in small quantities for personal consumption from:  
Andorra, the Faroe Islands, Greenland, Iceland, Liechtenstein, Norway, San Marino and Switzerland



# KEEP ANIMAL DISEASES OUT OF THE EUROPEAN UNION!



**TRAVELLERS MUST SURRENDER THESE  
PRODUCTS FOR OFFICIAL CONTROLS\***

Products of animal origin may carry pathogens that  
cause infectious diseases in animals.

There are strict procedures and veterinary controls on the  
introduction of products of animal origin into the European Union.

\*Other than those arriving with small quantities for personal consumption from:  
Andorra, the Faroe Islands, Greenland, Iceland, Liechtenstein, Norway, San Marino and Switzerland



**KEEP ANIMAL DISEASES OUT OF THE EUROPEAN UNION!**

**TRAVELLERS MUST SURRENDER THESE PRODUCTS FOR OFFICIAL CONTROLS\***



Products of animal origin may carry pathogens that cause infectious diseases in animals.

There are strict procedures and veterinary controls on the introduction of products of animal origin into the European Union.

\*Other than those arriving with small quantities for personal consumption from: Andorra, the Faroe Islands, Greenland, Iceland, Liechtenstein, Norway, San Marino and Switzerland

## ANNEX III

**Information referred to in point (a) of Article 8(2)**

Keep infectious animal diseases out of the EU!

**Animal products may carry pathogens causing infectious disease**

Due to the risk of introducing diseases into the European Union (EU), there are strict procedures for the introduction of certain animal products into the EU. These procedures do not apply to the movements of animal products between the Member States of the EU, or for animal products coming in small quantities for personal consumption from Andorra, Iceland, Liechtenstein, Norway, San Marino, and Switzerland.

All animal products not conforming to these rules shall be surrendered on arrival in the EU for official disposal. **Failure to declare such items may result in a fine or criminal prosecution.**

The following goods shall not be introduced into the EU, unless the combined quantity of goods listed in points 2, 3 and 5 does not exceed the weight limit of 2 kg per person.

In the case of goods coming from the Faroe Islands or Greenland, the combined quantity of goods listed in points 1, 2, 3 and 5 shall not exceed the weight limit of 10 kg per person.

**1.Small quantities of meat and milk and their products (other than powdered infant milk, infant food, and special foods required for medical reasons or petfood required for health-related reasons)**

You may only bring in or send to the EU personal consignments of meat and milk and their products (other than powdered infant milk, infant food, and special foods required for medical reasons or petfood required for health-related reasons) provided that they come from the Faroe Islands or Greenland, and their weight does not exceed **10 kg** per person.

**2.Powdered infant milk, infant food, and special foods required for medical reasons**

You may only bring in or send to the EU personal consignments of powdered infant milk, infant food, and special foods required for medical reasons provided that:

- they come from the Faroe Islands or Greenland, and their combined quantity does not exceed the weight limit of **10 kg** per person, and that:
  - (a) the product does not require refrigeration before consumption;
  - (b) the product is a packaged proprietary brand product; and
  - (c) the packaging is unbroken unless in current use,
- they come from other countries (other than the Faroe Islands or Greenland), and their combined quantity does not exceed the weight limit of **2 kg** per person, and that:
  - (a) the product does not require refrigeration before consumption;
  - (b) the product is a packaged proprietary brand product; and
  - (c) the packaging is unbroken unless in current use.

### 3. Petfood required for health-related reasons

You may only bring in or send to the EU personal consignments of petfood required for health-related reasons provided that:

- they come from the Faroe Islands or Greenland, and their combined quantity does not exceed the weight limit of **10 kg** per person, and that:
  - (a) the product does not require refrigeration before consumption;
  - (b) the product is a packaged proprietary brand product; and
  - (c) the packaging is unbroken unless in current use,
- they come from other countries (other than the Faroe Islands or Greenland), and their combined quantity does not exceed the weight limit of **2 kg** per person, and that:
  - (a) the product does not require refrigeration before consumption;
  - (b) the product is a packaged proprietary brand product; and
  - (c) the packaging is unbroken unless in current use.

### 4. Small quantities of fishery products for personal human consumption

You may only bring in or send to the EU personal consignments of fishery products (including fresh, dried, cooked, cured or smoked fish, and certain shellfish, such as prawns, lobsters, dead mussels and dead oysters) provided that:

- fresh fish are eviscerated,
- the weight of the fishery products does not exceed, per person, 20 kg or the weight of one fish, whichever weight is the highest.

These restrictions do not apply to fishery products coming from the Faroe Islands or Greenland.

### 5. Small quantities of other animal products for personal human consumption

You may only bring in or send to the EU other animal products, such as honey, live oysters, live mussels and snails for example, provided that:

- they come from the Faroe Islands or Greenland, and their combined weight does not exceed 10 kg per person,
- they come from other countries (other than the Faroe Islands or Greenland) and their combined weight does not exceed **2 kg** per person.

Please note that you may bring in or send to the EU small quantities of animal products from several of the above five categories (paragraphs 1 to 5) provided that they comply with the rules explained in each of the relevant paragraphs.

### 6. Larger quantities of animal products

You may only bring in or send to the EU larger quantities of animal products if they meet the requirements for commercial consignments, which include:

- certification requirements, as laid down in the appropriate official EU official certificate,
- the presentation of the goods, with the correct documentation, to a EU border control post, on arrival in the EU.

## 7.Exempted products

The following products are exempted from the rules set out in points 1 to 6:

- bread, cakes, biscuits, waffles and wafers, rusks, toasted bread and similar toasted products containing less than 20 % of processed dairy and egg products and treated as provided for in point (a)(i) of Article 6(1) of Commission Decision 2007/275/EC <sup>(1)</sup>,
- chocolate and confectionery (including sweets) containing less than 50 % of processed dairy and egg products and treated as provided for in point (a)(i) of Article 6(1) of Decision 2007/275/EC,
- food supplements packaged for the final consumer containing small amounts (in total less than 20 %) of processed animal products (including glucosamine, chondroitin or chitosan, or both chondroitin and chitosan) other than meat products,
- olives stuffed with fish,
- pasta and noodles not mixed or filled with meat product containing less than 50 % of processed dairy and egg products and treated as provided for in point (a)(i) of Article 6(1) of Decision 2007/275/EC,
- soup stocks and flavourings packaged for the final consumer containing less than 50 % of fish oils, fish powders or fish extracts and treated as provided for in point (a)(i) of Article 6(1) of Decision 2007/275/EC.

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<sup>(1)</sup> Commission Decision 2007/275/EC of 17 April 2007 concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC (OJ L 116, 4.5.2007, p. 9).

## ANNEX IV

## Poster referred to in Article 12

The poster can be found at:

[https://ec.europa.eu/food/animals/pet-movement/poster-diseases-dont-respect-borders\\_en](https://ec.europa.eu/food/animals/pet-movement/poster-diseases-dont-respect-borders_en)





## ANNEX V

## Correlation table referred to in Article 13(2)

Regulation (EC) No 206/2009	This Regulation
Article 1(1)	—
Article 1(2)	Article 7(e) and (f) and Article 10(1)
Article 1(3)	—
Article 1(4)	—
Article 2(1)(a)	—
Article 2(1)(b)	Article 7(a) and Article 10(1)
Article 2(1)(c)	Article 7(b) and Article 10(1)
Article 2(1)(d)	Article 7(c) and Article 10(1)
Article 2(2)(a)	—
Article 2(2)(b)	Article 7(a) and Article 10(1)
Article 2(3)	Article 7(g) and Article 10(1)
Article 3(1)	Article 8(1)
Article 3(2)	Article 8(1)
Article 3(3)	Article 8(2)
Article 3(4)(a)	Article 8(1)
Article 3(4)(b)	—
Article 4	Article 8(3)(a) and Article 10(3)
Article 5(1)	Articles 9(1) and 10(2)
Article 5(2)	Article 9(2)(a) and (b) and Article 10(2)
Article 5(3)	Article 9(2)(c) and Article 10(2)
Article 6(1)(a)	Article 9(3)(a) and Article 10(2)
Article 6(1)(b)	Article 9(3)(b) and Article 10(2)
Article 6(2)	—
Article 6(3)	—
Article 7	—
Article 8	—
Article 9	—
Article 10	—
Article 11	—
Annex I, Part 1	Annex I, Part 2
Annex I, Part 2	Annex I, Part 2
Annex II, Part 1	Annex I, Part 1, point (1)
Annex II, Part 2	Annex I, Part 1, point (2)
Annex III	Annex II
Annex IV	Annex III
Annex V	—
Annex VI	—
Annex VII	—

**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) <sup>(1)</sup>, 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.
- (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 <sup>(2)</sup> Commission Implementing Regulation and (EU) No 884/2014 <sup>(3)</sup> 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

<sup>(1)</sup> OJ L 95, 7.4.2017, p. 1.

<sup>(2)</sup> Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC (OJ L 194 25.7.2009, p. 11).

<sup>(3)</sup> Commission Implementing Regulation (EU) No 884/2014 of 13 August 2014 imposing special conditions governing the import of certain feed and food from certain third countries due to contamination risk by aflatoxins and repealing Regulation (EC) No 1152/2009 (OJ L 242 14.8.2014, p. 4).

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 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 <sup>(4)</sup>.

<sup>(4)</sup> 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).

- (12) Commission Decision 2010/313/EU <sup>(7)</sup> 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 <sup>(8)</sup> 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 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 <sup>(7)</sup> 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 <sup>(8)</sup> 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 <sup>(9)</sup> 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.

<sup>(7)</sup> Commission Decision 2010/313/EU of 7 June 2010 authorising physical checks pursuant to Regulation (EC) No 669/2009 to be carried out at approved premises of feed and food business operators in Cyprus (OJ L 140, 8.6.2010, p. 28).

<sup>(8)</sup> Commission Decision 2010/458/EU of 18 August 2010 authorising physical checks pursuant to Regulation (EC) No 669/2009 to be carried out at approved premises of feed and food business operators in Malta (OJ L 218, 19.8.2010, p. 26).

<sup>(7)</sup> 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).

<sup>(8)</sup> Commission Directive 2004/103/EC of 7 October 2004 on identity and plant health checks of plants, plant products or other objects, listed in Part B of Annex V to Council Directive 2000/29/EC, which may be carried out at a place other than the point of entry into the Community or at a place close by and specifying the conditions related to these checks (OJ L 313, 12.10.2004, p. 16).

<sup>(9)</sup> Regulation (EU) 2016/2031 of the European Parliament and 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).

- (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<sup>(10)</sup>.

## 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;

<sup>(10)</sup> Commission Implementing Regulation 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 (see page 128 of this Official Journal).

- (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 the disposal of the customs authorities as referred to in Article 163 of Regulation (EU) No 952/2013 of the European Parliament and of the Council <sup>(1)</sup>.
2. The requirement for the authenticated copy referred to in points (i) and (ii) of paragraph 1(g) to accompany the consignment shall not apply where the respective official certificates or results of laboratory analysis have been submitted in IMSOC by the competent authorities of the third country or uploaded in IMSOC by the operator and the competent authorities of the border control post have checked that they correspond to the original certificates or results of laboratory analyses.
3. Where the competent authority of a Member State manages an existing national system which records the results of documentary, identity and physical checks, points (d) and (h) of paragraph 1 shall not apply to consignments leaving the border control post to the control point within the same Member State, provided that the following requirements are fulfilled:
- (a) information on the expected time of arrival of the consignment to the control point and of the type of the means of transport is available in the existing national system;
  - (b) the existing national system complies with the following conditions:
    - (i) it ensures timely information of customs authorities and of the operator on the authorisation referred to in point (c) of paragraph 1 and of the competent authorities of the border control post of the arrival of the consignment at control point,
    - (ii) it exchanges electronic data with IMSOC, including information on rejections of consignments and information which allows for clear identification of each consignment, such as by way of a unique reference number,
    - (iii) it ensures that the finalisation of the CHED referred to in point (c) of paragraph 1 may only take place after electronic data exchange and confirmation by IMSOC.

### Article 3

#### **Identity and physical checks on consignments of food and feed of non-animal origin performed at a control point other than the border control post**

1. Identity checks and physical checks on consignments of food and feed of non-animal origin which are 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 may be performed by the competent authorities at a control point other than a border control post, where either of the following applies:
- (a) the operator responsible for the consignment has requested the competent authorities of the border control post that identity checks and physical checks be carried out at the control point, which has been designated for the category of goods of such consignment, and the competent authorities of the border control post authorise the transfer of the consignment to that control point;
  - (b) the competent authorities of the border control post have decided that identity checks and physical checks be performed at the control point, which has been designated for the category of goods of such consignment and the operator does not object to this decision.
2. The identity checks and physical checks referred in paragraph 1 shall be performed by the competent authorities of the border control post if either of the following applies:
- (a) there is no authorisation by the competent authority of the border control post as referred in paragraph 1(a),

<sup>(1)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (b) the operator objects to the decision to transfer the consignment to the control point as referred in paragraph 1 (b).

#### Article 4

##### **Identity and physical checks on consignments of plants, plant products and other objects performed at a control point other than the border control post**

1. Identity checks and physical checks may be performed by the competent authorities at a control point other than the border control post on consignments of:
  - (a) plants, plant products, and other objects referred to in Articles 72(1) and 74(1) of Regulation (EU) 2016/2031,
  - (b) 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.
2. The identity checks and physical checks referred to in paragraph 1 may be performed by the competent authorities at a control point other than a border control post where either of the following applies:
  - (a) the operator responsible for the consignment has requested the competent authorities of the border control post that identity checks and physical checks be carried out at a control point, which has been designated for the category of goods of such consignment, and the competent authorities of the border control post authorise the transfer of the consignment to the control point;
  - (b) the competent authorities of the border control post have decided that identity checks and physical checks be performed at a control point, which has been designated for the category of goods of such consignment and the operator does not object to this decision.
3. The identity checks and physical checks referred to in paragraph 1 shall be performed by the competent authorities of the border control post if either of the following applies:
  - (a) there is no authorisation by the competent authority of the border control post as referred in paragraph 2(a),
  - (b) the operator objects to the decision to transfer consignment to the control point as referred in paragraph 2(b).

#### Article 5

##### **Specific conditions for identity checks and physical checks at a control point other than the border control post of consignments of plants, plant products and other objects**

1. The identity checks and physical checks may be performed at a control point for consignments referred to in Article 4 (1) provided the operator has ensured that packaging or the means of transport of consignments are closed or sealed in such a way that, during their transfer to the control point they cannot cause infestation of or infection to other plants, plant products or other objects with the pests listed as Union quarantine pests or as Union regulated non-quarantine pests referred to in Articles 5(2) and 30(1) of Regulation (EU) 2016/2031 and, in the case of protected zones, with the respective pests included on list established pursuant to Article 32(3) of that Regulation.
2. By way of derogation from paragraph 1 the competent authorities of the border control post of entry may allow that the packaging or the means of transport of consignments of plants, plant products and other objects is not closed or sealed, where the following conditions apply:
  - (a) the consignment consists of wood of conifers 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,
  - (b) the consignments of wood of conifers are transported to a control point that is situated in the same Member State as the border control post of entry,

- (c) the consignments of wood of conifers do not pose a specific risk of spreading Union quarantine pests, or pests subject to measures adopted pursuant to Article 30(1) of Regulation (EU) 2016/2031, during transport to the control point,
  - (d) before leaving the territory of that Member State, the competent authority ensures that such wood is processed in a way that the wood does not represent a phytosanitary risk.
3. Member States that make use of provisions referred to in paragraph 2 shall:
- (a) inform the Commission and the other Member States of the area of the third country concerned and on the phytosanitary status of this area;
  - (b) annually submit a report with the volume and results of official controls performed on the wood of conifers concerned.

#### Article 6

##### **Operations during and after identity and physical checks at a control point other than the border control post**

1. After the competent authorities of the border control post have authorised or decided on the transfer of the consignment to the control point indicated in the CHED, the operator responsible for the consignment shall not present the consignment for identity and physical checks to a control point different from the one indicated in the CHED, unless the competent authorities of the border control post authorise the transfer of the consignment to another control point in accordance with point (a) of Article 3(1) and point (a) of Article 4(2).
2. The competent authorities of the control point shall confirm the arrival of the consignment to the competent authorities of the border control post by completing in IMSOC the CHED referred to in point (a) of Article 2(1).
3. The competent authorities of the control point shall finalise the separate CHED referred to in point (d) of Article 2(1), or where Article 2(3) applies, the CHED referred to in point (c) of Article 2(1), by recording therein the outcome of the identity checks and physical checks and any decision on the consignment taken in accordance with Article 55 of Regulation (EU) 2017/625.
4. The operator shall provide the reference number of the finalised CHED referred to in paragraph 3 in the customs declaration which is lodged for the consignment with the customs authorities and shall keep a copy of that CHED at the disposal of the customs authorities as a supporting document as referred to in Article 163 of Regulation (EU) No 952/2013.
5. Where the competent authorities of the border control post have not received, within 15 days from the day on which the transfer of a consignment to the control point was authorised, confirmation of the arrival of the consignment from the competent authorities of the control point, they shall:
  - (a) verify with the competent authorities of the control point whether the consignment has arrived at the control point;
  - (b) where the verification provided for in point (a) shows that the consignment has not arrived at control point, inform the customs authorities and other authorities referred to in Article 75(1) of Regulation (EU) 2017/625 of not having received confirmation of the arrival of the consignment to destination;
  - (c) undertake further investigation to determine the actual location of the goods in cooperation with customs authorities and other authorities as referred to in Article 75(1) of Regulation (EU) 2017/625.

#### CHAPTER II

##### **Documentary checks performed at a distance from a border control post**

#### Article 7

##### **Documentary checks on consignments of plants, plant products and other objects performed at a distance from a border control post**

Documentary checks on consignments of plants, plant products and other objects as referred to in point (c) of Article 47(1) of Regulation (EU) 2017/625 entering the Union may be performed by either of the following:



- (a) where consignments arrive at a border control post, competent authorities situated at a distance from the border control post or at a control point other than a border control post, provided they are situated in the same Member State as the border control post of arrival of the consignment;
- (b) where consignments are subject to a reduced frequency rate as laid down in the rules referred to in point (g) of Article 1 (2) of Regulation (EU) 2017/625 and arrive at a point of entry other than the border control post, the competent authorities at the point of entry into the Union.

#### *Article 8*

#### **Conditions for the performance of documentary checks on consignments of plants, plant products and other objects performed at a distance from a border control post**

1. The performance of documentary checks referred to in Article 7 shall be subject to compliance with the following conditions:

- (a) the competent authorities referred to in Article 7 shall perform documentary checks on:
  - (i) official certificates and results of laboratory tests uploaded in IMSOC by the competent authorities of the border control post of arrival of consignment,
  - (ii) official certificates and results of laboratory tests uploaded in IMSOC by the operator where the competent authorities of the border control post have checked that they correspond to the original certificates or results of laboratory tests,
  - (iii) official certificates and results of laboratory tests submitted in IMSOC by the competent authorities of third countries, or
  - (iv) original official certificates, when the competent authorities referred to in Article 7 are part of the designated border control post as referred to in Article 4(2) of Commission Implementing Regulation (EU) 2019/1012 <sup>(12)</sup>;
- (b) the consignment shall not be transported to the control point for identity and physical checks by the operator from the border control post until the competent authorities referred to in Article 7 have informed the competent authorities of the border control post of the satisfactory results of the documentary checks.

2. Where the consignment of plants, plant products and other objects is to be transported by the operator to a control point for the performance of identity checks and physical checks, Articles 2, 4 and 5 shall apply.

3. A consignment of plants, plant products and other objects may be transported by the operator from the border control post to a control point for the performance of documentary checks, provided that the control point is under the supervision of the same competent authority as the border control post.

### **CHAPTER III**

#### **Final provisions**

#### *Article 9*

#### **Repeals**

1. Commission Directive 2004/103/EC is repealed with effect from 14 December 2020.
2. Commission Decisions 2010/313/EU and 2010/458/EU are repealed with effect from 14 December 2019.

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<sup>(12)</sup> 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 (OJ L 165, 21.6.2019, p. 4).

*Article 10***Entry into force and application**

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

It shall apply from 14 December 2019.

Articles 4(1)(a), 7 and 8 shall apply from 14 December 2020.

Article 2(3) shall apply until 13 December 2023.

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

Done at Brussels, 10 October 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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**COMMISSION DELEGATED REGULATION (EU) 2019/2124****of 10 October 2019****supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union, and amending Commission Regulations (EC) No 798/2008, (EC) No 1251/2008, (EC) No 119/2009, (EU) No 206/2010, (EU) No 605/2010, (EU) No 142/2011, (EU) No 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/EC****(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) <sup>(1)</sup>, and in particular Article 50(4), points (a) to (d) of Article 51(1), points (c) and (j) of 77(1) and Article 77(2) 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 the Union agri-food chain legislation. That framework includes official controls performed on animals and goods entering the Union from third countries through designated border control posts.
- (2) Article 50(4) of Regulation (EU) 2017/625 empowers the Commission to adopt rules establishing the cases where, and the conditions under which, the Common Health Entry Document (CHED) is required to accompany consignments of animals, products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products, plants, plant products and other objects referred to in Article 47(1) of Regulation (EU) 2017/625 to the place of destination, in transit through the Union.
- (3) Point (a) of Article 51(1) of Regulation (EU) 2017/625 provides that the Commission is to establish the cases where, and the conditions under which, the competent authorities of border control posts should be able to authorise the onward transportation of consignments of food and feed of non-animal origin, plants, plant products, and other objects referred to in Article 47(1) of that Regulation to their place of final destination pending the availability of the results of physical checks.

<sup>(1)</sup> OJ L 95, 7.4.2017, p. 1.

- (4) Points (b) and (c) of Article 51(1) of Regulation (EU) 2017/625 empower the Commission to establish the cases where, and conditions under which, identity checks and physical checks of transhipped consignments and of animals arriving by air or sea and staying on the same means of transport for onward travel may be performed at a border control post other than the one of first arrival in the Union. For the purpose of effective controls of transhipped consignments, it is necessary to lay down the time periods and arrangement under which the competent authorities of the border control post should perform documentary, identity and physical checks.
- (5) Point (d) of Article 51(1) of Regulation (EU) 2017/625 provides that the Commission is to establish the cases where, and the conditions under which, the transit through the Union of consignments of animals, products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products, plants, plant products and other objects referred to in Article 47(1) of Regulation (EU) 2017/625, should be authorised. It also provides for the Commission to lay down rules concerning certain official controls to be performed at border control posts on such consignments, including the cases and conditions for the temporary storage of goods in customs warehouses, warehouses in free zones, temporary storage facilities and warehouses specialised in supplying NATO or US military bases.
- (6) The competent authorities of border control posts should be permitted to authorise the onward transportation to the place of final destination pending the availability of the results of laboratory analyses and tests of consignments of food and feed of non-animal origin subject to the measures referred to in points (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625 and of consignments of plants, plant products and other objects referred to in points (c) and (e) of Article 47(1) of that Regulation. The food and feed which form such consignments may appear on the list of goods subject to a temporary increase of official controls at the point of entry into the Union established pursuant to point (b) of Article 47(2) of Regulation (EU) 2017/625 or may be subject to an emergency measure provided for in acts adopted in accordance with Article 53(1)(b) of Regulation (EC) No 178/2002 of the European Parliament and of the Council <sup>(2)</sup> or be subject to additional conditions for the entry into the Union provided for in acts adopted in accordance with Article 126 of Regulation (EU) 2017/625 or to special measures regarding their entry into the Union provided for in acts adopted in accordance with Article 128 of Regulation (EU) 2017/625.
- (7) The onward transportation authorisation should be subject to conditions in order to ensure a proper control of risks. In particular, in order to contain potential risks to human or plant health, consignments of food and feed of non-animal origin subject to measures referred to in points (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625 and consignments of plants, plant products and other objects referred to in points (c) and (e) of Article 47(1) should be transported to, and stored at, onward transportation facilities at the place of final destination designated by the Member States pending the availability of the results of laboratory analyses and tests.
- (8) The onward transportation facilities should be customs warehouses or temporary storage facilities authorised, designated or approved in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council <sup>(3)</sup> and in order to ensure the hygiene of foodstuffs and feedingstuffs they should be registered with the competent authorities as provided for in Regulation (EC) No 852/2004 of the European Parliament and of the Council <sup>(4)</sup> and Regulation (EC) No 183/2005 of the European Parliament and of the Council <sup>(5)</sup>, respectively.
- (9) Animal health risks associated with consignments of animals from third countries arriving by air or sea and staying on the same means of transport for onward travel to the third country or another Member State which are intended to be placed on the market in the Union or to transit through the Union are lower than those associated with other consignments of animals, including consignments transhipped in ports or airports. Therefore, unless non-compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 is suspected, identity and physical checks of such animals should be performed at the border control post of introduction into the Union. In addition, documentary checks should be performed at the border control posts, including at the border control post of introduction into the Union where animals are presented for official controls and through which they enter the Union for subsequent placing on the market or for transit through the Union territory.

<sup>(2)</sup> 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 (OJ L 31, 1.2.2002, p. 1).

<sup>(3)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

<sup>(4)</sup> Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1).

<sup>(5)</sup> Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene (OJ L 35, 8.2.2005, p. 1).

- (10) Long journeys on the same means of transport can be detrimental to the welfare of animals. In order to respect animal welfare requirements during transport the Council Regulation (EC) No 1/2005 <sup>(6)</sup> provisions should apply until the consignment of animals reaches the border control post of introduction into the Union.
- (11) In order to avoid the introduction of animal diseases into the Union it is necessary to perform documentary, identity and physical checks on transhipped consignments of animals in ports or airports at the border control post where the first transhipment takes place.
- (12) Taking into account the risks to human and animal health associated with transhipped consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products and the need to ensure an efficient operation of official controls on such consignments it is appropriate to establish time period during which documentary checks should be carried out by the competent authorities of the border control post of transhipment. The calculation of time for the transhipment period should start when consignment arrives at the port or airport of the Member State. Where non-compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 is suspected the competent authorities of the border control post of transhipment should perform documentary, identity and physical checks.
- (13) With a view to ensuring an efficient operation of official controls and taking into account the risks to plant health associated with transhipped consignments of plants, plant products and other objects referred to in points (c) and (e) Article 47(1) of Regulation (EU) 2017/625, it is appropriate to establish time limits after which documentary checks may be carried out by the competent authorities of the border control post of transhipment. The calculation of time for the transhipment period should start when consignment arrives at the port or airport of the Member State. Where non-compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 is suspected the competent authorities of the border control post of transhipment should perform documentary, identity and physical checks.
- (14) It is appropriate to provide that unless all checks on transhipped consignments of plants, plant products and other objects referred to in points (c) and (e) Article 47(1) of Regulation (EU) 2017/625 which are intended to be placed on the market in the Union have been performed at the border control post of transhipment based on the suspicion of non-compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625, the competent authorities of the border control post of introduction into the Union should perform documentary, identity and physical checks.
- (15) In order to reduce the administrative burden, operators responsible for transhipped consignments should be able to transmit to the competent authorities of the border control post of transhipment information on the identification and location of the goods in the port or airport, the estimated time of arrival, the estimated time of departure and the destination of their consignment. In such cases, the Member States should be equipped with an information system which enables them to consult the information provided by the operators and to verify that the time limits for carrying out documentary checks have not been exceeded.
- (16) The risks to public and animal health are low in the case of food and feed of non-animal origin subject to measures or acts referred to in points (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625, which are transhipped from a vessel or aircraft under customs supervision to another vessel or aircraft in the same port or airport. It is therefore appropriate to provide that in this case documentary, identity and physical checks should take place not at the border control post of transhipment, but at a later stage at the border control post of introduction into the Union. Accordingly, the operator responsible for the consignment should give prior notification of the arrival of the consignments by completing and submitting the relevant part of the CHED in the information management system for official controls (IMSOC) for transmission to the competent authorities of the border control post of introduction.
- (17) In order to protect animal health and welfare, consignments of animals in transit from one third country to another third country passing under custom supervision through the Union territory should be subject to documentary, identity and physical checks at the border control post of first arrival into the Union, and such transit should only be authorised subject to the favourable outcome of those checks.

<sup>(6)</sup> Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (O) L 3, 5.1.2005, p. 1).

- (18) With a view to protecting human and animal health, consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products in transit from one third country to another third country passing through the Union territory should be subject to documentary and identity checks at the border control post. Such transit should be authorised subject to certain conditions, including the favourable outcome of checks at the border control post, with a view to ensuring the proper control of risks at the border and during transit, and ultimately ensuring that such goods leave the Union territory.
- (19) In order to protect plant health the consignments of plants, plant products and other objects referred to in points (c) and (e) of Article 47(1) of Regulation (EU) 2017/625 in transit from one third country to another third country and passing through the Union territory should be subject to risk based documentary and physical checks at the border control post. Such transit should be authorised subject to certain conditions, including the favourable outcome of checks at the border control post.
- (20) In certain cases, consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products which are in transit from one third country to another third country passing through the Union territory may be temporarily stored in warehouses. In order to ensure the traceability of such consignments, such temporary storage should only take place in warehouses approved by the competent authorities of Member States and which should comply with hygiene requirements laid down and referred to in Regulation (EC) No 852/2004 and Commission Regulation (EU) No 142/2011 <sup>(7)</sup>.
- (21) In the interests of transparency, Member States should maintain and keep up-to-date in the IMSOC a list of all approved warehouses, indicating their name and address, the category of goods for which they are approved and the approval number. The approved warehouses should be subject to regular official controls performed by the competent authorities with a view to ensure that the conditions for their approval are maintained.
- (22) In order to ensure that consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products are actually delivered on board the vessels, including military vessels, leaving the Union, the competent authority of the port of destination or the representative of the master of the vessel upon completion of delivery should confirm delivery to the competent authorities of the border control post of introduction into the Union or of the warehouse where such goods have been temporarily stored. Such confirmation should be provided by countersigning the official certificate or by electronic means. Where consignments are not delivered to the vessel, as they missed the vessel in port or due to logistical problems, the competent authority of the warehouse or border control post of introduction into the Union should be permitted to authorise the return of the consignment to the place of dispatch.
- (23) In some Member States due to the geographical situation, the transit of animals and goods takes place under specific conditions laid down in rules for the entry into the Union of certain animals, germinal products, animal by-products and products of animal origin. Specific control procedures and conditions are therefore necessary to support the enforcement of those requirements.
- (24) It is necessary to lay down conditions under which consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products for which transit through the Union territory had been authorised, but which are rejected by the third country of destination should be permitted to be returned directly to the border control post which authorised their transit through the Union or to the warehouses where such goods were stored on Union territory before their rejection by the third country.

<sup>(7)</sup> Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ L 54, 26.2.2011, p. 1).

- (25) Given the risks to human and animal health and welfare, consignments of animals, products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products which are moved from the Union territory to another part of the Union territory, passing through the territory of a third country should be subject to documentary and identity checks before re-introduction into the Union by the competent authorities of the border control posts. Plants, plant products and other objects, which have been adequately packed and transported as referred to in point (b) of Article 47(1) of Regulation (EU) 2016/2031 of the European Parliament and of the Council <sup>(8)</sup> should not be subject to checks at the border control post of re-introduction, due to the low risk of introducing harmful organisms.
- (26) With a view to ensuring the proper communication and the division of responsibilities between different authorities and operators the relevant part of the CHED should be completed. Part I should be completed by the operator responsible for the consignment and transmitted to the competent authorities of the border control post before the arrival of the consignment. Part II should be completed by the competent authorities as soon as the checks referred in this Regulation have been performed and a decision is taken on the consignment and recorded therein. Part III should be completed by the competent authorities of the border control post of exit or final destination or local competent authority as soon as the checks referred in this Regulation have been performed.
- (27) In order to ensure that consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products coming from the territory of Croatia and transiting through the territory of Bosnia and Herzegovina at Neum ('Neum corridor') are intact before entering the territory of Croatia via the points of entry at Klek or Zaton Doli, the competent authority should perform checks on the seals of the vehicles or transport containers and record the date and time of departure and arrival of the vehicles transporting goods.
- (28) When consignments of certain goods referred to in points (b), (c), (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625 are intended to be placed on the market in the Union or to transit through the Union, in certain cases, Union legislation provides that their transport from the border control post of arrival to the establishment at the place of destination or the border control post of exit and their arrival at their place of destination is to be monitored. In order to prevent any risk for public and animal health the competent authorities of the border control post of introduction into the Union should monitor that consignments arrive to the destination within 15 days.
- (29) One of the purposes of Regulation (EU) 2017/625 is to have rules laid down in a single act rather than scattered in several acts, which makes those rules easier to understand and apply. This Regulation follows the same approach and avoids the need for a number of cross-references between different acts, and it thus increases transparency. Various supplementing rules laid down in this draft act are interconnected and are to be applied in tandem. This is particularly the case for the rules on transit, and these rules will apply from the same date. Having these supplementing rules laid down in a single act also avoids the risk of duplication of rules.
- (30) Commission Decision 2000/208/EC <sup>(9)</sup>, Commission Decision 2000/571/EC <sup>(10)</sup> and Commission Implementing Decision 2011/215/EU <sup>(11)</sup> lay down rules on areas that fall within the scope of this Regulation. Accordingly, in order to avoid a duplication of rules those acts should be repealed.

<sup>(8)</sup> Regulation (EU) 2016/2031 of the European Parliament and 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).

<sup>(9)</sup> Commission Decision 2000/208/EC of 24 February 2000 establishing detailed rules for the application of Council Directive 97/78/EC concerning the transit of products of animal origin from one third country to another third country by road only across the European Community (OJ L 64, 11.3.2000, p. 20).

<sup>(10)</sup> Commission Decision 2000/571/EC of 8 September 2000 laying down the methods of veterinary checks for products from third countries destined for introduction into free zones, free warehouses, customs warehouses or operators supplying cross border means of sea transport (OJ L 240, 23.9.2000, p. 14).

<sup>(11)</sup> Commission Implementing Decision 2011/215/EU of 4 April 2011 implementing Council Directive 97/78/EC as regards transshipment at the border inspection post of introduction of consignments of products intended for import into the Union or for third countries (OJ L 90, 6.4.2011, p. 50).

- (31) Commission Decision 2007/777/EC <sup>(12)</sup>, Commission Regulation (EC) No 798/2008 <sup>(13)</sup>, Commission Regulation (EC) No 1251/2008 <sup>(14)</sup>, Commission Regulation (EC) No 119/2009 <sup>(15)</sup>, Commission Regulation (EU) No 206/2010 <sup>(16)</sup>, Commission Regulation (EU) No 605/2010 <sup>(17)</sup>, Regulation (EU) No 142/2011, Commission Regulation (EU) No 28/2012 <sup>(18)</sup> and Commission Implementing Regulation (EU) 2016/759 <sup>(19)</sup> should be amended in order to ensure that the rules laid down in those acts are consistent with the rules laid down in this Regulation.
- (32) Since Regulation (EU) 2017/625 applies from 14 December 2019, this Regulation should also apply from that date,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### Subject matter, scope and definitions

#### Article 1

##### Subject matter and scope

1. This Regulation lays down:
  - (a) rules establishing the cases where and the conditions under which, the competent authorities of a border control post may authorise the onward transportation of consignments of the following categories of goods to the place of final destination in the Union pending the availability of the results of laboratory analyses and tests carried out as part of the physical checks referred to in Article 49(1) of Regulation (EU) 2017/625:
    - (i) plants, plant products, and other objects referred to in the lists established pursuant to Articles 72(1) and 74(1) of Regulation (EU) 2016/2031;
    - (ii) plants, plant products and other objects subject to an emergency measure referred to in point (e) of Article 47(1) of Regulation (EU) 2017/625;
    - (iii) 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;

<sup>(12)</sup> Commission Decision 2007/777/EC of 29 November 2007 laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries and repealing Decision 2005/432/EC (OJ L 312, 30.11.2007, p. 49).

<sup>(13)</sup> Commission Regulation (EC) No 798/2008 of 8 August 2008 laying down a list of third countries, territories, zones or compartments from which poultry and poultry products may be imported into and transit through the Community and the veterinary certification requirements (OJ L 226, 23.8.2008, p. 1).

<sup>(14)</sup> Commission Regulation (EC) No 1251/2008 of 12 December 2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species (OJ L 337, 16.12.2008, p. 41).

<sup>(15)</sup> Commission Regulation (EC) No 119/2009 of 9 February 2009 laying down a list of third countries or parts thereof, for imports into, or transit through, the Community of meat of wild leporidae, of certain wild land mammals and of farmed rabbits and the veterinary certification requirements (OJ L 39, 10.2.2009, p. 12).

<sup>(16)</sup> Commission Regulation (EU) No 206/2010 of 12 March 2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements (OJ L 73, 20.3.2010, p. 1).

<sup>(17)</sup> Commission Regulation (EU) No 605/2010 of 2 July 2010 laying down animal and public health and veterinary certification conditions for the introduction into the European Union of raw milk, dairy products, colostrum and colostrum-based products intended for human consumption (OJ L 175, 10.7.2010, p. 1).

<sup>(18)</sup> Commission Regulation (EU) No 28/2012 of 11 January 2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products and amending Decision 2007/275/EC and Regulation (EC) No 1162/2009 (OJ L 12, 14.1.2012, p. 1).

<sup>(19)</sup> Commission Implementing Regulation (EU) 2016/759 of 28 April 2016 drawing up lists of third countries, parts of third countries and territories from which Member States are to authorise the introduction into the Union of certain products of animal origin intended for human consumption, laying down certificate requirements, amending Regulation (EC) No 2074/2005 and repealing Decision 2003/812/EC (OJ L 126, 14.5.2016, p. 13).



- (b) rules establishing the cases where and the conditions under which, identity checks and physical checks of animals arriving by air or sea and staying on the same means of transport for onward travel may be performed at a border control post other than the one of first arrival into the Union;
  - (c) specific rules for official controls at border control posts of transhipped consignments of animals and the following categories of goods:
    - (i) products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products;
    - (ii) plants, plant products, and other objects as referred in the lists established pursuant to Articles 72(1) and 74 (1) of Regulation (EU) 2016/2031;
    - (iii) plants, plant products, and other objects subject to an emergency measure provided for by the Articles of Regulation (EU) 2016/2031 referred to in point (e) of Article 47(1) of Regulation (EU) 2017/625;
    - (iv) food and feed of non-animal origin subject to measures or acts referred to in points (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625;
  - (d) specific rules for controls of consignments in transit of animals and of the following categories of goods:
    - (i) products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products;
    - (ii) plants, plant products, and other objects referred to in the lists established pursuant to Articles 72(1) and 74 (1) of Regulation (EU) 2016/2031;
    - (iii) plants, plant products, and other objects subject to an emergency measure provided for by the point (e) of Article 47(1) of Regulation (EU) 2017/625.
2. This Regulation shall apply to vertebrate and invertebrate animals with the exception of:
- (a) pet animals as defined in Article 4(11) of Regulation (EU) 2016/429 of the European Parliament and of the Council <sup>(20)</sup>; and
  - (b) invertebrate animals intended for scientific purposes as referred to in Article 3 of Commission Delegated Regulation (EU) 2019/2122 <sup>(21)</sup>.

## Article 2

### Definitions

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

- (1) 'common health entry document' or 'CHED' means the common health entry document, which is used for the prior notification of the arrival of consignments at the border control post, and which is used to record the outcome of official controls performed and of decisions taken by the competent authorities in relation to the consignment which it accompanies;
- (2) 'transhipped consignments' means consignments of animals or goods entering the Union by sea or by air transport from a third country, when those animals or goods are moved from a vessel or aircraft and are transported under customs supervision to another vessel or aircraft in the same port or airport in preparation for onward travel;
- (3) 'warehouse' means:
  - (a) a customs warehouse, a warehouse in a free zone, a temporary storage facility approved, authorised or designated in accordance with Articles 147(1), 240(1), 243(1) respectively of Regulation (EU) No 952/2013; or
  - (b) a warehouse specialised in supplying goods for NATO or US military bases;

<sup>(20)</sup> Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health (OJ L 84, 31.3.2016, p. 1).

<sup>(21)</sup> Commission Delegated Regulation (EU) 2019/2122 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market and amending Regulation (EU) No 142/2011 (See page 45 of this Official Journal).

- (4) 'onward transportation' means the movement of consignments of goods from a border control post to their place of final destination in the Union pending the availability of the results of laboratory analyses and tests;
- (5) 'onward transportation facility' means the facility at the place of final destination in the Union or at a place situated under the remit of the same competent authority as the place of final destination, designated by the Member State of destination for the storage of consignments of goods subject to onward transportation prior to the release for free circulation of such consignments;
- (6) 'information management system for official controls' or 'IMSOC' means the information management system for official controls referred to in Article 131 of Regulation (EU) 2017/625;
- (7) 'border control post of introduction into the Union' means the border control post where animals and goods are presented for official controls and through which they enter the Union for subsequent placing on the market or for transit through the Union territory and which may be the border control post of first arrival into the Union;
- (8) 'Union regulated non-quarantine pest' means a pest that fulfils all the conditions listed in Article 36 of the Regulation (EU) 2016/2031;
- (9) 'approved warehouse' means a warehouse approved by the competent authorities as provided for in Article 23 of this Regulation;
- (10) 'specified pathogen-free eggs' means hatching eggs which are derived from chicken flocks free from specified pathogens, as described in the European Pharmacopoeia <sup>(22)</sup>, and which are intended solely for diagnostic, research or pharmaceutical use.

## CHAPTER II

### **Onward transportation of consignments of plants, plant products and other objects and of food and feed of non-animal origin as referred to in point (a) of Article 1(1)**

#### SECTION 1

#### ***Conditions for onward transportation***

##### *Article 3*

#### **Operators' obligations before onward transportation authorisation**

1. Requests for the authorisation for onward transportation shall be made by the operator responsible for the consignments of goods referred to in point (a) of Article 1(1) to the competent authorities of the border control post of introduction into the Union prior to arrival of the consignment at the border control post. Such request shall be made by giving notification as referred to in point (a) of Article 56(3) of Regulation (EU) 2017/625 by completing Part I of the CHED.
2. For consignments of goods referred to in point (a) of Article 1(1) which are selected for sampling and laboratory analysis at the border control post, the operator responsible for the consignments may make a request for the authorisation for onward transportation to the competent authorities of the border control post of introduction into the Union by completing Part I of the CHED.

##### *Article 4*

#### **Authorisation for onward transportation**

The competent authorities of the border control post of introduction into the Union may authorise the onward transportation of consignments of goods referred to in point (a) of Article 1(1) provided that the following conditions are fulfilled:

- (a) the outcome of the documentary checks, identity checks and physical checks, other than of the laboratory analyses and tests carried out as part of those physical checks, performed at the border control post is satisfactory;
- (b) the operator responsible for the consignment has requested the onward transportation as provided for in Article 3.

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<sup>(22)</sup> <http://www.edqm.eu> (latest edition).

*Article 5***Operators' obligations after authorisation for onward transportation**

When the competent authorities of the border control post of introduction into the Union authorise the onward transportation of the consignments of goods referred to in point (a) of Article 1(1), the operator responsible for the consignment shall:

- (a) complete Part I of a separate CHED for the same consignment, linked in the IMSOC to the CHED referred to in Article 3, by declaring therein the means of transport and the date of arrival of the consignment at the selected onward transportation facility;
- (b) submit the CHED referred to in point (a) in the IMSOC for transmission to the competent authorities of the border control post which has authorised the onward transportation.

*Article 6***Conditions for transportation and storage of consignments subject to onward transportation**

1. The operator responsible for the consignments authorised for onward transportation in accordance with Article 4 shall ensure that:

- (a) during transport to, and storage at, the onward transportation facility, the consignment is not tampered with in any manner;
- (b) the consignment is not subject to any alteration, processing, substitution or change of packaging;
- (c) the consignment does not leave the onward transportation facility pending the decision on the consignment being taken by the competent authorities of the border control post in accordance with Article 55 of Regulation (EU) 2017/625.

2. The operator responsible for the consignment shall transport the consignment under customs supervision directly from the border control post of introduction into the Union to the onward transportation facility, without the goods being unloaded during transport, and shall store it in the onward transportation facility.

3. The operator responsible for the consignment shall ensure that the packaging or the means of transport of the consignment of plants, plant products and other objects referred to in point (a)(i) and (ii) of Article 1(1) has been closed or sealed in such a way that, during their transport to and storage at the onward transportation facility:

- (a) they do not cause an infestation of or an infection to other plants, plant products or other objects with pests listed as Union quarantine pests or as Union regulated non-quarantine pests;
- (b) they do not become infested or infected by non-quarantine pests.

4. The operator responsible for the consignment shall ensure that a copy, on paper or in electronic form, of the CHED referred to in Article 3 accompanies the consignment from the border control post of introduction into the Union to the onward transportation facility.

5. The operator responsible for the consignment shall notify the competent authorities at the place of final destination of the arrival of consignment at the onward transportation facility.

6. After the competent authorities of the border control post of introduction into the Union have authorised the onward transportation of the consignment to the onward transportation facility, the operator responsible for the consignment shall not transport the consignment to a onward transportation facility that is different from the one indicated in the CHED, unless the competent authorities of the border control post of introduction into the Union authorise the change in accordance with Article 4 and provided that the conditions laid down in paragraphs 1 to 5 of this Article are complied with.

*Article 7***Operations to be carried out by the competent authorities of the border control post after authorisation of onward transportation**

1. When authorising the onward transportation of a consignment in accordance with Article 4, the competent authorities of the border control post of introduction into the Union shall notify the competent authorities at the place of final destination of the transportation of the consignment by submitting the CHED referred to in Article 3 into the IMSOC.

2. Upon finalisation of the CHED referred to in Article 5 of this Regulation in accordance with Article 56(5) of Regulation (EU) 2017/625, the competent authorities of the border control post of introduction into the Union shall immediately notify the competent authorities at the place of final destination through the IMSOC.
3. Where the consignment does not comply with the rules referred to in Article 1(2) of Regulation (EU) 2017/625, the competent authorities of the border control post of introduction into the Union shall take measures in accordance with Article 66(3) to (6) of that Regulation.
4. Where the competent authorities of the border control post of introduction into the Union have not received confirmation from the competent authorities of the place of destination of the arrival of a consignment within a period of 15 days from the date on which the consignment was authorised for onward transportation to the onward transportation facility, they shall:
  - (a) verify with the competent authorities at the place of destination whether or not the consignment has arrived at onward transportation facility;
  - (b) inform the customs authorities of the non-arrival of the consignment;
  - (c) undertake further investigation to determine the actual location of the consignment in cooperation with customs authorities and other authorities in accordance with Article 75(1) of Regulation (EU) 2017/625.

#### *Article 8*

##### **Operations to be carried out by the competent authorities at the place of final destination**

1. The competent authorities at the place of final destination shall confirm the arrival of the consignment at the onward transportation facility by completing in the IMSOC Part III of the CHED referred to in Article 3.
2. The competent authorities at the place of final destination shall place consignments which do not comply with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 under official detention in accordance with Article 66(1) of that Regulation, and shall take all necessary steps to apply the measures ordered by the competent authorities of the border control post in accordance with Article 66(3) and (4) of that Regulation.

#### SECTION 2

##### ***Onward transportation facilities***

#### *Article 9*

##### **Conditions for the designation of onward transportation facilities**

1. Member States may designate onward transportation facilities for consignments of one or more categories of goods as referred to in point (a) of Article 1(1), provided that they comply with the following requirements:
  - (a) they are customs warehouses or temporary storage facilities as referred to in Articles 240(1) and 147(1) of Regulation (EU) No 952/2013, respectively;
  - (b) where the designation concerns:
    - (i) food of non-animal origin referred to in point (a)(iii) of Article 1(1) of this Regulation, the onward transportation facilities are registered with the competent authority as provided for in Article 6(2) of Regulation (EC) No 852/2004;
    - (ii) feed of non-animal origin referred to in point (a)(iii) of Article 1(1) of this Regulation, the onward transportation facilities are registered with the competent authority as provided for in Article 9(2) of Regulation (EC) No 183/2005;
  - (c) they have the necessary technology and equipment for the efficient operation of the IMSOC.

2. Where onward transportation facilities cease to comply with the requirements referred to in paragraph 1, Member States shall:
- (a) temporarily suspend the designation pending the implementation of corrective actions or permanently withdraw the designation for all or some of the categories of goods for which the designation was made;
  - (b) ensure that information on the onward transportation facilities referred to in Article 10 is updated accordingly.

#### Article 10

##### **Registration of designated onward transportation facilities in the IMSOC**

Member States shall maintain and keep up-to-date in the IMSOC the list of onward transportation facilities designated in accordance with Article 9(1), and provide the following information:

- (a) the name and address of the onward transportation facility;
- (b) the category of goods for which it is designated.

#### CHAPTER III

##### **Onward travel of animals staying on the same means of transport and transhipped consignments of animals and goods**

#### Article 11

##### **Documentary checks, identity checks and physical checks of consignments of animals staying on the same means of transport**

1. The competent authorities of the border control post shall perform documentary checks on originals or copies of official certificates or documents that are required to accompany consignments of animals which arrive by air or sea and stay on the same means of transport for onward travel, where such animals are intended to be placed on the market in the Union or to transit through the Union.
2. The competent authorities referred to in paragraph 1 shall return to the operator responsible for the consignment the official certificates or documents on which they performed documentary checks to allow such official certificates or documents to accompany the consignment for onward travel.
3. When non-compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 is suspected, the competent authorities of the border control post shall perform documentary checks, identity checks and physical checks on the consignments.

Documentary checks shall be performed on original official certificates or documents that are required to accompany the consignment of animals as provided for by the rules referred to point (d) of Article 1(2) of Regulation (EU) 2017/625.

4. The competent authorities of the border control post of introduction into the Union shall perform documentary checks, identity checks and physical checks, except where documentary checks, identity checks and physical checks have been performed at another border control post in accordance with paragraph 3.

#### Article 12

##### **Documentary checks, identity checks and physical checks of transhipped consignments of animals**

The competent authorities of the border control post of transshipment shall perform documentary checks, identity checks and physical checks of transhipped consignments of animals.

*Article 13***Documentary checks, identity checks and physical checks of transhipped consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products**

1. The competent authorities of the border control post of transhipment shall perform documentary checks on originals or copies of official certificates or documents that are required to accompany transhipped consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products in the following cases:

- (a) for goods subject to the animal health requirements and the rules for the prevention and minimisation of risks to human and animal health arising from animal by-products and derived products referred to in points (d) and (e) of Article 1(2) of Regulation (EU) 2017/625 where the transhipment period:
  - (i) at the airport exceeds 3 days;
  - (ii) at the port exceeds 30 days;
- (b) for goods other than those referred to in point (a), where the transhipment period exceeds 90 days.

2. The competent authorities referred to in paragraph 1 shall return to the operator responsible for the consignment the official certificates or documents on which they performed documentary checks to allow such official certificates or documents to accompany the consignment for onward travel.

3. Where the competent authorities of the border control post of transhipment suspects non-compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625, they shall perform documentary checks, identity checks and physical checks on the consignment.

Those documentary checks shall be performed on original official certificates or documents where such official certificates or documents are required to accompany the consignment, as provided for by the rules referred to in Article 1(2) of Regulation (EU) 2017/625.

4. Where a consignment intended for dispatch to third countries exceeds the time period referred to in paragraph 1 and where it does not comply with the rules referred to in Article 1(2) of Regulation (EU) 2017/625, the competent authorities of the border control post shall order the operator either to destroy the consignment or to ensure that it leaves the Union territory without delay.

5. The competent authorities of the border control post of introduction into the Union shall perform the documentary, identity and physical checks provided for in Article 49(1) of Regulation (EU) 2017/625 of goods intended to be placed on the Union market, except where documentary checks, identity checks and physical checks have been performed at another border control post in accordance with paragraph 3.

6. The competent authorities of the border control post of introduction into the Union shall perform checks referred in Article 19 of goods intended for transit through the Union territory, except where documentary checks, identity checks and physical checks have been performed at another border control post in accordance with paragraph 3.

*Article 14***Storage of transhipped consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products**

Operators shall ensure that consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products are only stored during the transhipment period either in:

- (i) the customs or free zone area of the same port or airport in sealed containers; or
- (ii) commercial storage facilities under the control of the same border control post, in compliance with the conditions laid down in Article 3(11) and (12) of Commission Implementing Regulation (EU) 2019/1014 <sup>(23)</sup>.

<sup>(23)</sup> Commission Implementing Regulation (EU) 2019/1014 of 12 June 2019 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points (OJ L 165, 21.6.2019, p. 10).

*Article 15***Documentary checks, identity checks and physical checks of transhipped consignments of plants, plant products and other objects**

1. The competent authorities of the border control post of transhipment shall perform documentary checks on a risk basis of transhipped consignments of plants, plant products and other objects referred to in point (c)(ii) and (iii) of Article 1(1) where the transhipment period exceeds 3 days at the airport or 30 days at the port.
2. The competent authorities referred to in paragraph 1 shall return to the operator responsible for the consignment the official certificates or documents on which they performed documentary checks to allow the official certificates or documents to accompany the consignment for onward travel.
3. Where non-compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 is suspected, the competent authorities of the border control post of transhipment shall perform documentary checks, identity checks and physical checks on the consignment.
4. The documentary checks, identity checks and physical checks shall be performed at the border control post of introduction into the Union, except where documentary checks, identity checks and physical checks have been performed at another border control post in accordance with paragraph 3.

*Article 16***Notification of information before the transhipment period expires**

1. For consignments intended for transhipment within the periods referred to in Articles 13(1) and 15(1), the operator responsible for the consignments shall provide notification before the arrival of the consignments to the competent authorities of the border control post of transhipment through the IMSOC or another information system designated by the competent authorities for that purpose, indicating the following:
  - (a) the information necessary for the identification and location of the consignment in the airport or port;
  - (b) the identification of the means of transportation;
  - (c) the estimated time of arrival and departure of the consignment;
  - (d) the destination of the consignment.
2. For the purposes of the notification referred to in paragraph 1, the competent authorities shall designate an information system which allows the competent authorities of the border control post of transhipment to:
  - (a) consult the information provided by operators;
  - (b) verify in respect of each consignment that the transhipment periods provided for in Articles 13(1) and 15(1) are not exceeded.
3. In addition to the prior notification provided for in paragraph 1 of this Article, the operator responsible for the consignment shall also notify the competent authorities of the border control post of transhipment by completing and submitting the relevant part of the CHED in the IMSOC as provided for in Article 56 of Regulation (EU) 2017/625 in the following cases:
  - (a) the transhipment period referred to in Articles 13(1) and 15(1) has expired; or
  - (b) the competent authorities of the border control post of transhipment inform the operator responsible for the consignment of their decision to perform documentary checks, identity checks and physical checks based on a suspicion of non-compliance as provided for in Article 13(3) or 15(3).

*Article 17***Documentary checks, identity checks and physical checks of transhipped consignments of food and feed of non-animal origin**

1. The competent authorities of the border control post of introduction into the Union shall perform documentary checks, identity checks and physical checks on transhipped 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.
2. The operator responsible for the consignment shall give prior notification of the arrival of the consignment of goods referred to in paragraph 1 of this Article as provided for in Article 56(4) of Regulation (EU) 2017/625, to the competent authorities of the border control post of introduction into the Union.

## CHAPTER IV

**Transit of animals and goods from one third country to another third country, passing through the Union territory**

## SECTION 1

***Official controls at the border control post of introduction into the Union****Article 18***Documentary checks, identity checks and physical checks of consignments of animals in transit**

The competent authorities of the border control post of introduction into the Union shall only authorise the transit of consignments of animals from one third country to another third country, passing through the territory of the Union where documentary checks, identity checks and physical checks have been favourable.

*Article 19***Conditions for the authorisation of transit of consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products**

The competent authorities of the border control post of introduction into the Union shall only authorise the transit of consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products subject to compliance with the following conditions:

- (a) the goods comply with the applicable requirements laid down in the rules referred to in points (d) and (e) of Article 1(2) of Regulation (EU) 2017/625;
- (b) the consignment has been subjected to documentary checks and identity checks at the border control post with favourable results;
- (c) the consignment has been subjected to physical checks at the border control post, where non-compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 was suspected;
- (d) the consignment is accompanied by the CHED, and leaves the border control post in vehicles or transport containers sealed by the authority at the border control post;
- (e) the consignment must be directly transported under customs supervision, without the goods being unloaded or split, within a maximum period of 15 days from the border control post to one of the following destinations:
  - (i) to a border control post in order to leave the Union territory;
  - (ii) to an approved warehouse;
  - (iii) to a NATO or US military base located in the Union territory;
  - (iv) to a vessel leaving the Union, where, the consignment is intended for ship supplying purposes.



*Article 20***Follow-up measures by the competent authorities**

The competent authorities of the border control post of introduction into the Union which have not received, within a period of 15 days from the date on which transit was authorised at the border control post, confirmation of the arrival of consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products at one of the destinations referred to in points (e)(i) to (iv) of Article 19, shall:

- (a) verify with the competent authorities at the place of destination whether or not the consignment has arrived at the place of destination;
- (b) inform the customs authorities of the non-arrival of the consignment;
- (c) undertake further investigation to determine the actual location of the consignment in cooperation with customs authorities and other authorities in accordance with Article 75(1) of Regulation (EU) 2017/625.

*Article 21***Transportation of consignments to a vessel leaving the Union territory**

1. Where a consignment of goods referred to in Article 19 is destined to a vessel leaving the Union territory, the competent authorities of the border control post of introduction into the Union shall, in addition to the CHED, issue an official certificate in accordance with the model laid down in Annex to Commission Implementing Regulation (EU) 2019/2128 <sup>(24)</sup> which shall accompany the consignment to the vessel.

2. In the case where several consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products are delivered together to the same vessel, the competent authorities of the border control post of introduction into the Union may issue one single official certificate as referred to in paragraph 1 which shall accompany such consignments to the vessel, provided that it has indicated the reference of the CHED for each consignment.

*Article 22***Documentary checks and physical checks of plants, plant products and other objects in transit**

1. Where consignments of plants, plant products and other objects referred to in point (d)(ii) and (iii) of Article 1(1) are presented for transit at a border control post of introduction into the Union, the competent authorities of that border control post may authorise the transit of such plants, plant products, and other objects, provided that the consignments are transported under customs supervision.

2. The competent authorities of the border control post referred to in paragraph 1 shall perform the following checks on a risk basis:

- (a) documentary checks of the signed declaration referred to in point (a) of Article 47(1) of Regulation (EU) 2016/2031;
- (b) physical checks of the consignments to ensure that it is adequately packed and transported as referred to in point (b) of Article 47(1) of Regulation (EU) 2016/2031.

3. Where official controls are performed, the competent authorities shall authorise the transit of the goods referred to in paragraph 1 provided that the consignments:

- (a) comply with Article 47 of Regulation (EU) 2016/2031;
- (b) are transported to the point of exit from the Union under customs supervision.

<sup>(24)</sup> Commission Implementing Regulation (EU) 2019/2128 of 12 November 2019 establishing the model official certificate and rules for issuing official certificates for goods which are delivered to vessels leaving the Union and intended for ship supply or consumption by the crew and passengers, or to NATO or a United States' military base (See page 114 of this Official Journal).

4. The operator responsible for consignments of plants, plant products and other objects referred to in paragraph 1 shall ensure that the packaging or the means of transport of the consignments is closed or sealed in such a way that, during their transport to and storage at warehouses:

- (a) the plants, plant products and other objects cannot cause an infestation or an infection to other plants, plant products or other objects with the pests listed as Union quarantine pests or as Union regulated non-quarantine pests referred to in the first subparagraph of Article 5(2) and Article 30(1) of Regulation (EU) 2016/2031, respectively and, in the case of protected zones, with the respective pests included on lists established pursuant to Article 32(3) of that Regulation;
- (b) plants, plant products and other objects cannot become infested or infected by the pests referred in point (a).

## SECTION 2

### ***Conditions for the storage of consignments in transit in approved warehouses***

#### *Article 23*

#### **Conditions for the approval of warehouses**

1. The competent authorities shall approve the warehouses for the storage of consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products for which transit has been authorised in accordance with Article 19.

2. The competent authorities shall only approve warehouses referred to in paragraph 1 that comply with the following requirements:

- (a) the warehouses storing products of animal origin, composite products, animal by-products and derived products must comply with either:
  - (i) the hygiene requirements laid down in Article 4 of Regulation (EC) No 852/2004; or
  - (ii) the requirements laid down in points (b) and (c) of Article 19 of Regulation (EU) No 142/2011;
- (b) they must have been authorised, approved or designated by the customs authorities in accordance with Articles 147(1), 240(1) and 243(1) of Regulation (EU) No 952/2013;
- (c) the warehouses must consist of a closed space with entrances and exits subject to permanent control by the operators;
- (d) the warehouses must possess storage or refrigeration rooms allowing for the separate storage of the goods referred to in paragraph 1;
- (e) the warehouses must have arrangements for the daily logging of all consignments entering or leaving the facilities, with details of the nature and quantity of the goods, the name and address of the recipients and copies of the CHED and certificates accompanying the consignments; the warehouses must keep those records for a period at least of three years;
- (f) all goods referred to in paragraph 1 must be identified by labelling or by electronic means with the reference number of the CHED accompanying the consignment; those goods must not be subjected to any alteration, processing, substitution or change of packaging;
- (g) the warehouses must have the technology and equipment necessary for the efficient operation of the IMSOC;
- (h) the operators of the warehouses shall provide premises and the means of communication necessary to enable them to perform official controls and other official activities effectively, upon request by the competent authority.

3. Where warehouses no longer comply with the requirements laid down in paragraph 2, the competent authority shall withdraw or temporarily suspend the approval of the warehouse.

*Article 24***Transportation of goods from warehouses**

The operator responsible for the consignment shall transport the consignments of goods referred to in Article 23(1) from approved warehouses to one of the following destinations:

- (a) a border control post in order to leave the Union territory to go to:
  - (i) a NATO or US military base; or
  - (ii) any other destination;
- (b) another approved warehouse;
- (c) a NATO or US military base located in the Union territory;
- (d) a vessel leaving the Union, where, the consignments are intended for ship supplying purposes;
- (e) a place where the consignments are to be disposed of in accordance with Chapter II of Title I of Regulation (EC) No 1069/2009 of the European Parliament and of the Council <sup>(25)</sup>.

*Article 25***Maintaining and keeping up-to-date the list of approved warehouses**

Member States shall maintain and keep up-to-date in the IMSOC the list of approved warehouses, and provide the following information:

- (a) the name and address of each warehouse;
- (b) the categories of goods for which it is approved.

*Article 26***Official controls in warehouses**

1. The competent authorities shall perform regular official controls in approved warehouses to verify the compliance with the requirements for approval laid down in Article 23.
2. The competent authorities responsible for official controls in approved warehouses shall verify the effectiveness of the systems in place to ensure the traceability of consignments, including by comparing the quantities of goods entering and leaving warehouses.
3. The competent authorities shall verify that consignments moved to or stored in warehouses are accompanied by the relevant CHED and authenticated paper or electronic copy of the official certificate as referred to in Article 50(2) of Regulation (EU) 2017/625.
4. When consignments arrive at approved warehouses, the competent authorities shall:
  - (a) perform an identity check to confirm that the consignment corresponds to the relevant information in the accompanying CHED;
  - (b) verify that the seals fixed on the vehicles or transport containers, in accordance with point (d) of Article 19 or point (d) of Article 28, are still intact;
  - (c) record the outcome of identity checks in Part III of the CHED and communicate that information through the IMSOC.

*Article 27***Operators' obligations at warehouses**

1. The operator responsible for the consignment shall inform the competent authorities of the arrival of the consignment at the approved warehouse.

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<sup>(25)</sup> Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (OJ L 300, 14.11.2009, p. 1).

2. By way of derogation from paragraph 1, the competent authority may exempt the operator responsible for the approved warehouse from the obligation to inform competent authorities of the arrival of the consignment at the warehouse provided that the operator is approved by the customs authorities as an authorised economic operator referred to in Article 38 of Regulation (EU) No 952/2013.

3. By way of derogation from paragraph 1, the competent authority may exempt consignments from identity checks provided that the operator responsible for the consignment is approved by the customs authorities as an authorised economic operator referred to in Article 38 of Regulation (EU) No 952/2013.

4. The operator responsible for the consignment shall ensure that goods referred in paragraph 1 moved to or stored in the warehouses are accompanied by the relevant CHED and authenticated paper or electronic copy of the official certificate as referred to in Article 50(2) of Regulation (EU) 2017/625.

#### Article 28

##### **Conditions for transportation of goods from warehouses to third countries, other warehouses and disposal places**

The operator responsible for the consignment shall transport the goods referred to in Article 23(1) from the approved warehouse to one of the destinations referred to in points (a)(ii), (b) and (e) of Article 24 provided that the following requirements are fulfilled:

- (a) the operator responsible for the consignment submits the CHED through the IMSOC for the entire consignment and declares therein the means of transport and the place of destination; where the initial consignment is split at the warehouse, the operator responsible for the consignment must submit the CHED through the IMSOC for each part of the split consignment and declare therein the quantity, means of transport and place of destination for the relevant part of the split consignment;
- (b) the competent authorities must authorise the movement and finalise the CHED for:
  - (i) the entire consignment, or
  - (ii) individual parts of the split consignment, provided that the total sum of the quantities declared in the CHEDs issued for the individual parts does not exceed the total quantity set out in the CHED for the entire consignment;
- (c) the operator responsible for the consignment must ensure that, in addition to the CHED accompanying the consignment, an authenticated copy of the official certificate which accompanied the consignment to the warehouse, as referred to in Article 27(4), travels onwards with the consignment unless an electronic copy of the official certificate was uploaded into the IMSOC and was verified by the competent authorities of the border control post of introduction into the Union; where the initial consignment is split and the copy of the official certificate was not uploaded into the IMSOC by the competent authorities of the border control post of introduction into the Union, the competent authorities issue the operator responsible for the consignment authenticated copies of the official certificate in order to accompany the parts of the split consignment to their destinations;
- (d) the operator responsible for the consignment transports the goods under customs supervision from the warehouses in vehicles or transport containers sealed by the competent authorities;
- (e) the operator responsible for the consignment transports the goods directly from the warehouse to the place of destination without the goods being unloaded or split, within a maximum period of 15 days from the date of authorisation of transportation.

#### Article 29

##### **Conditions for transportation of goods from warehouses to NATO or US military bases and vessels leaving the Union**

The operator responsible for the consignment shall transport the goods referred to in Article 23(1) from the approved warehouses to one of the destinations referred to in points (a)(i),(c) and (d) of Article 24 provided that the following requirements are fulfilled:

- (a) the operator responsible for the warehouse declares the movement of the goods to the competent authorities by completing Part I of the official certificate referred to in point (c);
- (b) the competent authority authorises the movement of the goods and issues to the operator responsible for the consignment a finalised official certificate referred to in point (c), that may be used for the delivery of the consignment containing goods derived from more than one consignment of origin or product categories;

- (c) the operator responsible for the consignment ensures that, an official certificate in accordance with the model set out in the Annex to Implementing Regulation (EU) 2019/2128 accompanies the consignment to its place of destination;
- (d) the operator responsible for the consignment transports the goods under customs supervision;
- (e) the operator responsible for the consignment transports the goods from the warehouses in vehicles or transport containers which were sealed under the supervision of the competent authorities.

#### Article 30

##### **Follow-up measures by the competent authorities**

The competent authorities of a warehouse which have not received, within a period of 15 days from the date on which transit from the warehouse was authorised, confirmation of arrival of consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products at one of the destinations referred to in Article 24, shall:

- (a) verify with the competent authorities at places of destination whether or not the consignment has arrived;
- (b) inform the customs authorities of the non-arrival of the consignments;
- (c) undertake further investigation to determine the actual location of the goods in cooperation with customs authorities and other authorities in accordance with Article 75(1) of Regulation (EU) 2017/625.

#### Article 31

##### **Monitoring of delivery of goods to a vessel leaving the Union territory**

1. The competent authorities of the border control post of introduction into the Union or of the warehouse shall notify the dispatch of consignments of goods referred to in Article 19 and Article 23(1) and their place of destination to the competent authority of the port of destination, through the IMSOC.

2. The operator may unload consignments of the goods referred to in Article 19 and Article 23(1) at the port of destination before the delivery of the consignments to the vessel leaving the Union territory provided that the operation is authorised and supervised by the customs authority, and the conditions of delivery indicated in the notification referred to in paragraph 1 are met.

3. Upon completion of delivery on board the vessel of the consignments of goods referred to in paragraph 1, the competent authority of the port of destination or the representative of the master of the vessel shall confirm the delivery to the competent authorities of the border control post of introduction into the Union or of the warehouse, either by:

- (a) countersigning the official certificate referred to in point (c) of Article 29; or
- (b) use of electronic means, including through IMSOC or existing national systems.

4. The representative referred to in paragraph 3 or the operator responsible for the delivery of the consignment to the vessel leaving the Union territory shall return, within a period of 15 days from the date of delivery of the consignment, the countersigned official certificate referred to in paragraph 3(a), to the competent authorities of the border control post of introduction into the Union or of the warehouse.

5. The competent authority of the port of destination, the competent authorities of border control post of introduction into the Union or the competent authority of the warehouse shall verify that the confirmation of delivery referred to in paragraph 3 is recorded in the IMSOC or that the countersigned documents referred to in point (a) of paragraph 3 are returned to the competent authorities of the border control post of introduction into the Union or to the competent authority of the warehouse.

## SECTION 3

**Official controls at the border control post where goods leave the Union territory**

## Article 32

**Operator's obligations to present goods leaving the Union territory for official controls**

1. Operators shall present products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products which leave the Union territory to be transported to a third country for official controls to the competent authorities of the border control post indicated in the CHED, at a location indicated by those competent authorities of the border control post.
2. Operators shall present the goods referred to in paragraph 1 which leave the Union territory to be dispatched to a NATO or US military base located in a third country, for official controls to the competent authorities of the border control post indicated in the official certificate in accordance with the model set out in Annex to Implementing Regulation (EU) 2019/2128.

## Article 33

**Official controls at the border control post where goods leave the Union territory**

1. The competent authorities of the border control post where germinal products, animal by-products, hay and straw and composite products leave the Union territory shall perform an identity check to ensure that the consignment presented corresponds to the consignment referred to in the CHED or in the official certificate referred to in Article 29(c) accompanying the consignment. In particular, they shall verify that the seals fixed on the vehicles or transport containers, in accordance with point (d) of Article 19, point (d) of Article 28 or point (e) of Article 29 are still intact.
2. The competent authorities of the border control post where goods referred in paragraph 1 leave the Union territory shall record the outcome of official controls in part III of the CHED or part III of the official certificate in accordance with the model set out in Annex to Implementing Regulation (EU) 2019/2128. The competent authorities of the border control post responsible for checks referred in paragraph 1 shall record the outcome of these controls in the IMSOC.

## SECTION 4

**Derogations for consignments in transit**

## Article 34

**Transit of certain animals and certain goods**

1. By way of derogation from Articles 18 and 19, the competent authorities of the border control posts of introduction into the Union may authorise transit through the Union territory of the following consignments subject to the compliance with the conditions laid down in paragraph 2:
  - (a) Transit by road through Lithuania of consignments of bovine animals for breeding and production, coming from the Russian region of Kaliningrad and consigned to a destination outside the Union, entering and exiting through the designated border control posts of Lithuania.
  - (b) Transit by road or by rail through the Union of consignments of aquaculture animals, between border control posts in Latvia, Lithuania and Poland, coming from and destined for Russia, directly or via another third country.

- (c) Transit by road or by rail through the Union of consignments of products of animal origin, composite products, animal by-products, derived products and germinal products of bovine, porcine, ovine, caprine, equine animals, specified pathogen-free eggs, between border control posts in Latvia, Lithuania and Poland, coming from and destined to Russia, directly or via another third country.
  - (d) Transit by road or rail of consignments of eggs, egg products and poultry meat, between border control posts in Lithuania, coming from Belarus and destined for the Russian region of Kaliningrad.
  - (e) Transit by road through Croatia of consignments of aquaculture animals, products of animal origin, composite products, animal by-products, derived products and germinal products of bovine, porcine, ovine, caprine, equine animals, specific pathogen free eggs coming from Bosnia and Herzegovina, entering at the road border control post of Nova Sela and exiting at the port border control post of Ploče.
2. The authorisation referred to in paragraph 1 shall be subject to compliance with the following conditions:
- (a) The competent authorities of the border control post of introduction into the Union shall:
    - (i) perform documentary checks, identity checks and physical checks for consignments of animals as provided for in Article 18;
    - (ii) perform documentary checks and identity checks for consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products as provided for in Article 19;
    - (iii) stamp the official certificates accompanying the consignments intended for the third country of destination 'ONLY FOR TRANSIT VIA THE EU';
    - (iv) retain copies or electronic equivalents of the certificates referred to in (iii) at the border control post of introduction into the Union;
    - (v) seal the vehicles or transport containers transporting the consignments.
  - (b) The operator responsible for the consignment shall ensure that consignments are directly transported under customs supervision, without being unloaded, to the border control post where consignments are to leave the Union territory.
  - (c) The competent authorities of the border control post where the goods leave the Union territory shall:
    - (i) perform an identity check to confirm that the consignment covered by the accompanying CHED actually leaves the Union territory. In particular, they shall verify that the seals fixed on the vehicles or transport containers are still intact;
    - (ii) record the outcome of the official controls referred to in (i) in the IMSOC.
  - (d) The competent authorities of the Member States shall carry out risk-based controls to ensure that the number of consignments and the quantities of animals and goods leaving the Union territory match the number and quantities entering the Union territory.

#### Article 35

##### **Transit of goods to NATO or US military base located in the Union territory**

1. Products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products destined for a NATO or US military base located in the Union territory, shall be presented by the operator responsible for the consignment for official controls at the NATO or US military base indicated in the CHED or in the accompanying official certificate in accordance with the model set out in Annex to Implementing Regulation (EU) 2019/2128.
2. The competent authority responsible for controls at the NATO or US military base at the place of destination shall perform an identity check to confirm that the consignment corresponds to the one covered by the CHED or by the accompanying official certificate in accordance with the model laid down in Annex to Commission Implementing Regulation (EU) 2019/2128. In particular, it shall verify that the seals fixed on the vehicles or transport containers, in accordance with point (d) of Article 19 and point (e) of Article 29, are still intact. The competent authority responsible for controls at the NATO or US military base shall record the outcome of these controls in the IMSOC.

*Article 36***Transit of goods refused by a third country after their transit through the Union**

1. The competent authorities of the road or of the rail border control post of introduction into the Union may authorise further transit through the Union territory of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products subject to compliance with the following conditions:
  - (a) the consignment of goods was refused entry by a third country immediately after their transit through the Union or the seals placed by the competent authorities referred to in point (d) of Article 19, point (d) of Article 28 or point (e) of Article 29 on the vehicle or transport container are still intact;
  - (b) the consignment complies with the rules laid down in points (a), (b) and (c) of Article 19.
2. The competent authorities of the road or of the rail border control post of introduction into the Union shall re-seal the consignment after the checks referred to in points (b) and (c) of Article 19.
3. The operators shall directly transport the consignment to one of the following destinations:
  - (a) the border control post which authorised transit through the Union; or
  - (b) the warehouse where it was stored before refusal by a third country.

## CHAPTER V

**Transit of animals and goods from one part of the Union territory to another part of the Union territory, and passing through the territory of a third country***Article 37***Transit of animals, products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products**

1. The competent authorities of the Member States shall ensure that consignments of animals and products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products, which are moved from one part of the Union territory to another part of the Union territory, passing through the territory of a third country are transported under customs supervision.
2. The operators responsible for consignments referred to in paragraph 1 which have passed through the territory of a third country shall present the consignments when they are re-introduced into the Union territory to:
  - (a) to the competent authorities of a border control post designated for any category of the animals and the goods referred to in paragraph 1; or
  - (b) a location, indicated by the competent authorities referred to in point (a), which is in the close vicinity of the border control post.
3. The competent authorities of the border control post of re-introduction into the Union shall:
  - (a) perform a documentary check to verify the origin of the animals and goods comprising the consignment;
  - (b) where required by the rules referred to in points (d) and (e) of Article 1(2) of Regulation (EU) 2017/625, verify the animal health status of the third countries through which the consignments have transited and the relevant official certificates and documents accompanying the consignments;
  - (c) where required by the rules referred to in points (d) and (e) of Article 1(2) of Regulation (EU) 2017/625, perform an identity check to verify that the seals put on the vehicles or transport containers are still intact.
4. When non-compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 is suspected, the competent authorities of the border control post of re-introduction into the Union shall perform in addition identity checks and physical checks in addition to those provided for in paragraph 3.



5. Operators shall present consignments of animals, moving from one part of the Union territory to another part of the Union territory and passing through the territory of a third country, for official checks at the exit point from the Union territory.
6. The competent authority at the exit point from the Union shall:
  - (a) perform the checks where required by the rules referred to in points (d) and (e) of Article 1(2) of Regulation (EU) 2017/625;
  - (b) stamp the official certificate accompanying the consignment with the following wording 'ONLY FOR TRANSIT BETWEEN DIFFERENT PARTS OF THE EUROPEAN UNION VIA [third country name]'.

#### Article 38

##### Neum corridor

1. When consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products come from the territory of Croatia for transit through the territory of Bosnia and Herzegovina at the Neum corridor and before those consignments leave the territory of Croatia via the points of entry of Klek or Zaton Doli, the competent authorities of Croatia shall:
  - (a) seal the vehicles or transport containers before the consignment transits the Neum corridor;
  - (b) record the date and time of departure of the vehicles transporting the consignments.
2. When the consignments referred to in paragraph 1 re-enter the territory of Croatia at the points of entry of Klek or Zaton Doli, the competent authorities of Croatia shall:
  - (a) verify that the seals on vehicles or transport containers are still intact;
  - (b) record the date and time of arrival of the vehicles transporting consignments.
3. The competent authorities of Croatia shall take appropriate measures in accordance with Article 65 of Regulation (EU) 2017/625 where:
  - (a) the seal referred to in paragraph 1 has been broken during the transit through the Neum corridor; or
  - (b) the time of transit exceeds the time necessary to travel between the points of entry of Klek and Zaton Doli.

#### CHAPTER VI

##### Final provisions

#### Article 39

##### Repeals

Decisions 2000/208/EC and 2000/571/EC, and Implementing Decision 2011/215/EU are repealed with effect from 14 December 2019.

#### Article 40

##### Amendments to Decision 2007/777/EC

Decision 2007/777/EC is amended as follows:

- (1) Article 6 is amended as follows:
  - (a) in paragraph 1, points (b), (c) and (d) are deleted;
  - (b) paragraphs 2 and 3 are deleted;

(2) Article 6a is amended as follows:

- (a) in paragraph 1, points (b), (c) and (d) are deleted;
- (b) paragraphs 2 and 3 are deleted.

#### *Article 41*

##### **Amendments to Regulation (EC) No 798/2008**

Article 18 of Regulation (EC) No 798/2008 is amended as follows:

- (1) in paragraph 1, points (b), (c) and (d) are deleted;
- (2) in paragraph 2, points (b), (c) and (d) are deleted;
- (3) paragraphs 3 and 4 are deleted.

#### *Article 42*

##### **Amendments to Regulation (EC) No 1251/2008**

Article 17 of Regulation (EC) No 1251/2008 is amended as follows:

- (1) in paragraph 1, points (b), (c) and (d) are deleted;
- (2) paragraphs 2 and 3 are deleted.

#### *Article 43*

##### **Amendments to Regulation (EC) No 119/2009**

Article 5 of Regulation (EC) No 119/2009 is amended as follows:

- (1) in paragraph 1, points (b), (c) and (d) are deleted;
- (2) paragraphs 2 and 3 are deleted.

#### *Article 44*

##### **Amendments to Regulation (EU) No 206/2010**

Regulation (EU) No 206/2010 is amended as follows:

- (1) Article 12a is amended as follows:
  - (a) in paragraph 1, points (d) and (e) are deleted;
  - (b) paragraph 2 is deleted;
  - (c) paragraph 4 is deleted;
- (2) Article 17 is amended as follows:
  - (a) in paragraph 1, points (b), (c) and (d) are deleted;
  - (b) paragraphs 2 and 3 are deleted;
- (3) Article 17a is amended as follows:
  - (a) in paragraph 1, points (b), (c) and (d) are deleted;
  - (b) paragraphs 2 and 3 are deleted.

*Article 45***Amendments to Regulation (EU) No 605/2010**

Regulation (EU) No 605/2010 is amended as follows:

- (1) Article 7 is amended as follows:
  - (a) in paragraph 1, points (b), (c) and (d) are deleted;
  - (b) paragraphs 2 and 3 are deleted
- (2) in Article 7a, paragraphs 2 and 3 are deleted.

*Article 46***Amendments to Regulation (EU) No 142/2011**

Regulation (EU) No 142/2011 is amended as follows:

- (1) Article 29 is amended as follows:
  - (a) in paragraph 1, points (b), (c) and (d) are deleted;
  - (b) paragraphs 2 and 3 are deleted;
- (2) Article 29a is amended as follows:
  - (a) in paragraph 1, points (b), (c) and (d) are deleted;
  - (b) paragraphs 2 and 3 are deleted.

*Article 47***Amendments to Regulation (EU) No 28/2012**

Regulation (EU) No 28/2012 is amended as follows:

- (1) Article 5 is amended as follows:
  - (a) in paragraph 1, points (b), (c) and (d) are deleted;
  - (b) paragraphs 2 and 3 are deleted;
- (2) Article 5a is amended as follows:
  - (a) in paragraph 1, points (b), (c) and (d) are deleted;
  - (b) paragraphs 2 and 3 are deleted.

*Article 48***Amendments to Implementing Regulation (EU) 2016/759**

Article 5 of Implementing Regulation (EU) 2016/759 is amended as follows:

- (1) in paragraph 1, points (b), (c) and (d) are deleted;
- (2) paragraphs 2 and 3 are deleted.

*Article 49***Entry into force and date of application**

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

It shall apply from 14 December 2019.

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

Done at Brussels, 10 October 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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**COMMISSION DELEGATED REGULATION (EU) 2019/2125****of 10 October 2019****supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules concerning the performance of specific official controls of wood packaging material, notification of certain consignments and measures to be taken in cases of non-compliance**

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) <sup>(1)</sup>, and in particular Articles 45(4) and 77(1)(d) thereof,

Whereas:

- (1) Regulation (EU) 2017/625 of the European Parliament and of the Council establishes, inter alia, the framework for the performance of official controls and other official activities on animals and goods entering the Union territory from third countries to verify compliance with Union legislation in order to protect human, animal and plant health, animal welfare and, in relation to GMO and plant protection products, also the environment.
- (2) Wood packaging material, which may accompany all kinds of objects, is known to be a source of introduction and spreading of pests of plants. Forms of wood packaging material that may serve as a pathway for pests posing a risk of spreading of pests of plants in the Union include but are not limited to packing cases, boxes, crates, cable drums and spools/reels, pallets, box pallets and other load boards, pallet collars and dunnage, whether or not actually in use in the transport of objects of all kinds. The volumes of wood packaging material entering the Union territory by means of transport are substantial.
- (3) Articles 43 and 96 of Regulation (EU) 2016/2031 of the European Parliament and of the Council <sup>(2)</sup> set out specific import conditions for the introduction into the Union territory of wood packaging material. Article 77(1)(d) of Regulation (EU) 2017/625 empowers the Commission to establish rules for the performance of specific official controls to verify compliance of wood packaging material with these requirements, at the places referred to in Article 44(3) of Regulation (EU) 2017/625, and on measures in cases of non-compliance.
- (4) To ensure the effectiveness of checks on wood packaging material entering the Union territory and to avoid any risk of introduction or spreading of pests of plants, rules should be adopted to supplement those in Regulation (EU) 2017/625 concerning the performance of specific official controls of wood packaging material and measures to be taken in cases of non-compliance.
- (5) Specific import conditions for wood packaging material set out in Article 43(1) of Regulation (EU) 2016/2031 do not apply to material which is subject to the exemptions provided for in the International Standard for Phytosanitary Measures No 15 — Regulation of Wood Packaging Material in International Trade (ISPM15). Such material should therefore be exempted from the scope of this Regulation.

<sup>(1)</sup> OJ L 95, 7.4.2017, p. 1.

<sup>(2)</sup> Regulation (EU) 2016/2031 of the European Parliament and 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).

- (6) With a view to identifying consignments where wood packaging material, which may present the highest phytosanitary risk for the Union territory is present and which accordingly should be subject to specific official controls, the competent authorities of Member States should establish a monitoring plan based on a risk approach.
- (7) On the basis of that monitoring plan, the competent authorities should select consignments of wood packaging material for the performance of the specific official controls. Moreover, the competent authorities should have the possibility to require the customs authorities, where necessary, for the performance of the specific official controls by the competent authorities, to detain selected consignments in which wood packaging material is present until the specific official controls are completed.
- (8) Wood packaging material is not included in the lists of goods subject to official controls at border control posts referred to in point (c) of Article 47(1) of Regulation (EU) 2017/625.
- (9) Article 45(4) of Regulation (EU) 2017/625 empowers the Commission to specify cases where and the conditions under which competent authorities may request operators to notify the arrival of certain goods which are not subject to controls at border control posts.
- (10) For competent authorities to be able to plan and perform specific official controls on wood packaging material in an effective manner, they should be able to request operators to inform them of the arrival of consignments where wood packaging material is present within a reasonable time in advance.
- (11) Therefore, the possibility for competent authorities to request operators to notify the competent authorities in advance of the arrival of such consignments should be foreseen together with the rules on specific official controls on wood packaging material laid down in this Regulation. The information management system for official controls (IMSOC) set up and managed by the Commission in accordance with Article 131(1) of Regulation (EU) 2017/625 may be used for such notifications. The competent authorities may request operators responsible for the consignment to notify, by way of the IMSOC, by way of existing national information systems or in another way agreed to by the competent authority, within a reasonable time in advance specified by the competent authorities, the arrival.
- (12) The Common Health Entry Document (CHED) referred to in Article 56 of Regulation (EU) 2017/625 should be used to record the results of the specific official controls in the IMSOC. The recorded results of official controls will provide an overview of the situation regarding specific official controls on wood packaging material carried out in Member States, as a basis for further actions to protect the Union territory from the spreading of pests of plants.
- (13) The provisions of this Regulation should apply without prejudice to the relevant provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>(3)</sup>.
- (14) Where the competent authority decides to re-dispatch non-compliant wood packaging material to a destination outside the Union pursuant to point (b) of the first subparagraph of Article 66(3) of Regulation (EU) 2017/625, the non-compliant wood packaging material should remain under official customs supervision, until it leaves the Union territory, to avoid any risk of introduction of pests into the Union or spreading of pests.
- (15) When non-compliant wood packaging material is found during physical checks at the point of release for free circulation in the Union or at the place of destination, such material should be immediately destroyed, in view of the higher risk for the spreading of Union quarantine pests, which cannot be prevented by less effective means.
- (16) Regulation (EU) 2017/625 applies from 14 December 2019. Accordingly, the rules laid down in this Regulation should also apply from that date,

<sup>(3)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

HAS ADOPTED THIS REGULATION:

*Article 1*

**Subject matter and scope**

1. This Regulation lays down rules for the performance of specific official controls of wood packaging material or wood products (excluding paper products) intended for supporting, protecting or carrying a commodity entering the Union territory, whether or not actually in use in the transport of objects of all kind ('wood packaging material'), and measures in case of non-compliance.
2. This Regulation also establishes cases where and conditions under which the competent authorities may request operators to notify the arrival of certain consignments entering the Union territory in which wood packaging material is present.
3. This Regulation does not apply to wood packaging material referred to in the second subparagraph of Article 43(1) of Regulation (EU) 2016/2031 concerning the exemptions provided under the International Standard for Phytosanitary Measures No 15 — Regulation of Wood Packaging Material in International Trade (ISPM15).

*Article 2*

**Monitoring plan**

The competent authorities shall develop a monitoring plan on wood packaging material on the basis of a risk analysis taking into account at least the following:

- (a) the number and results of specific official controls conducted in previous years on wood packaging material carried out by the competent authorities, on the basis of information from the information management system for official controls (IMSOC);
- (b) the history of compliance by the third country, the exporter or the operator responsible for consignments, with Regulation (EU) 2016/2031, in particular Article 43(1) and point (a) of the first subparagraph of Article 96(1) of that Regulation;
- (c) where available, information from customs authorities and from other sources regarding the number of consignments entering the Union in which wood packaging material is present and the country of origin of the consignment.

*Article 3*

**Notification of consignments**

The competent authorities may request operators responsible for the consignment to notify, by way of the IMSOC, by way of existing national information systems or in another way agreed to by the competent authority, within a reasonable time in advance specified by the competent authorities, the arrival of consignments entering the Union territory in which wood packaging material is present.

*Article 4*

**Specific official controls on wood packaging material**

1. The competent authorities shall select for physical checks consignments in which wood packaging material is present, on the basis of:
  - (a) the monitoring plan referred to in Article 2;
  - (b) where applicable, information provided in the notifications referred to in Article 3; and
  - (c) any other relevant information at their disposal.
2. The competent authorities shall carry out physical checks of the consignments that have been selected in accordance with paragraph 1, to verify their compliance with the import requirements laid down in Article 43(1) and point (a) of the first subparagraph of Article 96(1) of Regulation (EU) 2016/2031.

3. The competent authorities may require the customs authorities, if deemed necessary for the purpose of physical checks in accordance with paragraph 2 and for the duration of those checks, to detain selected consignments in which wood packaging material is present.

4. While performing specific official controls, the competent authorities shall have access to the entire consignment, in a way that the physical checks referred to in paragraph 2 may be carried out on the entirety of the wood packaging material present in the consignment.

5. Within three working days from the beginning of the detention of the consignment in which wood packaging material is present, the competent authority shall submit to the customs authorities the results of the checks of the detained consignment.

6. Where physical checks cannot be completed within three working days from the beginning of the detention of the consignment in which wood packaging material is present, the competent authorities may request the customs authorities to continue the detention of the consignment for additional three working days in order to complete the checks.

In this case, if technically possible, the customs authority may release the consignment if the operator responsible for the consignment separates the wood packaging material from the consignment.

7. A consignment that has been detained by the customs authorities pursuant to paragraph 3 shall be released if, within three working days from the beginning of the detention, the competent authorities have not submitted the results of the checks in accordance with paragraph 5 or have not requested the customs authorities to continue the detention for additional three working days in accordance with paragraph 6.

#### *Article 5*

### **Reporting of results of specific official controls**

1. After the completion of the specific official controls in accordance with Article 4, the competent authorities shall:
  - (a) complete the Common Health Entry Document (CHED) with the results of specific official controls as referred to in Article 56(3)(b)(i) of Regulation (EU) 2017/625;
  - (b) submit the results of the specific official controls of the wood packaging material to the IMSOC directly or via existing national systems; and
  - (c) notify the operator responsible for the consignments in which wood packaging material is present and the customs authorities of the results of the specific official controls.
2. Where the operator responsible for the consignment in which wood packaging material is present is notified by the competent authorities of the results of the specific official controls through a CHED, the operator shall provide the reference number of the CHED as a supporting document as referred to in Article 163 of Regulation (EU) No 952/2013 to any customs declaration which is lodged with the customs authorities for this consignment.

#### *Article 6*

### **Measures in cases of non-compliance**

1. The competent authorities shall order, in accordance with Article 66 of Regulation (EU) 2017/625, destruction, re-dispatch or special treatment of wood packaging material that does not comply with the requirements set out in Article 43 (1) and point (a) of the first subparagraph of Article 96(1) of Regulation (EU) 2016/2031.

However, where such non-compliant wood packaging material is found during physical checks in accordance with Article 4 at the consignment's point of release for free circulation in the Union or at the consignment's place of destination, as referred in Article 44(3)(c) and (e) of Regulation (EU) 2017/625, the competent authorities shall order the operator concerned to destroy the wood packaging material without delay. Prior to and during destruction, the wood packaging material shall be handled in a way that prevents spreading of Union quarantine pests as defined in Article 4 of Regulation (EU) 2016/2031.

2. Where the competent authorities decide to order the operator responsible for the consignment to re-dispatch non-compliant wood packaging material outside the Union pursuant to point (b) of the first subparagraph of Article 66(3) of Regulation (EU) 2017/625, the consignment in which non-compliant wood packaging material is present shall remain under official customs supervision, in accordance with the appropriate customs procedure, until the non-compliant wood packaging material leaves the Union territory.



*Article 7***Entry into force and date of application**

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

It shall apply from 14 December 2019.

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

Done at Brussels, 10 October 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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**COMMISSION DELEGATED REGULATION (EU) 2019/2126****of 10 October 2019****supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for specific official controls for certain categories of animals and goods, measures to be taken following the performance of such controls and certain categories of animals and goods exempted from official controls at 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) <sup>(1)</sup>, and in particular Article 48(h) and Article 77(1)(a), (b) and (k) thereof,

Whereas:

- (1) Article 77(1)(a), (b) and (k) of Regulation (EU) 2017/625 empowers the Commission to adopt rules for the performance of specific official controls for certain categories of animals and goods entering the Union and on measures to be taken in case of non-compliance.
- (2) In the interest of ensuring efficient official controls of consignments of unskinned, furred wild game introduced into the Union, specific control requirements should be laid down where physical controls are finalised at the establishment of destination since complete physical checks and sampling cannot be performed at border control posts.
- (3) In the interest of ensuring efficient official controls of fresh fishery products directly landed in Union ports, it should be allowed for official controls to be performed in ports designated by Member States in accordance with Council Regulation (EC) No 1005/2008 <sup>(2)</sup>.
- (4) Article 77(1)(k) of Regulation (EU) 2017/625 empowers the Commission to adopt rules for the performance of specific official controls for animals and goods referred to in Article 48(h) of that Regulation posing a low risk or no specific risk and exempted from official controls at border control posts, when such an exemption is justified.
- (5) Where official controls are not performed at border control posts, conditions, such as adequate control arrangements, should be established to ensure that no unacceptable risks to public, animal and plant health are incurred where such animals and goods enter the Union.
- (6) In the case of frozen tuna posing low risk or no specific risk in accordance with Article 48(h) of Regulation (EU) 2017/625, official controls may be carried out at the processing establishment of destination, which is to be approved by the customs authorities for the temporary storage of non-Union goods in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council <sup>(3)</sup>.

<sup>(1)</sup> OJ L 95, 7.4.2017, p. 1.

<sup>(2)</sup> Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

<sup>(3)</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (7) In the case of fishery products posing low risk or no specific risk in accordance with Article 48(h) of Regulation (EU) 2017/625 caught by vessels flying the flag of a Member State and introduced into the Union after being unloaded in third countries, as referred to in Article 72 of Commission Implementing Regulation (EU) 2019/627 <sup>(4)</sup>, measures should be taken in case of suspected non-compliance.
- (8) Animals and goods entering the Union through certain Greek islands and through certain French territories pose a low risk given that such animals and goods are not placed on the market outside these islands or territories. Adequate official control requirements and measures should be established to ensure that such animals and goods are not placed on the market outside these islands or territories.
- (9) In order to rationalise and simplify the application of the legislative framework the rules on official controls under Article 77(1)(k) and Article 48(h) of Regulation (EU) 2017/625 should be adopted together with the rules on official controls on other categories of goods listed in Article 77(1)(a) and (b) of that Regulation.
- (10) These rules are substantially linked and many are intended to be applied in tandem. In the interest of simplicity and transparency, as well as to facilitate their application and avoid a multiplication of rules, they should therefore be laid down in a single act rather than in a number of separate acts with many cross-references and the risk of duplication.
- (11) Given that this Regulation lays down rules covered by Commission Decision 94/641/EC <sup>(5)</sup> and Commission Implementing Decision 2012/44/EU, <sup>(6)</sup> those legal acts should be repealed.
- (12) Since Regulation (EU) 2017/625 applies from 14 December 2019, this Regulation should also apply from that date,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### **Subject matter**

This Regulation establishes rules for the performance of specific official controls as regards certain categories of animals and goods and measures to be taken in case of non-compliance. It lays down rules for cases where and conditions under which certain categories of animals and goods are exempted from official controls at border control posts, and when such exemption is justified.

#### *Article 2*

##### **Definitions**

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

- (1) 'IMSOC' means the information management system for official controls referred to in Article 131 of Regulation (EU) 2017/625;
- (2) 'fresh fishery products' means fresh fishery products as defined in point 3.5 of Annex I to Regulation (EC) No 853/2004 of the European Parliament and of the Council <sup>(7)</sup>;
- (3) 'frozen tuna' means tuna kept in compliance with the requirements set out in point (2) of Chapter VII of Section VIII of Annex III to Regulation (EC) No 853/2004.

<sup>(4)</sup> Commission Implementing Regulation (EU) 2019/627 of 15 March 2019 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No 2074/2005 as regards official controls (OJ L 131, 17.5.2019, p 51).

<sup>(5)</sup> Commission Decision 94/641/EC of 8 September 1994 laying down rules applicable to veterinary checks to be carried out on products imported into certain Greek islands from third countries (OJ L 248, 23.9.1994, p. 26).

<sup>(6)</sup> Commission Implementing Decision 2012/44/EU of 25 January 2012 on the rules applicable to veterinary checks to be carried out on live animals and products of animal origin entering certain French overseas departments from third countries (OJ L 24, 27.1.2012, p. 14).

<sup>(7)</sup> Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55).

*Article 3***Unskinned, furred wild game**

1. The competent authority of the border control posts of first arrival into the Union may allow the dispatch of consignments of unskinned, furred wild game to the establishment at the place of destination without finalising physical checks if the consignments are dispatched in vehicles or containers in accordance with Articles 2 and 3 of Commission Delegated Regulation (EU) 2019/1666 <sup>(8)</sup>.
2. The competent authority referred to in paragraph 1 shall inform the competent authority of the establishment at the place of destination of the necessity to finalise physical checks, in particular health checks and laboratory testing.
3. The competent authority of the establishment at the place of destination shall inform the competent authority referred to in paragraph 1 of the results of the physical checks referred to in paragraph 2.

*Article 4***Fresh fishery products directly landed in Union ports designated by Member States from a fishing vessel flying a third country flag**

Fresh fishery products directly landed from a fishing vessel flying a third country flag are exempted from official controls at border control posts provided that they are performed by competent authorities in Union ports designated by Member States in accordance with Article 5(1) of Regulation (EC) No 1005/2008.

*Article 5***Frozen tuna directly landed in Union ports designated by Member States from a fishing vessel flying a third country flag**

Member States may carry out, at the processing establishment of destination approved in accordance with Article 4 of Regulation (EC) No 853/2004, official controls of frozen tuna that has not been beheaded nor gutted and that has been landed directly in Union ports designated by Member States in accordance with Article 5(1) of Regulation (EC) No 1005/2008 from a fishing vessel flying a third country flag, subject to the following conditions:

- (a) the official controls are carried out by the competent authority of the nearest border control post;
- (b) the processing establishment of destination is approved by the customs authorities for the temporary storage of non-Union goods in accordance with Article 147(1) and Article 148 of Regulation (EU) No 952/2013;
- (c) the frozen tuna is dispatched from the vessel to the processing establishment of destination in sealed vehicles or transport containers, under the supervision of the competent authority carrying out the official controls and under the relevant customs procedure in accordance with Articles 134, 135, 140, 141 and Article 148(5) of Regulation (EU) No 952/2013;
- (d) prior to the arrival of the consignment at designated Union ports, the operator responsible for the consignment has notified the competent authority referred to in point (a) of this Article of the arrival of the consignment by submitting in the IMSOC a completed Common Health Entry Document (CHED) as referred to in Article 56 of Regulation (EU) 2017/625.

*Article 6***Fishery products intended for human consumption caught by vessels flying the flag of a Member State, unloaded in third countries**

1. Consignments of fishery products intended for human consumption caught by vessels flying the flag of a Member State, unloaded, with or without storage, in third countries before entering the Union by a different means of transportation as referred to in Article 72(1) of Implementing Regulation (EU) 2019/627 shall undergo documentary checks by the competent authority of the border control posts of first arrival into the Union.

<sup>(8)</sup> Commission Delegated Regulation (EU) 2019/1666 of 4 June 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards conditions for monitoring the transport and arrival of consignments of certain goods from the border control post of arrival to the establishment at the place of destination in the Union (OJ L 255, 4.10.2019, p. 1).

2. Consignments referred to in paragraph 1 may be exempted from identity and physical checks at border control posts provided that they comply with the conditions laid down in Article 72 of Regulation (EU) 2019/627.
3. When non-compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 is identified or suspected, the competent authority of the border control post of first arrival into the Union shall perform, in addition to documentary checks, identity and physical checks on the consignments referred to in paragraph 1 of this Article.

#### Article 7

##### **Consignments entering the Union through certain Greek islands and certain French territories**

1. Products of animal origin and composite products entering the Union from third countries through the authorised points of entry in the Greek islands of Rhodes, Mitilini and Iraklio (Crete) for local use in the Greek island of the point of entry are exempted from official controls at border control posts.
2. Animals, products of animal origin and composite products entering the Union from third countries through the authorised points of entry in the French overseas departments of Guadeloupe, French Guiana, Martinique and Mayotte for local use in the French overseas department of the point of entry are exempted from official controls at border control posts.

#### Article 8

##### **Specific official controls on consignments entering the Union through certain Greek islands and certain French territories**

1. Consignments referred to in Article 7 shall be subject, for each authorised point of entry, to checks in accordance with Annex I.
2. Each authorised point of entry shall be under the responsibility of a competent authority, which has at its disposal:
  - (a) official veterinarians responsible for taking decisions on the consignments in accordance with point (a) of Article 55(2) of Regulation (EU) 2017/625, and
  - (b) if deemed necessary by the competent authority, staff referred to in points (a) and (b) of Article 49(2) of Regulation (EU) 2017/625 trained in accordance with Article 2 of Commission Delegated Regulation (EU) 2019/1081 <sup>(9)</sup>.
3. The competent authority of the authorised points of entry in the Greek islands referred to in Article 7(1) shall ensure that for each authorised point of entry staff and resources are available to carry out official controls on consignments of goods referred to in Article 7(1) for which the point of entry is authorised.
4. Each authorised point of entry in the French overseas departments referred to in Article 7(2) shall have all the facilities, equipment and staff necessary to carry out official controls on consignments of animals and goods referred to in Article 7(2) for which the point of entry is authorised.

#### Article 9

##### **Responsibilities of operators regarding consignments entering the Union through certain Greek islands and certain French territories**

The operator responsible for consignments referred to in Article 7 shall:

- (a) notify the competent authority of the authorised point of entry of the arrival of the consignment by submitting a completed CHED in the IMSOC prior to the arrival of the consignment at the authorised point of entry;

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<sup>(9)</sup> Commission Delegated Regulation (EU) 2019/1081 of 8 March 2019 establishing rules on specific training requirements for staff for performing certain physical checks at border control posts (OJ L 171, 26.6.2019, p. 1).

- (b) keep a register approved by the competent authority of the authorised point of entry showing if applicable the quantities of animals, products of animal origin and composite products for placing on the market and the names and addresses of the purchaser(s);
- (c) inform the purchaser(s) that:
  - (i) the products of animal origin and composite products for placing on the market are for local consumption only and that these products must not be re-dispatched under any circumstances to other parts of the Union territory;
  - (ii) in the case of resale, the purchaser(s) must inform the new purchaser(s) where the latter is a commercial operator about the restrictions in accordance with point (c)(i);
- (d) in the case of the French overseas departments of Guadeloupe, French Guiana, Martinique and Mayotte, inform the purchaser(s) that:
  - (i) the animals for placing on the market are for local breeding and production only and that these animals and products derived from these animals must not be re-dispatched under any circumstances to other parts of the Union territory;
  - (ii) in the case of resale, the purchaser(s) must inform the new purchaser(s) where the latter is a commercial operator about the restrictions in accordance with point (d)(i).

#### *Article 10*

#### **Repeals**

1. Decision 94/641/EC and Implementing Decision 2012/44/EU are repealed with effect from 14 December 2019.
2. References to the repealed acts shall be construed as references to this Regulation and read in accordance with the correlation tables in Annex II.

#### *Article 11*

#### **Entry into force and date of application**

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

It shall apply from 14 December 2019.

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

Done at Brussels, 10 October 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

## ANNEX I

**Specific official controls on goods entering the Union through the authorised points of entry of certain Greek islands and certain French territories**

1. The competent authority shall ensure that all data of products of animal origin and composite products, and, in the case of the French overseas departments of Guadeloupe, French Guiana, Martinique and Mayotte, also all data of animals, presented for placing on the market are entered in the IMSOC.
  2. The competent authority shall check:
    - (a) the accompanying certificates and documents;
    - (b) the identity of the products of animal origin and composite products, and, in the case of the French overseas departments of Guadeloupe, French Guiana, Martinique and Mayotte, also the identity of the animals;
    - (c) the packaging and marking;
    - (d) the quality and state of preservation of the goods;
    - (e) the transport conditions and, in the case of carriage by refrigerated means of transport, the temperature of the means of transport and the internal temperature of the goods;
    - (f) any damage to the goods.
  3. The competent authority shall ensure that after the specific official controls are completed, the accompanying CHED indicates that products of animal origin and composite products for placing on the market are for local consumption only and that these products must not be re-dispatched under any circumstances to other parts of the Union territory.
  4. In the case of the French overseas departments of Guadeloupe, French Guiana, Martinique and Mayotte, the competent authority shall ensure that after the specific official controls are completed, the accompanying CHED indicates that the animals, for placing on the market are for local breeding and production only and these animals and products derived from these animals must not be re-dispatched under any circumstances to other parts of the Union territory.
  5. The competent authority shall carry out regular inspections of the place of housing/storage of the consignments for placing on the market to verify that public health requirements are maintained and that these consignments are not re-dispatched to other parts of the Union territory.
  6. In the case of the French overseas departments of Guadeloupe, French Guiana, Martinique and Mayotte, the competent authority shall carry out regular inspections of the place of housing of the animals for placing on the market to verify that animal health requirements are maintained and that these animals and products derived from these animals are not re-dispatched to other parts of the Union territory.
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## ANNEX II

**Correlation tables referred to in Article 10(2)**

## 1. Decision 94/641/EC

Decision 94/641/EC	This Regulation
Article 1	Article 7
Article 2	Article 8(2)(a)
Article 3, first indent	Article 9(a)
Article 3, second indent	Article 9(b)
Article 3, third indent	Article 9(c)
Article 3, fourth indent	Article 9(e)
Article 4	Article 8(1)
Article 5	—
Article 6	—
Article 7	—
Annex I	Article 7
Point (1) of Annex II	Point (2) of Annex I
Point (2) of Annex II	Point (5) of Annex I

## 2. Implementing Decision 2012/44/EU

Implementing Decision 2012/44/EU	This Regulation
Article 1	Article 7
Article 2(1)	Article 8(2)
Article 2(2)	Article 8(4)
Article 3(1)	Article 9(a)
Article 3(2)	—
Article 3(3)	Article 9(b)
Article 3(4)	Article 9(c) and (d)
Article 3(5)	Article 9(e) and (f)
Article 4(1)	Article 8(1)
Article 4(2)	Article 8(1)
Article 4(3)	Point (1) of Annex I
Article 4(4)	Points (3) and (4) of Annex I
Article 4(5)	Points (5) and (6) of Annex I
Article 5	—
Article 6	—
Article 7	—
Article 8	—
Annex	Article 7



**COMMISSION DELEGATED REGULATION (EU) 2019/2127****of 10 October 2019****amending Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the date of application of certain provisions of Council Directives 91/496/EEC, 97/78/EC and 2000/29/EC****(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 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 <sup>(1)</sup>, and in particular Article 149(2) and Article 165(3) 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 the correct application of Union food and feed law. That framework includes official controls performed on animals and goods entering the Union from third countries.
- (2) Regulation (EU) 2017/625 repeals Council Directives 91/496/EEC <sup>(2)</sup> and 97/78/EC <sup>(3)</sup> with effect from 14 December 2019. It moreover amends Regulation (EU) 2016/2031 of the European Parliament and the Council <sup>(4)</sup> to repeal Council Directive 2000/29/EC <sup>(5)</sup>.
- (3) In order to avoid any legislative gaps pending the adoption of implementing and delegated acts which concern matters referred to in Article 47(2), Article 48, points (b), (c) and (d) of Article 51(1), point (a) of Article 53(1), Article 54(1) and (3), and point (a) of Article 58 of Regulation (EU) 2017/625, Regulation (EU) 2017/625 provides that the relevant provisions of Council Directives 91/496/EEC and 97/78/EC and Directive 2000/29/EC are to continue to apply until 14 December 2022 or an earlier date to be determined by the Commission. As regards Directive 2000/29/EC, such earlier date is to fall after the date of application of Regulation (EU) 2017/625.
- (4) A delegated act has been adopted pursuant to point (a) of Article 53(1) of Regulation (EU) 2017/625, governing official controls at control points other than border control posts. This act will apply as of 14 December 2019. However, insofar as categories of consignments of plants, plant products and other objects referred to in point (c) of Article 47(1) of that Regulation are concerned, it will only become applicable as of 14 December 2020. Hence the corresponding provisions of Directive 2000/29/EC should remain applicable until 13 December 2020.

<sup>(1)</sup> OJ L 95, 7.4.2017, p. 1.

<sup>(2)</sup> 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 (OJ L 268, 24.9.1991, p. 56).

<sup>(3)</sup> Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (OJ L 24, 30.1.1998, p. 9).

<sup>(4)</sup> Regulation (EU) 2016/2031 of the European Parliament and 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).

<sup>(5)</sup> 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).

- (5) An implementing act has been adopted pursuant to Article 54(3) of Regulation (EU) 2017/625, governing the frequency of identity and physical checks at the entry into the Union of animals and goods. This act will apply as of 14 December 2019. However, insofar as categories of consignments of plants, plant products and other objects referred to in point (c) of Article 47(1) of that Regulation are concerned, it will only become applicable as of 14 December 2022. Hence the corresponding provisions of Directive 2000/29/EC should remain applicable until 13 December 2022.
- (6) In addition, an implementing act has been adopted pursuant to point (a) of Article 47(2) of Regulation (EU) 2017/625, establishing a list of animals and goods to be subjected to systematic official controls at their entry into the Union. By Commission Delegated Regulation (EU) 2019/478 <sup>(6)</sup>, composite products have been added to the categories to be listed. However, the requirements for the entry into the Union for such products established in Commission Delegated Regulation (EU) 2019/625 <sup>(7)</sup> will only apply as of 21 April 2021. The existing requirements for composite products will remain applicable until 20 April 2021. Hence, transitional measures are required in respect of the provisions of Directive 97/78/EC which govern the matters referred to in point (a) of Article 47(2) of Regulation (EU) 2017/625 related to composite products.
- (7) Implementing acts have been adopted pursuant to point (b) of Article 47(2) and point (a) of Article 58 of Regulation (EU) 2017/625 governing the establishment of a list of goods subject to a temporary increase of official controls at their entry into the Union and the format of the Common Health Entry Document (CHED) respectively. These acts will apply as of the date of application of Regulation (EU) 2017/625.
- (8) Delegated acts have been adopted pursuant to Article 48 and points (b), (c) and (d) of Article 51(1) of Regulation (EU) 2017/625 governing exemptions from official controls at border control posts and the establishment of specific rules on transit and transshipment. These acts will apply as of the date of application of Regulation (EU) 2017/625.
- (9) It is therefore appropriate to amend Regulation (EU) 2017/625 accordingly.
- (10) As the rules laid down in this act are intertwined and will be applied together it is appropriate that they will be laid down in a single act rather than in different acts with numerous cross-references and the risks of duplication.
- (11) Since Regulation (EU) 2017/625 and the Delegated Regulations and Implementing Regulations referred to above apply from 14 December 2019, this Regulation should also apply from that date,

HAS ADOPTED THIS REGULATION:

#### Article 1

#### **Amendment to Regulation (EU) 2017/625**

Regulation (EU) 2017/625 shall be amended as follows:

- (1) Article 149(1) shall be replaced by the following:

‘The relevant provisions of Directives 91/496/EEC and 97/78/EC which govern matters referred to in point (b) of Article 47(2), Article 48, points (b), (c) and (d) of Article 51(1), point (a) of Article 53(1), Article 54(1) and (3), and point (a) of Article 58 of this Regulation shall apply instead of the corresponding provisions of this Regulation until 13 December 2019.

The relevant provisions of Directive 97/78/EC which govern matters referred to in point (a) of Article 47(2) of this Regulation related to composite products shall continue to apply instead of that corresponding provision until 20 April 2021.’;

<sup>(6)</sup> Commission Delegated Regulation (EU) 2019/478 of 14 January 2019 amending Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the categories of consignments to be subjected to official controls at border control posts (OJ L 82, 25.3.2019, p. 4).

<sup>(7)</sup> Commission Delegated Regulation (EU) 2019/625 of 4 March 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption (OJ L 131, 17.5.2019, p. 18).

(2) Article 165(2) shall be replaced by the following:

'In relation to matters governed by Directive 2000/29/EC, Article 47(2), Article 48, points (b), (c) and (d) of Article 51 (1), and point (a) of Article 58 of this Regulation shall apply from 15 December 2019 instead of the relevant provisions of that Directive, which shall cease to be applicable as of the same date.

The relevant provisions of Directive 2000/29/EC shall continue to apply in relation to the matters governed by points (a) of Article 53(1) of this Regulation instead of that latter provision until 13 December 2020.

The relevant provisions of Directive 2000/29/EC shall continue to apply in relation to the matters governed by Article 54(1) and (3) of this Regulation instead of these latter provisions until 13 December 2022.'

#### *Article 2*

### **Entry into force and application of this Regulation**

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

It shall apply from 14 December 2019.

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

Done at Brussels, 10 October 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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**COMMISSION IMPLEMENTING REGULATION (EU) 2019/2128****of 12 November 2019****establishing the model official certificate and rules for issuing official certificates for goods which are delivered to vessels leaving the Union and intended for ship supply or consumption by the crew and passengers, or to NATO or a United States' military base****(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) <sup>(1)</sup>, and in particular Articles 77(3)(a), 90(a) and (f) thereof,

Whereas:

- (1) Regulation (EU) 2017/625 establishes the rules with which the competent authorities of the Member States must comply when performing official controls on animals and goods entering the Union in order to verify compliance with Union agri-food chain legislation.
- (2) Commission Delegated Regulation (EU) 2019/2124 <sup>(2)</sup> lays down rules for the official controls of consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products from third countries, that are stored in warehouses located in the Union territory, and that are to be delivered either to a NATO or United States' military base located in the Union territory or in a third country, or to a vessel leaving the Union and intended for ship supply or consumption by the crew and passengers.
- (3) Delegated Regulation (EU) 2019/2124 in particular provides that those consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products must be accompanied by an official certificate when leaving the warehouse.
- (4) Delegated Regulation (EU) 2019/2124 also provides that consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products from third countries that are destined for a vessel leaving the Union must be accompanied by an official certificate when transported from the border control post to the vessel.
- (5) For reasons of clarity and consistency, it is appropriate to establish a single model official certificate for consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products from third countries destined for delivery to vessels leaving the Union and intended for ship supply or consumption by the crew and passengers, or to NATO or United States' military bases located in the Union territory or in a third country.

<sup>(1)</sup> OJ L 95, 7.4.2017, p. 1.

<sup>(2)</sup> Commission Delegated Regulation (EU) 2019/2124 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation, amending Commission Regulations (EC) No 798/2008, (EC) No 1251/2008, (EC) No 119/2009, (EU) No 206/2010, (EU) No 605/2010, (EU) No 142/2011, (EU) No 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/EC (see page 73 of this Official Journal).

- (6) Frequently, the content of consignments is formed at warehouses. Such consignments may consist of goods that are derived from several consignments of different origins or product categories. In order to reduce administrative burdens, a single official certificate should be used for the goods in the newly formed consignments. The traceability of goods should be assured by indicating in the official certificate the number of the Common Health Entry Document (CHED) accompanying the original consignments from which the goods are derived.
- (7) The official certificate may be issued by the competent authorities either in paper or in electronic format. Therefore, it is appropriate to establish requirements as regards the issuance of the official certificate in both cases.
- (8) For the purpose of consistency, the rules applying to the issuance of electronic certificates and to the use of an electronic signature for official certificates laid down in Commission Implementing Regulation (EU) 2019/1715 <sup>(3)</sup> should also apply to the model official certificate established in this Regulation.
- (9) Model certificates are included in the electronic system TRACES, set up by Commission Decision 2003/623/EC <sup>(4)</sup> and Commission Decision 2004/292/EC <sup>(5)</sup> to facilitate and accelerate administrative procedures at Union borders and at customs warehouses and to enable electronic communication between the parties involved. Accordingly, the format of the model official certificate laid down in this Regulation and the notes on its completion should be adapted to the TRACES system.
- (10) In accordance with Article 133(4) of Regulation (EU) 2017/625, the TRACES system is to be integrated into the Information Management System for Official Controls (IMSOC). The model official certificate laid down in this Regulation should therefore be adapted to IMSOC.
- (11) Regulation (EU) 2017/625 applies from 14 December 2019. Accordingly, the rules laid down in this Regulation should also apply from that date.
- (12) 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:

#### *Article 1*

#### **Definition**

For the purposes of this Regulation, the definition of ‘warehouse’ set out in Article 2(3) of Delegated Regulation (EU) 2019/2124 shall apply.

#### *Article 2*

#### **Model official certificate**

1. For the purposes of Article 21(1) and Article 29(c) of Delegated Regulation (EU) 2019/2124, the model official certificate set out in Part I of the Annex to this Regulation shall be used for the official certification of consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products which are delivered:

- (a) to vessels leaving the Union territory and intended for ship supply or consumption by the crew and passengers; or

<sup>(3)</sup> Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019 laying down rules for the functioning of the information management system for official controls and its system components (‘the IMSOC Regulation’) (OJ L 261, 14.10.2019, p. 37).

<sup>(4)</sup> Commission Decision 2003/623/EC of 19 August 2003 concerning the development of an integrated computerised veterinary system known as Traces (OJ L 216, 28.8.2003, p. 58).

<sup>(5)</sup> Commission Decision 2004/292/EC of 30 March 2004 on the introduction of the Traces system and amending Decision 92/486/EEC (OJ L 94, 31.3.2004, p. 63).

- (b) from a warehouse located in the Union territory to NATO or United States' military bases located in the Union territory or in a third country.

The official certificate may be issued in paper format or electronically through IMSOC.

2. Where the content of consignments is formed at a warehouse and composed of products of different origins or product categories, one single official certificate may be issued to accompany such consignment.

### *Article 3*

#### **Requirements for official certificates which are not submitted in IMSOC**

Official certificates which are not submitted in IMSOC shall meet the following requirements:

1. in addition to the signature of the certifying officer, the official certificate shall bear an official stamp. The colour of the signature and stamp shall be different to the colour of the printing.
2. where the official certificate contains statements, statements which are not relevant shall be crossed out, initialled and stamped by the certifying officer, or completely removed from the certificate.
3. the official certificate shall consist of:
  - (a) a single sheet of paper; or
  - (b) several sheets of paper where all sheets are indivisible and constitute an integral whole; or
  - (c) a sequence of pages numbered so as to indicate that it is a particular page in a finite sequence.
4. Where the official certificate consists of a sequence of pages, each page must indicate the unique code as referred to in Article 89(1)(a) of Regulation (EU) 2017/625 and bear the signature of the certifying officer and the official stamp.
5. The official certificate shall be issued before the consignments to which it relates leave the control of the competent authorities at the border control post or at the warehouse.

### *Article 4*

#### **Requirements for official certificates submitted in IMSOC and for the use of electronic signature**

1. Official certificates submitted in IMSOC shall be based on the model official certificate laid down in Part 1 of the Annex to this Regulation.
2. The official certificate shall be submitted in IMSOC before the consignments to which it relates leave the control of the competent authorities at the border control post or at the warehouse.
3. Official certificates submitted in IMSOC shall meet the requirements for the issuance of electronic official certificate and for the use of electronic signature laid down in Article 39 of Implementing Regulation (EU) 2019/1715.

### *Article 5*

#### **Notes on the completion of the official certificate**

The official certificate shall be completed by reference to the notes set out in Part 2 of the Annex to this Regulation.

*Article 6***Entry into force and date of application**

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

It shall apply from 14 December 2019.

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

Done at Brussels, 12 November 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX

## PART 1

**Model of official certificate accompanying consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products from third countries which are delivered to vessels leaving the Union or to NATO or United States' military bases**

**Official Certificate for goods delivered to vessels leaving the Union  
or to NATO or United States' military bases**

EUROPEAN UNION						
<b>I.1</b>	Border control post/Competent authority	<b>I.2</b>		Certificate reference number		
	TRACES reference number	I.2.a		IMSOC reference number		
<b>I.3</b>	<b>Consignor</b>	<b>I.4</b>		<b>Operator responsible for the consignment</b>		
	Name			Name		
	Address			Address		
	Registration/Approval No					
	Country ISO country code			Country ISO country code		
<b>I.5</b>	<b>Place of destination (vessel)</b>	<b>I.6</b>		<b>Place of destination (NATO/United States' military base)</b>		
	Vessel name			Name of NATO/United States' military base		
	Vessel IMO number			NATO/United States' military base TRACES reference number		
	Port			Address		
	Country ISO country code			Country ISO country code		
				BCP of exit		
<b>I.7</b>	<b>Means of transport</b>	Identification number(s)	<b>Container No</b>	<b>Seal No</b>		
<b>I.8</b>	<b>Description of goods</b>					
	<b>CN code</b>	<b>Product type</b>	<b>Country of origin</b>	<b>Number of packages</b>	<b>Net weight(kg)</b>	<b>Reference of CHED of origin</b>
<input type="checkbox"/> Supporting document: _____						



<b>I.9</b>	<b>Total number of packages</b>		<b>I.10</b>	<b>Total net weight (kg)</b>
<b>I.11</b>	<b>Date of departure</b>			
<b>II.1</b>	<b>Declaration:</b>			
	<input type="checkbox"/> I, the undersigned certifying officer confirm that the products described above are authorised to be dispatched to the vessel leaving the Union			
	<input type="checkbox"/> I, the undersigned certifying officer confirm that the products described above are authorised to be dispatched to a NATO/Unites States' military base			
<b>II.2</b>	Name (in capital letters)	Qualification and title		
	Competent authority/BCP	Competent authority/BCP TRACES registration No		
	Date	Stamp	Signature	
<b>III.1</b>	<b>Confirmation of the arrival and compliance of the consignment</b>			
	I confirm delivery of the consignment:		<input type="checkbox"/> on board the vessel specified in Box I.5	
			<input type="checkbox"/> to a NATO/United States' military base specified in Box I.6	
			<input type="checkbox"/> BCP of exit	
	Compliance of consignment		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>III.2</b>	<input type="checkbox"/> <b>Competent authority</b>	<input type="checkbox"/> <b>Official representative of the master of vessel</b>	<input type="checkbox"/> <b>Competent authority responsible for controls at the NATO/United States' military base</b>	
	Name (in capital letters)	Position		
	Competent authority	Competent authority TRACES registration No		
	Place			
	Date	Stamp	Signature	
<sup>(1)</sup> Keep as appropriate				

## PART 2

**Notes for the completion of the model official certificate****General**

To positively indicate any option, please tick or mark the relevant box with a cross (X).

“ISO code” refers to the international standard two-letter code used to refer to a country, in accordance with the international standard ISO 3166 alpha-2 <sup>(1)</sup>.

Whenever a box allows for the choice of one or more options, only those options will be displayed in the electronic version of the official certificate.

**Part I: Details of the dispatched consignment**

Box I.1.	Border control post/Competent authority: indicate the name of the border control post (BCP) or of the competent authority issuing the official certificate, as appropriate, and their TRACES reference number.
Box I.2.	Certificate reference number: the unique mandatory code assigned by the competent authority issuing the official certificate in accordance with its own classification. This box is compulsory for all certificates not submitted in IMSOC.
Box I.2.a	IMSOC reference number: the unique reference code automatically assigned by IMSOC if the certificate is registered in IMSOC. Do not complete this box if the certificate is not submitted in IMSOC.
Box I.3.	Consignor: in the case of dispatch from a warehouse, indicate the name and address (street, city and region, province or state, registration/approval No, as appropriate) of the warehouse from which the consignment is dispatched. Do not complete this box if the consignment is dispatched directly from a border control post.
Box I.4.	Operator responsible for the consignment: the name and address (street, city and region, province or state, registration/approval No, as appropriate) of the natural or legal person who is responsible in the Union for the delivery of the consignment to the place of destination.
Box I.5.	Place of destination (vessel): indicate the name of the vessel for which the consignment is intended, vessel International Maritime Organisation (IMO) number, name of port, name and ISO code of the Member State of destination of goods. Do not complete this box if the official certificate is issued for delivery of the consignment to the NATO or United States' military base located in the Union territory or in a third country.
Box I.6.	Place of destination (NATO/United States' military base): indicate the name of the NATO/United States' military base of destination situated in the Union territory, the name and ISO code of the Member State where the NATO or United States' military base of destination is located. If the destination is a NATO/United States' military base located in a third country, only the border control post of exit from the Union must be indicated in this box. Do not complete this box if the official certificate is issued for delivery to vessels leaving the Union.
Box I.7.	Means of transport: Identification number(s): for aeroplanes; indicate the flight number, for vessels; the ship name(s), for railways; the train identity and wagon number, for road transports; the registration number plate with the trailer number plate if appropriate. For containerized consignments, the trailer number plate is not obligatory if the container number has been indicated. In the case of transport by ferry, indicate the identification of the road vehicle, the registration number plate with trailer number plate if appropriate, and the name of the scheduled ferry.
Container No:	if applicable, corresponding numbers. The container number must be indicated if the goods are transported in closed containers.

<sup>(1)</sup> List of country names and code elements under: [http://www.iso.org/iso/country\\_codes/iso-3166-1\\_decoding\\_table.htm](http://www.iso.org/iso/country_codes/iso-3166-1_decoding_table.htm)

Seal No:	Only the official seal number must be stated. An official seal applies if a seal is affixed to the container, truck or rail wagon under the supervision of the competent authority issuing the certificate.
Box I.8.	Description of goods: Description of goods and product type: indicate the relevant Combined Nomenclature (CN) code, and the title as referred to in Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff <sup>(1)</sup> . Country of origin: indicate the country of origin of the goods. Reference of CHED of origin: indicate the reference of the CHED for the consignment from which the relevant number of boxes of the product are derived. The information under this box may also be provided in a supporting document to be attached to the official certificate. In such a case, the box 'Supporting document' must be filled in, including the reference number of the supporting document(s).
Box I.9.	Total number of packages: indicate the number of boxes or of packages of goods. In the case of bulk consignments, this box is optional.
Box I.10.	Total net weight in kilogrammes: this is defined as the mass of the goods themselves without immediate containers or any packaging.
Box I.11.	Date and time of departure: indicate the date and time of the intended departure of the means of transport from the border control post or warehouse.

<sup>(1)</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

### Part II: Declaration

This part must be completed by an official veterinarian or an official inspector of the competent authority at the border control post or at the warehouse.

### Part III: Confirmation of arrival of consignment

This part must be completed by:

- in case the destination is a vessel leaving the Union; the competent authority at the port of destination or by the official representative of the master of the vessel;
- in case the destination is a NATO/United States' military base situated in the Union territory; the competent authority responsible for controls at the NATO/United States' military base;
- in case the destination is a NATO/United States' military base located in a third country; the competent authority at the border control post of exit.

**COMMISSION IMPLEMENTING REGULATION (EU) 2019/2129****of 25 November 2019****establishing rules for the uniform application of frequency rates for identity checks and physical checks on certain consignments of animals and goods 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) <sup>(1)</sup>, 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 animals and goods entering the Union in order to verify compliance with Union agri-food chain legislation.
- (2) Article 54(3) of Regulation (EU) 2017/625 empowers the Commission to establish rules for the uniform application of the appropriate frequency rate for identity checks and physical checks on consignments of the categories of animals and goods referred to in Article 47(1)(a) and (b) of that Regulation. Therefore the frequency rates on identity checks and physical checks should be established depending on the risk posed by each animal, good or category of animals or goods to human, animal or plant health, animal welfare or, as regards genetically modified organisms and also to the environment.
- (3) To ensure that the frequency rates of physical checks required pursuant to this Regulation are complied with in a uniform manner, 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.
- (4) The frequency rates established in accordance with this Regulation should be applicable for the animals and goods referred to in Article 47(1)(a) and (b) of Regulation (EU) 2017/625 intended to be placed on the market. However, the frequency of physical checks carried out at border control posts to ascertain compliance with Regulation (EU) 2018/848 of the European Parliament and of the Council <sup>(2)</sup> should be determined in accordance with Article 45(5) of that Regulation.
- (5) Council Directive 91/496/EEC <sup>(3)</sup> lays down rules governing the organisation of veterinary checks on animals entering the Union from third countries. Article 4 of that Directive provides that each consignment of animals should be subject to identity checks and physical checks.

<sup>(1)</sup> OJ L 95, 7.4.2017, p. 1.

<sup>(2)</sup> Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1).

<sup>(3)</sup> Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (OJ L 268, 24.9.1991, p. 56).

- (6) Directive 91/496/EEC is repealed by Regulation (EU) 2017/625 with effect from 14 December 2019. Taking into account the risk posed by certain categories of animals to human or animal health and animal welfare, the same frequency rates of identity checks and physical checks should continue to apply to animals entering the Union from third countries as those laid down in or in accordance with Directive 91/496/EEC.
- (7) To ensure the effectiveness of 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.
- (8) Article 3 of Commission Implementing Regulation (EU) 2019/2130 <sup>(4)</sup> establishes detailed rules on identity checks for goods referred to in point (b) of Article 47(1) of Regulation (EU) 2017/625, according to whether the consignment is subject to physical checks or not.
- (9) The baseline criteria for determining the baseline frequency rates for the identity checks and physical checks performed on products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products should be established taking into account information regarding the risks associated with the categories of animals or goods and available scientific assessments.
- (10) Based on information collected by the Commission in accordance with Article 125(1) of Regulation (EU) 2017/625, on the outcome of controls performed by Commission experts in third countries in accordance with 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 resulting from the baseline criteria.
- (11) To ensure the efficiency of official controls, the frequency rates determined in accordance with this Regulation should be made available through the IMSOC.
- (12) For certain third countries with which the Union has concluded veterinary agreements on equivalency, it is appropriate to reduce the frequency of physical checks on certain products, taking into account, inter alia, the application of the regionalisation principle in the case of animal disease, and of other veterinary principles. Therefore, the frequency rates for physical checks specified in these veterinary agreements should apply for the purpose of this Regulation.
- (13) Commission Decision 94/360/EC <sup>(5)</sup> establishes reduced frequency rates of physical checks for certain categories of goods subject to veterinary checks. Since this Regulation lays down provisions in the areas covered by Decision 94/360/EC, that Decision should be repealed with effect from the date specified in this Regulation.
- (14) Regulation (EU) 2017/625 applies from 14 December 2019. Accordingly, the rules laid down in this Regulation should also apply from that date.
- (15) 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:

#### *Article 1*

#### **Subject matter and scope**

This Regulation lays down rules for the uniform application of the appropriate frequency rate of identity checks and physical checks on consignments of animals and goods referred to in Article 47(1)(a) and (b) of Regulation (EU) 2017/625 intended to be placed on the market.

<sup>(4)</sup> 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 (see page 128 of this Official Journal).

<sup>(5)</sup> Commission Decision 94/360/EC of 20 May 1994 on the reduced frequency of physical checks of consignments of certain products to be implemented from third countries, under Council Directive 90/675/EEC (OJ L 158, 25.6.1994, p. 41).

*Article 2***Definitions**

For the purpose of this Regulation,

1. 'frequency rate' means the minimum percentage of consignments of animals and goods referred to in Article 1, determined in accordance with this Regulation, of the number of consignments arrived at the border control post during an identified period, for which identity checks and physical checks are to 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 is automatically generated by the 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 of this Article, the competent authorities shall perform identity checks as referred to in Article 3(1) of Implementing Regulation (EU) 2019/2130.

*Article 4***Frequency rates for identity checks and physical checks**

1. The competent authorities shall perform identity checks and physical checks on consignments of animals, products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products at the frequency rates determined in accordance with Article 5.
2. For the third countries listed in Annex II with which the Union has concluded agreements of equivalence, physical checks shall be carried out according to the frequency rates established by these agreements.

*Article 5***Determination and modification of frequency rates for identity checks and physical checks performed on animals, products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products**

1. The baseline frequency rates for identity checks and for physical checks on consignments of animals and goods referred to in Article 1 are set out in Annex I to this Regulation, based on the scientific assessments and information referred to in points (a)(v) and (vi) of the first subparagraph of Article 54(3) of Regulation (EU) 2017/625.
2. The frequency rate for physical checks on specific goods from a specific third country may be increased where serious deficiencies are identified based on:
  - (a) information collected by the Commission in accordance with Article 125(1) of Regulation (EU) 2017/625; or
  - (b) the outcome of controls performed by Commission experts in accordance with Article 120(1) of Regulation (EU) 2017/625.

In this case, the frequency rate determined in accordance with paragraph 1 is increased to the next higher baseline frequency rate set out in Annex I or to a frequency rate of 50 % where the frequency rate applicable to the specific category of goods is at 30 %,

3. The frequency rate of physical checks shall be increased from the baseline frequency rate determined in accordance with paragraph 1 to the next higher baseline frequency rate set out in Annex I, or to a frequency rate of 50 % if the frequency rate applicable to the specific category of goods is at 30 %, where data and information collected via the IMSOC indicate for specific goods from a specific third country a level of non-compliance with respect to physical checks in the last 12 months, for the same category of goods, which exceeds by 30 % the average rate of non-compliance for the same category of goods from all third countries.
4. Where the criteria referred to in paragraph 2 or in paragraph 3 are no longer met, the frequency rate shall be reduced to the respective baseline frequency rate set out in Annex I.
5. The Commission shall make frequency rates determined in accordance with this Article available to competent authorities and to operators through the IMSOC.

*Article 6*

**Repeals**

Decision 94/360/EC is repealed with effect from 14 December 2019.

*Article 7*

**Entry into force and date of application**

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

It shall apply from 14 December 2019.

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

Done at Brussels, 25 November 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

## ANNEX I

**Baseline criteria for determining the baseline frequency rates for the identity checks and physical checks of the consignments of animals, products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products**

Baseline criteria for determining baseline frequency rates for identity checks and physical checks		Baseline frequency rates that apply to	
Risk category	Category of animals or goods (*)	identity checks	physical checks
<b>I</b>	Animals	<b>100 %</b>	<b>100 %</b>
<b>II</b>	<ul style="list-style-type: none"> <li>— Minced meat, mechanically separated meat and meat preparations for human consumption (HC)</li> <li>— Poultry meat for HC</li> <li>— Rabbit meat, game meat, and their meat products for HC</li> <li>— Eggs for HC</li> <li>— Egg products for HC which are preserved at frozen or chilled temperatures</li> <li>— Milk for HC</li> <li>— Dairy products and colostrum-based products for HC, which are preserved at frozen or chilled temperatures</li> <li>— Fishery products from aquaculture and bivalve molluscs for HC, which are not in hermetically sealed containers intended to render them stable at ambient temperature</li> <li>— Animal by-products and derived products, for feeding of farmed animals</li> </ul>	<b>100 %</b>	<b>30 %</b>
<b>III</b>	<ul style="list-style-type: none"> <li>— Meat other than meat mentioned in Category II, and meat products derived from such meat, for HC</li> <li>— Rendered animal fat and greaves for HC</li> <li>— Poultry meat products for HC</li> <li>— Egg products for HC, other than those mentioned in Category II</li> <li>— Dairy products and colostrum-based products for HC other than those mentioned in Category II</li> <li>— Fishery products other than those mentioned in Category II</li> <li>— Honey and other apiculture products for HC</li> <li>— Composite products</li> <li>— Hatching eggs</li> <li>— Organic fertilisers and soil improvers, derived from animal by-products</li> <li>— Frog legs and snails for HC</li> <li>— Insects for HC</li> </ul>	<b>100 %</b>	<b>15 %</b>
<b>IV</b>	<ul style="list-style-type: none"> <li>— Gelatine and collagen for HC</li> <li>— Casings</li> <li>— Semen and embryos</li> <li>— Animal by-products and derived products, other than those mentioned in Category II and Category III</li> </ul>	<b>100 %</b>	<b>5 %</b>
<b>V</b>	<ul style="list-style-type: none"> <li>— Highly refined products for HC</li> <li>— Hay and straw</li> <li>— Other goods than those mentioned in Category II, Category III and Category IV</li> </ul>	<b>100 %</b>	<b>1 %</b>

(\*) The frequency rates for physical checks of consignments of trade samples shall be in accordance with the description of the categories of goods provided in this Annex.



## ANNEX II

**List of certain third countries referred to in Article 4(2) and frequencies of physical checks****1. New Zealand**

In the case of New Zealand, the frequencies shall be those provided for in the Agreement which was approved by Council Decision 97/132/EC <sup>(1)</sup> in the form of an Exchange of Letters concerning the provisional application of the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products.

**2. Canada**

In the case of Canada, the frequencies shall be those provided for in Annex VIII to the Agreement which was approved by Council Decision 1999/201/EC <sup>(2)</sup>.

**3. Chile**

In the case of Chile, the frequencies shall be those provided for in the Agreement on Sanitary and Phytosanitary Measures applicable to Trade in Animals and Animal Products, Plants, Plant Products and other Goods and Animal Welfare set out in Annex IV to the Association Agreement which was approved by Council Decision 2002/979/EC <sup>(3)</sup>.

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<sup>(1)</sup> Council Decision 97/132/EC of 17 December 1996 on the conclusion of the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products (OJ L 57, 26.2.1997, p. 4).

<sup>(2)</sup> Council Decision 1999/201/EC of 14 December 1998 on the conclusion of the Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in live animals and animal products (OJ L 71, 18.3.1999, p. 1).

<sup>(3)</sup> Council Decision 2002/979/EC of 18 November 2002 on the signature and provisional application of certain provisions of an Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part (OJ L 352, 30.12.2002, p. 1).

**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****(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) <sup>(1)</sup>, and in particular Article 52 thereof,

Whereas:

- (1) Regulation (EU) 2017/625 establishes the rules for the competent authorities of Member States when they perform official controls on animals and goods entering the Union in order to verify compliance with the Union agri-food chain legislation.
- (2) Pursuant to Regulation (EU) 2017/625, consignments of the categories of animals and goods referred to in its Article 47(1) are subject to official controls at border control posts for official controls, unless they are exempted from such controls on the basis of Article 48 of that Regulation. Those official controls are to include documentary checks, identity checks and physical checks. For the purpose of ensuring the uniform implementation of Articles 49, 50 and 51 of Regulation (EU) 2017/625 and the efficient performance of official controls on the categories of animals and goods referred to above, detailed rules concerning the performance of documentary checks, identity checks and physical checks at border control posts should be laid down in this Regulation.
- (3) The rules on the operations to be carried out during and after documentary checks, identity checks and physical checks at the border control posts of arrival or control points should also apply to certain categories of food and feed of non-animal origin subject to a temporary increase of controls, other conditions of entry into the Union and emergency measures provided for by the acts referred to in points (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625.
- (4) The operations carried out during documentary checks, identity checks and physical checks before the date of application of this Regulation have proven to be effective and ensure a high level of performance of checks. Therefore, the rules laid down in this Regulation should be based on the same principles as the requirements for the performance of documentary checks, identity checks and physical checks laid down in Council Directives 91/496/EEC <sup>(2)</sup>, 97/78/EC <sup>(3)</sup> and 2000/29/EC <sup>(4)</sup>, Commission Regulations (EC) No 136/2004 <sup>(5)</sup> and (EC) No 282/2004 <sup>(6)</sup> and Commission Decision 97/794/EC <sup>(7)</sup>.

<sup>(1)</sup> OJ L 95, 7.4.2017, p. 1.

<sup>(2)</sup> Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (OJ L 268, 24.9.1991, p. 56).

<sup>(3)</sup> Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (OJ L 24, 30.1.1998, p. 9).

<sup>(4)</sup> 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).

<sup>(5)</sup> Commission Regulation (EC) No 136/2004 of 22 January 2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries (OJ L 21, 28.1.2004, p. 11).

<sup>(6)</sup> Commission Regulation (EC) No 282/2004 of 18 February 2004 introducing a document for the declaration of, and veterinary checks on, animals from third countries entering the Community (OJ L 49, 19.2.2004, p. 11).

<sup>(7)</sup> Commission Decision 97/794/EC of 12 November 1997 laying down certain detailed rules for the application of Council Directive 91/496/EEC as regards veterinary checks on live animals to be imported from third countries (OJ L 323, 26.11.1997, p. 31).

- (5) All relevant documents which are required to accompany consignments of the categories of animals and goods referred to in Article 47(1) of Regulation (EU) 2017/625 should be checked to ensure that they are based on the relevant model document, that the general certification requirements are fulfilled and that they provide the guarantees required under Union legislation or applicable national rules.
- (6) When consignments of certain categories of goods referred to in Article 47(1) of Regulation (EU) 2017/625 enter the Union, Union legislation provides that laboratory analyses, tests or diagnoses are to be carried out or that the means of transport are to be sealed to ensure a high level of consumer protection and to prevent any risk for public, animal and plant health. In such cases, the results of the laboratory analyses, tests or diagnoses or the seal numbers should be recorded in the Common Health Entry Document (CHED).
- (7) To ensure traceability of the animals and goods entering the Union, the original and, where applicable, the copy of the official certificates or documents should be kept for a certain period at the border control post of arrival into the Union.
- (8) Since this Regulation lays down provisions in the areas covered by Regulations (EC) No 136/2004 and (EC) No 282/2004 and Decision 97/794/EC, these acts should be repealed with effect from the date of application of this Regulation.
- (9) Regulation (EU) 2017/625 applies from 14 December 2019. Accordingly, the rules laid down in this Regulation should also apply from that date.
- (10) 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:

#### *Article 1*

##### **Subject matter and scope**

This Regulation lays down detailed rules on the operations to be carried out during and after the documentary checks, identity checks and physical checks referred to in Articles 49, 50 and 51 of Regulation (EU) 2017/625 on consignments of the categories of animals and goods referred to in Article 47(1) of that Regulation.

#### *Article 2*

##### **Detailed rules for documentary checks**

1. For each consignment of animals and goods referred to in Article 1, the competent authority shall ascertain the use to which the animals and goods are assigned pursuant to the official certificates, official attestations and other documents accompanying the consignment as well as the destination of the consignment indicated in these certificates, attestations and documents.
2. The competent authority shall inspect all official certificates, official attestations and other documents referred to in point (41) of Article 3 of Regulation (EU) 2017/625 or their electronic equivalents submitted in the information management system for official controls (IMSOC) referred to in Article 131 of that Regulation or via existing national systems in order to ascertain that:
  - (a) they are issued by the competent authority of the third country, where applicable;
  - (b) they fulfil the requirements set out in Articles 89(1) and 91(2) of Regulation (EU) 2017/625 and in the implementing acts referred to in Article 90 of that Regulation;
  - (c) they correspond to the model established by the rules referred to in Article 1(2) of Regulation (EU) 2017/625;
  - (d) the information contained in the certificates or documents complies with the rules referred to in Article 1(2) of Regulation (EU) 2017/625
3. The competent authority shall check that the operator responsible for the consignment completed the relevant part of the Common Health Entry Document (CHED) fully and correctly as required by Article 56(1) of Regulation (EU) 2017/625 and that the information in it corresponds to the information provided in the official certificates, official attestations and other documents accompanying the consignment.

*Article 3***Detailed rules for identity checks**

1. During identity checks on consignments of animals and goods referred to in Article 1, the competent authority shall verify that the following elements correspond to the information provided in the official certificates, official attestations and other documents accompanying the consignments:

- (a) the number of animals, their species, breed, sex, age and category, where applicable;
- (b) the content of the consignments;
- (c) the quantity of the consignments;
- (d) the appropriate stamps and identification marks or codes, where applicable;
- (e) the identification of the means of transport, where applicable;
- (f) seals on containers or means of transport, where applicable.

2. For consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products, the identity checks may be limited to points (e) and (f) of paragraph 1 in the cases where:

- (a) the consignments are not selected for physical checks;
- (b) the consignments have been loaded in transport units which are closed and locked by a seal;
- (c) seals on containers or means of transport are intact and not tampered with;
- (d) the seals on containers or means of transport were fixed by or under the supervision of the competent authority issuing the official certificate; and
- (e) the information available on seals corresponds to that given in the accompanying official certificate required by the rules referred to in Article 1(2) of Regulation (EU) 2017/625.

3. For consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products, the selection of items or packages for identity checks shall cover 1 % of the items or packages in a consignment, with a minimum of two and up to a maximum of 10 items or packages. Where, on the basis of selected items or packages the competent authority is not able to complete the identity check, the number of items or packages checked may be increased to perform more extensive checks and may reach the total number of items or packages in the consignment concerned.

4. For consignments of animals, identity checks shall be based on the following rules:

- (a) for animals for which individual identification is required by Union legislation, at least 10 % of the animals with a minimum of 10 animals shall be selected from the consignment so as to constitute a representative sample. Where the consignment contain less than 10 animals, the identity checks shall be carried out on each animal in the consignment;
- (b) for animals for which individual identification is not required by Union legislation, the marking shall be checked of a representative number of packages or containers;
- (c) if the identity checks laid down in points (a) and (b) have not been satisfactory, the number of animals checked shall be increased and may reach the total number of animals in the consignment concerned.

5. Consignments shall be partially or fully unloaded from the means of transport where it is necessary to have full access to the whole consignment for the purpose of identity checks.

*Article 4***Detailed rules for physical checks**

1. During physical checks on consignments of animals and goods referred to in Article 1, the competent authority shall verify that the consignments comply with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 applicable to the particular animals or goods and the specific requirements defined in the relevant official certificates, official attestations and other documents.

2. Consignments shall be partially or fully unloaded from the means of transport where it is necessary to have access to the whole consignment for the purpose of physical checks.

3. Physical checks on animals shall be carried out in accordance with the requirements set out in Annex I to this Regulation.

4. Physical checks on products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products and on food and feed of non-animal origin subject to temporary increase of controls, other conditions of entry into the Union and emergency measures provided for by the acts referred to in points (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625 shall be carried out in accordance with the requirements set out in Annex II to this Regulation.
5. Laboratory tests to detect hazards on products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products shall be carried out in accordance with the monitoring plan referred to in point 5 of Annex II.
6. Physical checks on plants, plant products and other objects referred to in point (c) of Article 47(1) of Regulation (EU) 2017/625 and, where applicable, subject to emergency measures provided for in the acts referred to in point (e) of Article 47(1) of that Regulation shall be carried out in accordance with the requirements set out in Annex III to this Regulation.
7. The following consignments of animals may be placed on the market before the results of laboratory tests carried out during physical checks are available:
  - (a) consignments of ungulates sampled in line with sampling requirements referred in part III of Annex I, where no immediate danger to public health or animal health is suspected from those ungulates; and
  - (b) consignments of other animals referred to in point (a) of Article 47(1) of Regulation (EU) 2017/625, where no immediate danger to public health or animal health is suspected from those animals.
8. Consignments of goods tested pursuant to the monitoring plan referred to in paragraph 5, for which no immediate danger to public health or animal health is suspected, may be placed on the market before the laboratory test results are available.
9. Where consignments of plants, plant products and other objects referred to in point (c) of Article 47(1) of Regulation (EU) 2017/625 are sampled for laboratory analysis during physical checks and no immediate danger to plant health is suspected, such consignments may be placed on the market before the laboratory test results are available.

#### *Article 5*

##### **Operations to be carried out after documentary checks, identity checks and physical checks**

1. After completion of the checks provided for in Article 49(1) of Regulation (EU) 2017/625, the competent authority shall:
  - (a) close and identify with an official mark the packages which it has opened for the purpose of identity checks or physical checks;
  - (b) in the cases required by Union legislation, seal the means of transport and enter the seal number in the CHED.
2. The competent authorities shall record in the CHED all the results of laboratory analyses, tests or diagnoses, as soon as they are available, of consignments which have been tested and placed on the market before laboratory test results are available.
3. The original official certificates or documents, or electronic equivalents, referred to in Article 50(1) of Regulation (EU) 2017/625 shall be kept by the competent authority of the border control post of arrival into the Union for at least three years from the date on which the consignments were authorised to enter the Union.

However, the original certificate or documents for the plants, plant products and other objects referred to in point (c) of Article 47(1) of Regulation (EU) 2017/625 may be kept by means of electronic storage of information provided that such information is generated by the competent authority on the basis of the original certificate or documents. In such cases, the original certificate or document shall be invalidated or destroyed by the competent authority.

4. Where the rules referred to in Article 1(2) of Regulation (EU) 2017/625 do not require original certificates or documents to be presented to, and kept by, the competent authority, a copy of the original official certificate or documents referred to in Article 50(1) of Regulation (EU) 2017/625 shall be kept by the competent authority of the border control post of arrival into the Union for at least three years from the date on which the consignments were authorised to enter the Union or for onward travel in paper or electronic format.

*Article 6***Repeals**

1. Regulation (EC) No 282/2004 and Decision 97/794/EC are repealed with effect from 14 December 2019.
2. Regulation (EC) No 136/2004 is repealed with effect from 14 December 2019.

However, Article 9 of Regulation (EC) No 136/2004 shall continue to apply until 20 April 2021 in respect of the list of countries authorised and listed in Annex V to that Regulation.

*Article 7***Entry into force and date of application**

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

It shall apply from 14 December 2019.

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

Done at Brussels, 25 November 2019/

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX I

**Detailed rules on the operations to be carried out during physical checks on animals referred to in Article 4(3)**

## I. Inspection regarding fitness of the animals for further transport

1. An overall assessment of all animals shall be made by visual inspection to assess their fitness for further transport, taking into account the length of the journey already undertaken, including feeding, watering and resting arrangements that had been provided. Account shall be taken of the length of the journey that remains to be undertaken including the proposed feeding, watering and resting arrangements during this part of journey.
2. The means of transport of the animals and the journey log shall be checked for compliance with Council Regulation (EC) No 1/2005 <sup>(1)</sup>.

## II. Clinical examination

1. The clinical examination of the animals shall consist of a visual examination of all animals and shall comprise of at least the following:
  - (a) a visual examination of the animals, including an overall assessment of their health status, their ability to move freely, the condition of their skin and mucosae and any evidence of abnormal discharges;
  - (b) monitoring of the respiratory and alimentary systems;
  - (c) random monitoring of the body temperature in cases when abnormalities have been detected in accordance with points (a) or (b);
  - (d) palpation in cases when abnormalities have been detected in accordance with points (a), (b) or (c).
2. Consignments of animals intended for breeding or production shall be subject to clinical examination of at least 10 % of the animals with a minimum of 10 animals, which shall be selected so as to be representative of the whole consignment. Where the consignment contains less than 10 animals, the checks shall be carried out on each animal in the consignment.
3. Consignments of animals intended for slaughter shall be subject to clinical examination of at least 5 % of the animals with a minimum of five animals, which shall be selected so as to be representative of the whole consignment. Where the consignment contains less than five animals, the checks shall be carried out on each animal in the consignment.
4. The number of animals checked in accordance with points 2 and 3 shall be increased and may reach the total number of animals in the consignment concerned, if the physical checks carried out have not been satisfactory.
5. The animals listed below shall not be subject to individual clinical examination:
  - poultry,
  - birds,
  - aquaculture animals and all live fish,
  - rodents,
  - lagomorphs,
  - bees and other insects,
  - reptiles and amphibians,
  - other invertebrates,
  - certain zoo and circus animals, including ungulates, considered to be dangerous,
  - fur animals.

<sup>(1)</sup> Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ L 3, 5.1.2005, p. 1).

6. For the animals listed in point 5, clinical examination shall consist of observation of the state of health and behaviour of the entire group or of a representative number of animals. If the above mentioned clinical examination reveals an anomaly, a more thorough clinical examination shall be carried out, including sampling, where appropriate.
7. In case of live fish, crustaceans and molluscs, and animals destined for scientific research centres and having a certified specific health status, which are transported in sealed containers under controlled environmental conditions, a clinical examination and sampling shall be carried out only where it is considered that a specific risk may exist because of the species involved or because of their origin, or where there are other irregularities.

### III. Sampling procedure of ungulates

1. Concerning consignments of ungulates, sampling with a view to checking compliance with the health requirements laid down in the accompanying official certificates or documents, or electronic equivalents, shall be undertaken as follows:
  - (a) At least 3 % of the consignments that have arrived each month at the border control post shall be subject to serological sampling, with the exception of registered horses as defined in Article 2(c) of Commission Implementing Regulation (EU) 2018/659 <sup>(2)</sup>, and shall be accompanied by an individual health certificate attesting compliance with the animal health requirements set out in that Implementing Regulation. At least 10 % of the animals in each consignment shall be sampled, with a minimum of four animals. Should the competent authority have reasons to suspect that this sampling is not conclusive, that percentage shall be increased and may reach the total number of animals in the consignment concerned.
  - (b) Following a risk assessment by the official veterinarian or where provided for in Union legislation, the necessary samples may be taken from any animal in a consignment presented for official controls.
  - (c) The necessary laboratory tests, performed with a view to verifying compliance with animal health requirements or, where appropriate, the existence of residues and contaminants, shall be carried out without delay.

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<sup>(2)</sup> Commission Implementing Regulation (EU) 2018/659 of 12 April 2018 on the conditions for the entry into the Union of live equidae and of semen, ova and embryos of equidae (OJ L 110, 30.4.2018, p. 1).



## ANNEX II

**Detailed rules on the operations to be carried out during physical checks on goods referred to in Article 4(4)**

1. The competent authority shall carry out physical checks to verify:
  - (a) that the transport conditions ensured the proper preservation of the goods taking into account their purpose;
  - (b) that the temperature range during transport required by Union legislation was maintained and there were no shortcomings or breaks in the cold chain, by means of examination of records of temperature range during transport;
  - (c) the integrity of the packaging material.
2. The competent authority shall carry out physical checks to verify that the labelling of the 'use by' date complies with Regulation (EU) No 1169/2011 of the European Parliament and of the Council <sup>(1)</sup>.

The competent authority may carry out physical checks to verify that the labelling complies with other requirements laid down in the rules referred to in Article 1(2) of Regulation (EU) 2017/625.

3. The competent authority shall verify that the goods are fit to be used for the intended purpose and that their properties have not changed during transport, by means of:
  - (a) sensory examination of the smell, colour, consistency or taste of the goods; or
  - (b) simple physical or chemical tests by cutting, defrosting or cooking the goods; or
  - (c) laboratory tests.
4. In respect of consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products, the competent authority shall carry out the operations referred to in point 3 as follows:
  - (a) a selection of items or packages, or samples in the case of bulk products, shall be collected before carrying out the operations referred to in point 3;
  - (b) the selection of samples for examination mentioned in points (a) and (b) of point 3 shall cover 1 % of the items or packages in a consignment, with a minimum of two items or packages and up to a maximum of 10 items or packages. If necessary, the competent authority may increase the number of items or packages checked to perform more extensive checks;
  - (c) the tests referred to in points 3(b) and (c) shall be carried out on a range of samples selected so as to be representative of the entire consignment.
5. For the purposes of implementation of Article 4(5), the competent authority shall develop a monitoring plan, with the objective of monitoring the conformity with the rules referred to in Article 1(2) of Regulation (EU) 2017/625, and in particular of detecting hazards by indicating the goods to be examined and the testing to be carried out, and shall carry out the laboratory tests referred to in point 3(c) in accordance with that plan.

Such monitoring plan shall be risk-based taking into account all relevant parameters, such as the nature of the goods, the risk they represent, the frequency and number of incoming consignments and the results of previous monitoring.

<sup>(1)</sup> Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).

6. In respect of consignments of food and feed of non-animal origin subject to measures provided for in the acts referred to in points (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625, the competent authority shall carry out physical checks in accordance with the following rules:
- (a) physical checks shall include laboratory tests in accordance with the acts referred to in points (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625;
  - (b) physical checks shall be carried out in such a way that it is not possible for food and feed business operators or their representatives to predict whether any particular consignment will be subjected to such checks;
  - (c) the results of physical checks shall be available as soon as technically possible;
  - (d) the consignments tested must be placed under official detention pending the outcome of laboratory tests, unless onward transportation to the place of final destination is authorised by the competent authority at the border control post in accordance with Article 4 of Commission Delegated Regulation 2019/2124 <sup>(2)</sup>.

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<sup>(2)</sup> Commission Delegated Regulation (EU) 2019/2124 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation, amending Commission Regulations (EC) No 798/2008, (EC) No 1251/2008, (EC) No 119/2009, (EU) No 206/2010, (EU) No 605/2010, (EU) No 142/2011, (EU) No 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/EC (see page 73 of this Official Journal).

## ANNEX III

**Detailed rules on the operations to be carried out during physical checks on plants, plant products and other objects referred to in Article 4(6)**

1. The competent authority shall carry out physical checks of consignments and their lots in their entirety or on representative samples. Homogenous lots in the consignment shall be identified based on the information provided in the official phytosanitary certificate and taking into account the elements referred to in point 2.
2. The homogeneity of a lot within the meaning of Article 2(7) of Regulation (EU) 2016/2031 of the European Parliament and of the Council <sup>(1)</sup>, shall be identified on the basis of the following elements, as presented in the official phytosanitary certificate:
  - origin,
  - grower,
  - packing facility,
  - type of packaging,
  - genus, species, variety, or degree of maturity,
  - exporter,
  - area of production,
  - regulated pests and their characteristics,
  - treatment at origin,
  - type of processing.
3. Sampling of lots in a consignment shall include the identification of the appropriate independent unit for sampling. In the case of certain plants or plant products, the unit shall be identified as follows:
  - fruit in the botanical sense: 1 fruit,
  - cut flower: 1 stem,
  - foliage, leafy vegetable: 1 leaf,
  - tubers, bulbs, rhizomes: 1 tuber or bulb or rhizome,
  - plants intended for planting: 1 plant,
  - branches: 1 branch,
  - wood and bark: to be determined on a case by case basis, with the smallest piece weighing not less than 1 kg,
  - seed: one seed.

When the unit is not definable because of the size, shape or way of packaging, the smallest package unit shall be defined as the sampling unit.

4. Sampling for physical checks performed by visual inspection shall be carried out under the following sampling schemes depending on the goods and as referred to in the relevant table of the International Standards for Phytosanitary Measures No 31 *Methodologies for sampling of consignments* (ISPM31):
  - (a) rooted non-dormant plants for planting:
    - sampling scheme able to identify with 95 % reliability a level of presence of infected plants of 1 % or above;
  - (b) dormant plants for planting including tubers, bulbs and rhizomes:
    - sampling scheme able to identify with 95 % reliability a level of presence of infected plants of 2 % or above;

<sup>(1)</sup> Regulation (EU) 2016/2031 of the European Parliament and 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).

- (c) seeds or plant products that comply with the specific conditions listed in Articles 3 and 4 of Commission Regulation (EC) No 1756/2004 <sup>(2)</sup>:
    - sampling scheme able to identify with 80 % reliability a level of presence of infected plants of 5 % or above;
  - (d) unrooted cuttings, plants, plant products and other objects, not falling under points (a), (b) and (c):
    - sampling scheme able to identify with 95 % reliability a level of presence of infected plants of 5 % or above;
  - (e) lots of seeds and leafy vegetables of less than or equal to 500 units:
    - hypergeometric sampling scheme able to identify with 95 % reliability a level of presence of infected plants of 10 % or above.
5. Any measure taken in response to non-compliance shall be related to the lot as identified ahead of the physical checks.
6. A minimum amount of samples for laboratory tests shall be taken for latent infection detection concerning plants for planting according to a risk analysis, in accordance with the following criteria:
- (a) the history of the level of Union quarantine pests intercepted and notified by the Member States, according to point (c) of the first paragraph of Article 11 of Regulation (EU) 2016/2031, including priority pests, as defined in Article 6(1) of that Regulation, of a third country of origin;
  - (b) the occurrence of a priority pest in the third country of origin, according to available scientific information;
  - (c) information available via the IMSOC.
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<sup>(2)</sup> 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).

**COMMISSION IMPLEMENTING REGULATION (EU) 2019/2131****of 28 November 2019****amending Implementing Regulation (EU) 2019/1198 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Articles 13(3) and 14(5) thereof,

Whereas:

**1. PROCEDURE****1.1. Existing measures**

- (1) By Council Implementing Regulation (EU) No 412/2013 <sup>(2)</sup> ('the original Regulation'), as amended by Commission Implementing Regulation (EU) 2017/1932 <sup>(3)</sup>, the Council imposed a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China ('China' or 'the PRC'). The individual anti-dumping duties in force ranged from 13,1 % to 23,4 %. All non-sampled cooperating exporting producers listed in an Annex to that Regulation received a duty of 17,9 % and all other exporting producers were subject to the residual duty of 36,1 %. These measures will hereinafter be referred to as 'the original measures' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.
- (2) By Commission Implementing Regulation (EU) No 803/2014 <sup>(4)</sup>, four Chinese exporting producers received the non-sampled cooperating duty of 17,9 % and were added to the list of exporting producers from China in the Annex to the original Regulation.
- (3) By Commission Implementing Regulation (EU) 2017/2207 <sup>(5)</sup>, another four Chinese exporting producers received the non-sampled cooperating duty of 17,9 % and were added to the list of exporting producers from China in the Annex to the original Regulation.
- (4) By Commission Implementing Regulation (EU) 2019/1198, the Commission maintained the original measures pursuant to Article 11(2) of the basic Regulation <sup>(6)</sup>. These measures will hereinafter be referred to as 'the measures in force' and the expiry review investigation will be hereinafter referred to as 'the last investigation'.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> Council Implementing Regulation (EU) No 412/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China (OJ L 131, 15.5.2013, p. 1).

<sup>(3)</sup> Commission Implementing Regulation (EU) 2017/1932 of 23 October 2017 amending Council Implementing Regulation (EU) No 412/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China (OJ L 273, 24.10.2017, p. 4).

<sup>(4)</sup> Commission Implementing Regulation (EU) No 803/2014 of 24 July 2014 amending Council Implementing Regulation (EU) No 412/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China (OJ L 219, 25.7.2014, p. 33).

<sup>(5)</sup> Commission Implementing Regulation (EU) 2017/2207 of 29 November 2017 amending Council Implementing Regulation (EU) No 412/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China (OJ L 314, 30.11.2017, p. 31).

<sup>(6)</sup> Commission Implementing Regulation (EU) 2019/1198 of 12 July 2019 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 (OJ L 189, 15.7.2019, p. 8).

### 1.2. Ex-officio initiation

- (5) In early 2019, the Commission analysed available evidence on the patterns and channels of sales of ceramic tableware and kitchenware since the imposition of the original measures. The comparison of export figures between 2014 and 2018 revealed a sharp rise or fall in the exports of certain exporting producers, which constituted an indicator for channelling practices. Moreover, in some cases, the actual exports from certain exporting producers exceeded the declared production. There was also the issue of the misuse of company-specific TARIC additional codes.
- (6) From these indicators, it appeared that certain exporting producers currently subject to the residual duty of 36,1 % and exporting producers subject to an individual duty were selling their ceramic tableware and kitchenware via other exporting producers subject to a lower duty.
- (7) The change in the pattern of trade regarding exports from China of ceramic tableware and kitchenware, following the imposition of the original measures, for which there was insufficient due cause or economic justification other than the imposition of the duty, would appear to have stemmed from the above-mentioned channelling practices. Furthermore, the evidence available to the Commission pointed to the fact that the remedial effects of the existing anti-dumping measures on the product concerned were being undermined both in terms of quantities and prices. Indeed, the volumes of imports of the product under investigation, as defined in recital (15), increased for certain exporting producers significantly between 2014 and 2018. Moreover, in some cases, the actual exports from certain exporting producers exceeded their declared production. In addition, there was sufficient evidence that the imports of the product under investigation were at prices below the non-injurious price established in the investigation that led to the existing measures.
- (8) Finally, the Commission had sufficient evidence at its disposal that the exports of the product under investigation were dumped in relation to the normal value previously established.
- (9) Therefore, the Commission determined, after having informed the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13 of the basic Regulation. As a result, the Commission adopted Regulation (EU) 2019/464 <sup>(7)</sup> (the 'initiating Regulation'), launching on its own initiative an investigation on the possible circumvention of the anti-dumping measures on imports of ceramic tableware and kitchenware originating in China imported under the 50 TARIC additional codes listed in the Annex to the initiating Regulation. These TARIC additional codes had been attributed to 50 exporting producers that were either groups of companies or individual companies from the PRC ('companies').
- (10) The Commission also directed customs authorities to register imports of ceramic tableware and kitchenware imported under the 50 TARIC additional codes listed in the annex to the initiating Regulation.

### 1.3. Investigation

- (11) The Commission notified the authorities of the PRC, the 50 exporting producers listed in the Annex to the initiating Regulation and the Union industry about the initiation of the investigation. It also sent questionnaires to the 50 exporting producers listed in this Annex, asking also information in respect of any related company, located in the People's Republic of China. Interested parties were given the opportunity to make their views known in writing, as well as to request a hearing.
- (12) The above-mentioned 50 exporting producers listed in the Annex to the initiating Regulation were subject to the following anti-dumping duties:
  - 48 of them belonged to the group of non-sampled cooperating exporting producers with a rate of duty of 17,9 %;
  - The two remaining exporting producers had individual rates of duty of 22,9 % and 23,4 %.

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<sup>(7)</sup> Commission Implementing Regulation (EU) 2019/464 of 21 March 2019 initiating an investigation concerning possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 412/2013 on imports of ceramic tableware and kitchenware originating in the People's Republic of China, and making such imports subject to registration (OJ L 80, 22.3.2019, p. 18).

#### 1.4. Reporting period and investigation period

- (13) The investigation period covered the period from 1 January 2015 to 31 December 2018 (the 'IP'). For the IP data were collected to investigate, inter alia, the alleged change in the pattern of trade and the practice, process or work behind it. For the period from 1 January 2018 to 31 December 2018 (the reporting period or 'the RP'), more detailed data were collected in order to examine the possible undermining of the remedial effect of the measures in force and the existence of dumping.

## 2. RESULTS OF THE INVESTIGATION

### 2.1. General considerations

- (14) Pursuant to Article 13(1) of the basic Regulation, the Commission analysed whether there was a change in the pattern of trade with respect to individual exporting producers in the PRC, whether this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than avoiding the imposition of the duty, whether there was evidence of injury or that the remedial effects of the duty were being undermined in terms of prices and/or quantities of the product under investigation, and whether there was evidence of continued dumping.

### 2.2. Product concerned and product under investigation

- (15) The product concerned is ceramic tableware and kitchenware, currently falling under CN codes ex 6911 10 00, ex 6912 00 21, ex 6912 00 23, ex 6912 00 25 and ex 6912 00 29 (TARIC codes 6911 10 00 90, 6912 00 21 11, 6912 00 21 91, 6912 00 23 10, 6912 00 25 10 and 6912 00 29 10) and originating in the People's Republic of China ('the product concerned').

The following products are excluded:

- ceramic condiment or spice mills and their ceramic grinding parts,
  - ceramic coffee mills,
  - ceramic knife sharpeners,
  - ceramic sharpeners,
  - ceramic kitchen tools to be used for cutting, grinding, grating, slicing, scraping and peeling, and
  - cordierite ceramic pizza-stones of a kind used for baking pizza or bread.
- (16) The product under investigation is the same as 'the product concerned' defined in the previous recital, currently falling under the same CN and TARIC codes as the product concerned and imported under the TARIC additional codes listed in the Annex to the initiating Regulation ('the product under investigation').

### 2.3. Detailed findings of the investigation for the 50 exporting producers

#### 2.3.1. *The 13 companies that did not submit questionnaire replies*

- (17) 13 out of 50 exporting producers did not submit any questionnaire replies.
- (18) The Commission qualified these 13 exporting producers as non-cooperating pursuant to Article 18(1) of the basic Regulation and consequently based its findings for them on the facts available as explained in the next recital.
- (19) All 13 exporting producers, subject to a rate of duty of 17,9 %, had sharply increased their exports between 2014 and 2018, or exported above their capacity, as declared in the framework of the sampling exercise during the last expiry review investigation. In the absence of any economic justification other than circumvention practices, the Commission concluded that these exporting producers are engaged in channelling practices. Therefore, it is appropriate that their company-specific TARIC additional codes should be repealed and that these exporting producers should be subject to the residual rate of duty of 36,1 %.
- (20) Moreover, three of the 13 exporting producers were related to three other exporting producers having the non-sampled cooperating rate of duty of 17,9 % because of their own individual TARIC additional code.

- (21) Consequently, to avoid the risk of channelling practices via these related companies, before disclosure, the Commission preliminarily concluded that it was appropriate that their company-specific TARIC additional code should be repealed. The residual rate of duty of 36,1 % should also be applied to the three related exporting producers.
- (22) Following disclosure, one of the three companies came forward and claimed that it was not related to one of the companies that did not submit a questionnaire reply. At a hearing of 10 October 2019 and in a subsequent letter of 21 October 2019, it explained that its sampling reply from the expiry review had wrongly indicated that both companies were related, although in reality they were just business partners. Upon request of the Commission, the company provided the documents about its company structure and shareholders, which showed that indeed no such relationship exists. Absent the relationship and in view of that company's demonstration that its increased export activity was in line with an increase of its production capacity in 2016, the Commission concluded that it was not necessary to repeal the company-specific TARIC additional code of this company.
- (23) Consequently, following disclosure, the Commission finally concluded that the residual rate of duty of 36,1 % should be applied to:
- The 13 out of 50 exporting producers that did not submit any questionnaire replies (see recital (19) before), and;
  - The two exporting producers that were related to two out of these 13 exporting producers and that had their own company-specific TARIC additional codes.

#### 2.3.2. *The 18 exporting producers that submitted highly deficient questionnaire replies*

- (24) When analysing the questionnaire replies from the 37 exporting producers who did submit replies, the Commission found 18 of them to have submitted highly deficient replies as explained in the following recitals.
- (25) A first exporting producer submitted partial information and declared on 28 April 2019 that it had ceased producing the product concerned in August 2018. The Commission informed the company on 3 June 2019 that only exporting producers are entitled to an individual TARIC additional code. Therefore, it intended to remove its TARIC additional code and to treat the company as any other company under the TARIC additional code 'B999' in the future. The company did not submit further comments.
- (26) A second exporting producer, also subject to an anti-dumping duty of 17,9 %, provided via several submissions in April and May 2019 a questionnaire reply. This reply indicated that the exporting producer only had one related company. The Commission crosschecked that reply with other publicly available sources of information. It established that there were other related companies within this group, which had not been disclosed by the company in its questionnaire reply. The exporting producer was informed of that finding in a deficiency letter of 24 June 2019. Subsequently, the exporting producer admitted on 28 June 2019 that it was also related to another company. However, the exporting producer group did not fill out the requested questionnaire reply for the latter company within the set time-limits. Therefore, the Commission informed the exporting producer on 8 July 2019 that it would make its findings based on facts available <sup>(8)</sup>, and that the company had the right to request a hearing with the Hearing Officer in Trade Proceedings. The exporting producer did not submit further comments.
- (27) A third exporting producer informed the Commission on 5 July 2019 that it was unable to answer to the Commission's deficiency letter and that it was well aware of the adverse consequence of not replying. Therefore, the Commission informed the exporting producer on 9 July 2019 that it would make its findings based on facts available <sup>(9)</sup> and that the company had the right to request a hearing with the Hearing Officer in Trade Proceedings. The exporting producer did not submit further comments.

<sup>(8)</sup> This exporting producer could not provide any evidence for an economic justification for its exports in 2018 other than channelling the product concerned produced by other Chinese exporting producers.

<sup>(9)</sup> The company did not provide within the time-limits set the necessary information in the questionnaire reply concerning, inter alia, the financial, sales and production data. As a result, this exporting producer could not provide any evidence for an economic justification for its exports in 2018 other than channelling.



- (28) The 15 remaining exporting producers which had submitted highly deficient replies received each a letter between 27 May and 18 July 2019 detailing the reasons why the Commission preliminary concluded that their replies were highly deficient. Recurring issues which led to the Commission's preliminary assessment that these 15 replies were highly deficient include the following:
- Not providing the requested financial information such as the financial statements, trial balances, a breakdown of sales quantities and values;
  - Providing incomplete, contradictory or only partial financial information, as regards the production process, production quantity and/or production capacity, the procurement of raw materials;
  - Not replying to specific questions of the questionnaire;
  - Not providing the requested official documents, such as the business licence, the proof of registration, the income tax returns;
  - Not disclosing all related companies of the Group, despite the specific request in the questionnaire reply, and consequently, not providing the necessary questionnaire replies for these related companies.
- (29) Each of these 15 exporting producers was also informed through the same letter that:
- They had the right to provide further explanations in response to the Commission's preliminary assessment within a one-week timeline from the sending of the letter, pursuant to Article 18(4) of the basic Regulation;
  - The Commission intended to make its final findings based on facts available as provided under recitals (21) to (23) of the initiating Regulation.
- (30) Subsequently, of these 15 exporting producers,
- Three did not contest the Commission's preliminary assessment;
  - Six provided answers to the Commission's preliminary assessment. In all cases the answers were unsatisfactory, false and/or misleading;
  - One exporting producer admitted that it had stopped production after May 2018 and that it had become a trader of the product concerned.
- (31) Two other (out of these 15) exporting producers provided subsequently some additional documents, although their replies could still not be considered to be fully complete. Nevertheless, the Commission decided to carry out verification visits at the premises of these two exporting producers. During these verification visits, the Commission identified issues at both exporting producers, respectively the non-disclosure of related companies and incorrect declarations on the transformation of certain types of the product concerned. Therefore, the Commission informed on 7 August 2019 both exporting producers that it would maintain its intention to apply Article 18 of the basic Regulation. The Commission pointed to the fact that the exporting producers could not provide any evidence for an economic justification for their exports in 2018 other than channelling the production from other Chinese exporting producers. In the same letter, the Commission also informed both exporting producers that they were entitled to request a hearing with the Hearing Officer in Trade Proceedings by 16 August 2019 at the latest. Both companies did not request a hearing by the set deadline.
- (32) On 1 August 2019, another exporting producer submitted additional information as a reaction to the preliminary assessment of the Commission that its questionnaire reply was insufficient. The Commission analysed this additional information. However, some issues such as its failure to provide complete information on all its related companies remained unanswered. Therefore, on 13 August 2019, the Commission informed the exporting producer that it would maintain its intention to apply Article 18 of the basic Regulation. The Commission pointed in this respect to the fact that the exporting producer did not provide any evidence for its exports during 2018, which were more than four times higher than the tonnage the exporting producer actually produced during the same period. In the same letter, the Commission also informed the exporting producer that it was entitled to request a hearing with the Hearing Officer in Trade Proceedings by 23 August 2019 at the latest. The exporting producer did not reply by the set deadline.
- (33) By letters of 18 May and 26 June 2019, the Commission informed another exporting producer about the deficiencies of its replies with respect to the required documentation and about its intention to apply Article 18 of the Basic Regulation. On 2 July 2019, the exporting producer stated that it had provided all the required information and provided again its financial statements from 2015 to 2018, but did not fill out the questionnaire in respect of its related company. On 12 and 22 August 2019, it seized the Hearing Officer of the issue. By letter of

27 August 2019, the Commission informed the exporting producer about the reasons why its additional information of 2 July was still highly incomplete and therefore the Commission maintained its intention to apply Article 18 of the basic Regulation. The Commission pointed to the fact that this exporting producer could not provide any evidence for an economic justification for its exports in 2018 other than channelling the production from other Chinese exporting producers. In the same letter, the Commission informed the exporting producer of the possibility to follow up their request for a hearing by 2 September 2019 at the latest. The exporting producer did not reply by the set deadline. It sent an email to the Commission on 10 September 2019 with an attachment concerning the cancellation of its related company. By letter of 13 September 2019, the Commission reiterated that it maintained its intention to apply Article 18 of the basic Regulation as the latest submission did not offer any new information and the reply remained highly incomplete. As a result, it was concluded that this exporting producer could not provide any evidence for an economic justification for its exports in 2018 other than channelling.

- (34) Finally, one exporting producer requested a hearing with the Commission services, which took place on 18 July 2019. During this hearing, the exporting producer submitted the questionnaire reply of its Hong Kong trader and provided additional documentation and clarifications. After the hearing, this exporting producer provided on the specific request of the Commission all requested documents which showed that it did not engage in channelling practices by selling the product concerned from other unrelated exporting producers under its own TARIC additional code. As a result, the Commission did not maintain its intention to apply Article 18 of the basic Regulation for this exporting producer.
- (35) In summary, 17 out of the 18 exporting producers were duly informed about the consequences of their partial or non-cooperation under recitals (21) to (23) of the initiating Regulation. Therefore, for these 17 companies, the Commission based its findings on the facts available, inter alia, on the data regarding trends in exports to the Union (see for details recital (36)), and on its assessment of the level of deficiency in their questionnaire replies) pursuant to Article 18(1) of the basic Regulation.
- (36) Of these 17 exporting producers,
- 15 had a rate of duty of 17,9 %, and had either sharply increased their exports between 2014 and 2018 or exported above their capacity;
  - The two remaining exporting producers, that had individual rates of duty of 22,9 % and 23,4 %, higher than the non-sampled cooperating rate of duty of 17,9 %, had decreased their exports between 2014 and 2018.

In the absence of any economic justification other than circumvention practices, the Commission concluded that these exporting producers are engaged in channelling.

- (37) Consequently, it is appropriate that the residual duty of 36,1 % should be applied to these 17 exporting producers that initially had a lower duty as explained in recital (12), and their company-specific TARIC additional codes should be repealed. Only one exporting producer was found not to be engaged in circumvention practices as explained in recital (34), and therefore should maintain its individual TARIC additional code and its rate of duty of 17,9 %.
- (38) Following disclosure, three of these 17 companies submitted comments, which were not accepted by the Commission for the reasons set out in recitals (39) to (41) below.
- (39) One company argued that the questionnaire reply had not been properly filled out due to an '*incomplete understanding of the questionnaire*' and a '*lack of understanding of the work of the production department of the company*'. It therefore requested to resubmit the questionnaire reply. In this respect, it should be pointed out that the company had ample opportunity to come forward during the investigation. On 3 June 2019, the Commission had informed it of its intention to repeal the company-specific TARIC additional code in view of the deficiencies identified. The Commission advised the company that it had the right to provide further explanations. Absent any reply, the Commission communicated on 26 June 2019 that '*your company did not provide within the time-limits set the necessary information in the questionnaire reply concerning, inter alia, the financial and production data.*' Following disclosure, the company had another three weeks to submit the necessary data and comments. No additional information was received within those time limits. Therefore, it is appropriate to repeal the company-specific TARIC additional code, as already announced to that company on 3 and 26 June 2019.

- (40) Following disclosure, the second company claimed in an email of 11 October 2019 that it had been fully cooperating, and referred in this respect to its earlier submissions on 28 April and 6 June 2019. It also confirmed in this email that the company is a trading company as per its business licence and that it did not undertake in any channelling practices. In this respect, it should be pointed out that only exporting producers can receive a company-specific TARIC additional code. As the company itself had acknowledged that it was a trader, it is appropriate to repeal the company-specific TARIC additional code, as already announced to that company on 3 and 26 June 2019.
- (41) Finally, the third company claimed that it had been fully cooperating and that it is not involved in channelling practices. In this respect, it should be recalled that the Commission had already informed the company about the deficiencies in its questionnaire reply on 28 May and 26 June 2019. Moreover, on 27 August 2019, the Commission had again explained to the company that many other issues, as outlined in the first letter of 28 May, had remained unanswered. When the last deadline had passed, the Commission informed the company on 13 September 2019 that it failed to provide the requested documents. As a result, the company did not provide sufficient evidence for an economic justification for its increased exports to the Union in 2018 other than channelling production from other Chinese tableware producers. Therefore, it is appropriate to repeal the company-specific TARIC additional code, as already announced to that company on 28 May 2019, 26 June 2019 and 13 August 2019.
- (42) In addition, before disclosure, the Commission noted that three of the 17 exporting producers were related to four other companies having each their own individual TARIC additional code and thus having the non-sampled cooperating duty of 17,9 %.
- (43) Consequently, to avoid the risk of channelling practices via these related companies, the Commission concluded at that stage that it was appropriate that their company-specific TARIC additional code be repealed. The residual duty of 36,1 % should also be applied to the four related companies that initially had all the lower non-sampling cooperating rate of duty of 17,9 %.
- (44) Following disclosure, all four related companies provided comments on the Commission's preliminary assessment that they were related to companies that submitted a highly deficient questionnaire reply, as set out in recitals (45) and (46) below.
- (45) Three of these four companies provided evidence that they were not related to the companies that had submitted a highly deficient reply. The Commission analysed the documentation and concluded that the three companies are indeed not related. Therefore, it is appropriate not to repeal the company-specific TARIC additional code of these three companies.
- (46) The remaining fourth company (company A) came also forward. At a hearing of 10 October 2019 and in a subsequent letter of 18 October 2019, it claimed that the repeal of its own company-specific TARIC additional code was neither legally warranted nor factually justified. It also submitted that there was no risk of intercompany channelling between itself and its related companies (inter alia companies B and C <sup>(10)</sup>). Moreover, it enquired about additional guarantees and commitments that would allow the Commission's monitoring of ceramic tableware produced by the company and imported under its company-specific TARIC additional code.
- (47) The Commission rejected the claim. According to the definition of related companies in Article 127 of Commission Implementing Regulation (EU) 2015/2447 <sup>(11)</sup>, the fourth company (company A) is related to the one that filled out a highly deficient questionnaire reply (company B). At the time of the initiation, there was a strong financial tie, and after the divestment of the shareholding shortly thereafter the relationship continued by virtue of family bonds. Moreover, the company A wrote in its letter of 18 October 2019 that *'there is still a family relation (i.e. husband and wife)'* between one of the current shareholders of that company and one of the current shareholders of the other

<sup>(10)</sup> It should be noted that the letter of 18 October 2019 from company A mainly refers to its relationship to company B, and less to its relationship it has with company C.

<sup>(11)</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

companies, thereby confirming that they are related. It follows that company's B omission to report all related companies in a questionnaire reply can also be attributed to company A. Together, they missed the opportunity to share relevant facts with the Commission, despite a letter of 28 May 2019 to company B to do so. In addition, the past behaviour of the company A indicates that there is a strong risk for intra-company channelling between the related companies. That company increased its exports from 1 657 tonnes in 2014 to 3 929 tonnes in 2018, for which there was no economic justification. Finally, the Commission noted that the possibility to offer an undertaking under Article 8 of the basic Regulation does not exist for anti-circumvention cases under Article 13 of the basic Regulation. Accordingly, it is appropriate to repeal A's company-specific TARIC additional code.

- (48) Moreover, following disclosure, one (company (C)) out of the two companies (companies (B) and (C)) that submitted highly deficient replies and that were related to the remaining fourth company (A), as mentioned in recital (46), came also forward. It requested the Commission to reconsider its intention of applying Article 18 of the basic Regulation. In this respect, it alleged that the main legal base of the Commission's intention to apply Article 18 of the basic Regulation was that it had identified another related company. Moreover, the company claimed that there was only a remote connection between both companies.
- (49) For the same reasons set out above in recital (47), the company C also missed the opportunity to share relevant facts with the Commission, despite a letter of 28 May 2019 to the company to do so. In addition, it is incorrect to claim, in the context of Article 18 of the basic Regulation, that the specific disclosure letter of 27 September 2019 mainly referred to the relationship between companies A and C. The specific disclosure letter mentions specifically that the main reasons to apply Article 18 of the basic Regulation were set out in the letters of 28 May 2019 and 11 June 2019 to the company, where all failures to prove non-circumvention were listed.
- (50) Consequently, following disclosure, to avoid the risk of channelling practices via related companies, the Commission finally concluded that it is appropriate that the company-specific TARIC additional code of the company, mentioned in recital (46) is also repealed. The residual duty of 36,1 % should also be applied to the remaining related company that initially had the lower non-sampling cooperating rate of duty of 17,9 %.

### 2.3.3. *The 19 exporting producers that submitted complete questionnaire replies*

- (51) The remaining 19 exporting producers submitted complete questionnaire replies and verification visits were subsequently carried out at their premises during the period from July to September 2019.
- (52) 17 out of these 19 exporting producers were not found to be engaged in circumvention practices. A large majority of them were established before the imposition of measures against the PRC. The questionnaire replies and the on-spot verifications of, among other factors, production and capacity data, production facilities, costs of production, purchases of raw materials, semi-finished and finished goods and export sales to the Union, confirmed that all 17 exporting producers were only exporting goods manufactured by them.
- (53) With respect to the remaining two exporting producers, the Commission did not find them to be engaged in circumvention practices but identified the following issues as detailed in recitals (54) and (55).
- (54) For the first group, the Commission noted that it had one trading company, which is the parent company, and two exporting producers, all three located at the same premises in China. It also noted that the individual TARIC additional code (with a rate of duty of 17,9 %) had been attributed only to the parent company. As TARIC additional codes have to be attributed to exporting producers, it is appropriate that the Commission now transfers the TARIC additional code from the trading parent company to the two exporting producers of the group pursuant to Articles 2(1) and 9(5) of the basic Regulation.
- (55) In the second group, which also had another related company with its own individual TARIC additional code (with a rate of duty of 17,9 %), the Commission noted a systematic misdeclaration of origin during its verification of the warehouse. Employees were packing the product concerned into inner and outer boxes on which was printed misleading information regarding the country of origin and the producer. The country of origin mentioned was Singapore and the producer, a company located in the same country. The purchase order was received from a trader

established in Hong Kong. The shipment itself was destined for a third country outside the EU, where there are also anti-dumping measures in force on tableware originating from China. The Commission checked at the premises of the companies all supporting documents concerning some selected export sale transactions to the Union and analysed in addition the export data from Singapore to the Union. The Commission could not establish that such illegal behaviour was applied for export sales destined for the EU. Therefore, in the absence of evidence of fraud regarding the EU market, the Commission concluded that the goods produced by both exporting producers and destined for the EU are correctly declared to be of Chinese origin, and thereby did not evade the applicable EU anti-dumping duties.

- (56) Consequently, it is appropriate that 18 out of the 19 exporting producers that submitted complete questionnaire replies and were visited at their premises maintain their duty of 17,9 %. Moreover, for one of these 19 exporting producers, as laid down in recital (54), it is appropriate that the Commission should transfer the TARIC additional code from the trading parent company to the two exporting producers of the group pursuant to Articles 2(1) and 9(5) of the basic Regulation.

## 2.4. Change in the pattern of trade

### 2.4.1. Degree of cooperation and determination of the trade volumes in China

- (57) In the recent expiry review, the Commission analysed the development of the import volumes from the PRC into the Union with reference to Eurostat data, which provide countrywide figures. In the present anti-circumvention investigation it was necessary to assess company-specific data. Such data are available in the database, set up pursuant to Article 14(6) of the basic Regulation. This database gathers the data reported each month to the Commission by Member States on imports of products subject to investigation under each TARIC additional code, as well as the measures, including registration. The Commission therefore used data from the 14(6) database to identify the change in the pattern of trade by comparing exporting producers with higher and lower duties for the purpose this investigation.
- (58) The exporting producers subject to this investigation accounted for 26 % of the total Chinese export volumes of the product under investigation to the Union in the RP, as reported by the 14(6) database. 48 of them had received the non-sampled cooperating duty of 17,9 %.
- (59) As explained in recital (51), only 19 exporting producers cooperated by submitting complete questionnaire replies. Moreover, as explained in recital (34), one additional exporting producer that initially submitted a highly deficient questionnaire reply maintained finally its individual duty of 17,9 %. These 20 exporting producers, all subject to the non-sampled cooperating duty of 17,9 %, accounted for 10 % of the total Chinese imports during the RP.

### 2.4.2. Change in the pattern of trade in China

- (60) Table 1 shows the volume of imports of the product concerned from the PRC into the Union from 1 January 2015 to the end of the reporting period in an aggregate amount.

Table 1

#### Total import volumes from the PRC (in tonnes) into the Union

	2015	2016	2017	2018
Volume of imports	348 003	376 286	403 071	383 460
<i>Index</i>	100	108	116	111

Source: EU Import statistics based on the 14(6) database.

- (61) The volume of total imports from the PRC increased on an aggregate basis by 11 % over the IP and went from 348 003 tonnes in 2015 to 383 460 tonnes during the RP.

- (62) As explained in sections 2.3.1 and 2.3.2, the Commission noted that the exporting producers had either sharply increased their exports between 2014 and 2018, or exported above their capacity, as declared in the framework of the sampling exercise during the last expiry review investigation. In the absence of any economic justification other than circumvention practices, the Commission based its findings for these 30 exporting producers on the facts available, inter alia, data regarding their trends in exports to the Union, and the level of deficiency in their questionnaire replies pursuant to Article 18(1) of the basic Regulation and concluded that all of them are involved in circumvention practices. These 30 exporting producers accounted for 16 % of the total Chinese imports during the RP.
- (63) The 30 exporting producers engaged in circumvention increased their sale volumes to the Union from 52 497 tonnes in 2015 to 63 227 tonnes in 2018. This increase by more than 20 % is in clear contrast with the increase of all Chinese imports into the Union by about 11 %, as laid down in the table in recital (60) of this Regulation.
- (64) In addition, when differentiating between these 30 exporting producers on the basis of their applicable duty rate, a change in the pattern of trade was noted with reference to the period 2015 – 2018, as follows:
- The 28 exporting producers subject to the non-sampled cooperating rate of duty (17,9 %) and engaged in circumvention practices increased their sales volume to the Union by about 12 600 tonnes on an aggregate level (or an average increase in sales volume to the Union per exporting producer of 450 tonnes), whereas the remaining exporting producers subject to the non-sampled cooperating rate of duty (about 370 exporting producers in total) <sup>(12)</sup> increased their sales volume to the Union by only about 20 000 tonnes during the same period (or an average increase in sales volume to the Union per exporting producer of 54 tonnes);
  - The two exporting producers with individual cooperating rates of duty, of 22,9 % and 23,4 % (higher than the non-sampled cooperating duty of 17,9 %) decreased their sales volume to the Union by about 1 900 tonnes, whereas the other three exporting producers with individual rates of duty (not targeted by this investigation) increased their sales volume by 1 450 tonnes. The latter exporting producers had received a – relatively lower – individual duty of respectively 13,1 %, 17,6 % and 18,3 % in the initial investigation.
- (65) These changes in trade flows to the Union constitute a change in the pattern of trade between individual exporting producers in the country subject to measures and the Union, which stems from a practice, process or work for which the investigation did not bring to light any due cause or economic justification other than the avoidance of the residual or the higher duty in force on tableware and kitchenware originating in the PRC.

#### 2.4.3. Nature of the circumvention practice in China

- (66) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stem from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, inter alia, the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to have their products exported to the Union through producers benefiting from an individual duty lower than that applicable to the products of the manufacturers.
- (67) As explained in sections 2.3.1 and 2.3.2, the Commission concluded that 30 out of the 50 exporting producers are involved in channelling practices. These represented 16 % of the total import volumes into the Union during the reporting period, as reported by the 14(6) database.
- (68) The Commission also received in 2018 evidence from the Slovenian customs authorities, showing that the product concerned was imported to the Union by another exporting producer (with a lower duty) than the one that actually manufactured it (with a higher duty). Moreover, during its analysis in the framework of a new exporter review, the Commission also collected evidence of a similar channelling practice whereby the product concerned was on the basis of the packaging labelling imported to the Union by another exporting producer (with a lower duty) than the one that actually manufactured it (with a higher duty). This confirms the findings of the investigation.

<sup>(12)</sup> As mentioned in footnote 4, more than 400 exporting producers are subject to the non-sampled cooperating rate of duty of 17,9 %.

- (69) In light of the considerations above, the Commission established that channelling practices of the product under investigation were taking place on a wide scale.

#### **2.5. Insufficient due cause or economic justification other than the imposition of the anti-dumping duty**

- (70) The investigation did not bring to light any due cause or economic justification for the channelling practices other than the avoidance of the residual or the higher duty in force on tableware and kitchenware originating in the PRC.

#### **2.6. Evidence of dumping**

- (71) In accordance with Article 13(1) of the basic Regulation, the Commission examined whether there was evidence of dumping in relation to the normal value previously established for the like product.
- (72) In both the original Regulation and the last, most recent expiry review, dumping was established. The Commission decided to use the data from the more recent expiry review for establishing the normal value.
- (73) In accordance with Articles 2(11) and 2(12) of the basic Regulation, the average normal value as established in the expiry review Regulation was compared with the weighted average export prices during the RP of the 30 producers found to be circumventing the measures as reported in the 14(6) database.
- (74) Since these export prices were below the normal value, the existence of dumping was confirmed.

#### **2.7. Undermining the remedial effect of the anti-dumping duty**

- (75) Finally, in accordance with Article 13(1) of the basic Regulation, the Commission examined whether the imported products from the 30 exporting producers found to be involved in circumventing practices had, in terms of quantities and prices, undermined the remedial effects of the measures in force.
- (76) In recital (205) of the last expiry review Regulation as mentioned in recital (4), the Commission established that the Union consumption amounted to 634 255 tonnes during the expiry review investigation period (1 April 2017 to 31 March 2018), which is the most recent figure on Union consumption the Commission has in its possession and a useful indicator for the Union consumption of the year 2018. Using this figure, the market share of the imports of the 30 exporting producers engaged in circumvention practices, that amounted to 63 227 tonnes in 2018 according to the 14(6) database, is around 10 % of the total Union market, which is a significant percentage.
- (77) Regarding prices, the average non-injurious price was not established in the expiry review. Therefore, the average cost of production of the Union industry as established in the expiry review investigation was compared with the weighted average CIF prices of the 30 producers found to be circumventing the measures during this investigation's RP as reported in the 14(6) database.
- (78) Since the CIF prices were below the average cost of production of the Union industry, the circumventing imports were undermining the remedial effects of the duty in terms of prices.
- (79) The Commission therefore concluded that the channelling practices described above undermined the remedial effects of the measures in force both in terms of quantities and prices.

### **3. MEASURES**

- (80) Given the above, the Commission concluded that the definitive anti-dumping duty imposed on imports of ceramic tableware and kitchenware originating in the PRC has been circumvented by means of channelling practices via certain Chinese exporting producers subject to a lower duty.
- (81) Pursuant to Article 13(1) of the basic Regulation, the residual anti-dumping duty on imports of the product concerned originating in the PRC should therefore be extended to imports of the same product declared to be manufactured by certain companies subject to a lower duty, as they are actually being produced by companies subject to a higher individual duty or to the residual duty of 36,1 %.

- (82) It is therefore appropriate to extend the measure as established in Article 1(2) of the Commission Implementing Regulation (EU) 2019/1198 <sup>(13)</sup> under ‘all other companies’, which is a definitive anti-dumping duty of 36,1 % applicable to the net, free-at-Union- frontier price, before duty.
- (83) Pursuant to Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measures should apply to imports which entered the Union under registration imposed by the initiating Regulation, duties should be collected on the registered imports of ceramic tableware and kitchenware originating in the PRC that were imported into the Union under the TARIC additional codes of the 30 producers found to be channelling. The amount of anti-dumping duties to be retroactively collected should be the difference between the residual duty of 36,1 % and the amount that that company paid.

#### 4. STRENGTHENING OF THE IMPORT REQUIREMENTS AND MONITORING

- (84) The Commission compared the submitted export data in the questionnaire replies to the data as reported in the 14 (6) database. It noted that for some Chinese exporting producers the reported data in the 14(6) database were higher than the reported data in the questionnaire replies.
- (85) The Commission compared the latter data also with other sources during the on-spot verifications, such as income and VAT tax returns. In many cases, it identified differences between the submitted and subsequently verified export data in the questionnaire replies on the one hand and the reported data in the 14(6) database on the other hand.
- (86) In recital (5), the Commission referred to the misuse of the TARIC additional codes, which are company-specific. Such misuse might explain the above-mentioned differences in the export data as described under recitals (71) and (72).
- (87) The Commission therefore raised the issue of the potential misuse of the company-specific TARIC additional codes with representatives of those exporting producers where the Commission believed, based on its verifications, that their TARIC additional codes were being misused by other companies, rather than the exporting producers themselves being engaged in channelling practices.
- (88) On 4 July 2019, the issue of the potential misuse of the TARIC additional codes was also discussed with the Chinese authorities and the China Chamber of Commerce for Import and Export of Light Industrial Products & Arts-Crafts (hereafter ‘the Chamber’).
- (89) Based on these discussions, the Commission considered that special measures were needed to reduce the risk of any misuse of the company-specific TARIC additional codes, in particular by strengthening import requirements and monitoring in respect of the imports of Chinese kitchenware and tableware to the EU. Given that many Chinese producers are exporting to the EU only via unrelated traders, it is appropriate to strengthen the current system as follows.
- (90) The importer should be required to provide the following documents to the customs authorities of the Member States:
- If the importer buys directly from the Chinese exporting producer, the import declaration must be accompanied by the commercial invoice bearing a declaration of the exporting producer as specified in Annex 2 (‘manufacturer declaration for direct export sale’);
  - If the importer buys from a trader or other intermediate legal person, whether located in mainland China or not, the import declaration must be accompanied by the commercial invoice from the manufacturer to the trader bearing a declaration of the manufacturer as specified in Annex 3 (‘manufacturer declaration for indirect export sale’) and by the commercial invoice from the trader to the importer.

<sup>(13)</sup> Commission Implementing Regulation (EU) 2019/1198 of 12 July 2019 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People’s Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 (OJ L 189, 15.7.2019, p. 8).



- (91) While presentation of these documents is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, these documents are not the only element to be taken into account by the customs authorities. Indeed, even if presented with these documents meeting all the requirements, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (92) Moreover, following the discussions as referred to in recital (88), on 9 August 2019, the Commission sent a letter to the Chinese authorities and the Chamber, proposing them to collaborate in strengthening the import requirements and monitoring system. On 1 September 2019, the Chinese authorities and the Chamber accepted to participate in a new enforcement system as follows: each exporting producer with a duty other than 36,1 % would be asked to send a copy of its commercial invoice to the Chamber, that on its turn would submit an annual report to the Commission concerning the export data to the EU of these exporting producers.
- (93) Following disclosure, the European Ceramic Industry Association commented that it welcomed the detailed findings in the General Disclosure Document and that it supported the proposed actions, such as the monitoring of imports and requiring a series of documents that the Member States will be collecting at Customs.

## 5. DISCLOSURE

- (94) The Commission informed all interested parties of the essential facts and considerations leading to the above conclusions and invited the parties to comment. The oral and written comments submitted by the parties were taken into consideration. None of the arguments presented gave rise to a modification of the definitive findings.
- (95) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

### Article 1

1. The definitive anti-dumping duty of 36,1 % applicable to 'all other companies' imposed by Article 1(2) of Commission Implementing Regulation (EU) 2019/1198 on imports of ceramic tableware and kitchenware, excluding ceramic condiment or spice mills and their ceramic grinding parts, ceramic coffee mills, ceramic knife sharpeners, ceramic sharpeners, ceramic kitchen tools to be used for cutting, grinding, grating, slicing, scraping and peeling, and cordierite ceramic pizza-stones of a kind used for baking pizza or bread, currently falling under CN codes ex 6911 10 00, ex 6912 00 21, ex 6912 00 23, ex 6912 00 25 and ex 6912 00 29 (TARIC codes 6911 10 00 90, 6912 00 21 11, 6912 00 21 91, 6912 00 23 10, 6912 00 25 10 and 6912 00 29 10) and originating in the People's Republic of China, is as of 23 March 2019 extended to imports declared by the companies listed in the following table. Their TARIC additional codes as mentioned in Article 1(2) and Annex I of Implementing Regulation (EU) 2019/1198, listed in the following table shall be repealed and replaced by TARIC additional code B999.

Company	TARIC Additional Code (repealed and replaced)
CHL Porcelain Industries Ltd	B351
Guangxi Province Beiliu City Laotian Ceramics Co., Ltd	B353
Beiliu Chengda Ceramic Co., Ltd	B360
Beiliu Jiasheng Porcelain Co., Ltd	B362
Chaozhou Lianjun Ceramics Co., Ltd	B446

Company	TARIC Additional Code (repealed and replaced)
Chaozhou Xinde Ceramics Craft Factory	B484
Chaozhou Yaran Ceramics Craft Making Co., Ltd	B492
Evershine Fine China Co., Ltd	B514
Far East (Boluo) Ceramics Factory, Co. Ltd	B517
Fujian Dehua Rongxin Ceramic Co., Ltd	B543
Fujian Dehua Xingye Ceramic Co., Ltd	B548
Profit Cultural & Creative Group Corporation	B556
Guangxi Beiliu Guixin Porcelain Co., Ltd	B579
Guangxi Beiliu Rili Porcelain Co., Ltd	B583
Hunan Huawei China Industry Co., Ltd	B602
Hunan Wing Star Ceramic Co., Ltd	B610
Joyye Arts & Crafts Co. Ltd	B619
Liling Rongxiang Ceramic Co., Ltd	B639
Meizhou Gaoyu Ceramics Co., Ltd	B656
Ronghui Ceramic Co., Ltd Liling Hunan China	B678
Shenzhen Donglin Industry Co., Ltd	B687
Shenzhen Fuxingjiayun Ceramics Co., Ltd	B692
Shenzhen Good-Always Imp. & Exp. Co. Ltd	B693
Tangshan Daxin Ceramics Co., Ltd	B712
Tangshan Redrose Porcelain Products Co., Ltd	B724
Xuchang Jianxing Porcelain Products Co., Ltd	B742
Yuzhou Huixiang Ceramics Co., Ltd	B751
Yuzhou Ruilong Ceramics Co., Ltd	B752
Zibo Fuxin Porcelain Co., Ltd	B759
Liling Taiyu Porcelain Industries Co., Ltd	B956

2. Due to their relationship to the companies listed in the table above, the definitive anti-dumping duty of 36,1 % applicable to 'all other companies' imposed by Article 1(2) of Implementing Regulation (EU) 2019/1198 on imports of ceramic tableware and kitchenware, excluding ceramic condiment or spice mills and their ceramic grinding parts, ceramic coffee mills, ceramic knife sharpeners, ceramic sharpeners, ceramic kitchen tools to be used for cutting, grinding, grating, slicing, scraping and peeling, and cordierite ceramic pizza-stones of a kind used for baking pizza or bread, currently falling under CN codes ex 6911 10 00, ex 6912 00 21, ex 6912 00 23, ex 6912 00 25 and ex 6912 00 29 (TARIC codes 6911 10 00 90, 6912 00 21 11, 6912 00 21 91, 6912 00 23 10, 6912 00 25 10 and 6912 00 29 10) and originating in the People's Republic of China, is as of 23 March 2019 also extended to imports declared by the companies listed in the following table. Their TARIC additional codes as mentioned in Annex I of Implementing Regulation (EU) 2019/1198 and which are listed in the following table shall be repealed and replaced by TARIC additional code B999.

Company	TARIC Additional Code (repealed and replaced)
Guandong Songfa Ceramics Co., Ltd	B573
Guangxi Xin Fu Yuan Co., Ltd	B588
Liling Jiaxing Ceramic Industrial Co., Ltd.	B632

3. The table in Article 1(2) of Commission Implementing Regulation (EU) 2019/1198 is hereby replaced by the following table:

Company	Duty (%)	TARIC Additional Code
Hunan Hualian China Industry Co., Ltd; Hunan Hualian Ebillion Industry Co., Ltd; Hunan Liling Hongguanyao China Industry Co., Ltd; Hunan Hualian Yuxiang China Industry Co., Ltd.	18,3 %	B349
Guangxi Sanhuan Enterprise Group Holding Co., Ltd	13,1 %	B350
Shandong Zibo Niceton-Marck Huaguang Ceramics Limited; Zibo Huatong Ceramics Co., Ltd; Shandong Silver Phoenix Co., Ltd; Niceton Ceramics (Linyi) Co., Ltd; Linyi Jingshi Ceramics Co., Ltd; Linyi Silver Phoenix Ceramics Co., Ltd; Linyi Chunguang Ceramics Co., Ltd; Linyi Zefeng Ceramics Co., Ltd.	17,6 %	B352
Companies listed in Annex 1	17,9 %	
All other companies	36,1 %	B999

4. Annex I to the Implementing Regulation (EU) 2019/1198 is hereby replaced by the Annex 1 to this Regulation.

5. The duty extended by paragraph 1 of this Article shall be collected on imports registered in accordance with Article 2 of Implementing Regulation (EU) 2019/464 and Articles 13(3) and 14(5) of Regulation (EU) 2016/1036, for all companies listed in the table under paragraph 1 of this Article.

The amount of anti-dumping duties to be retroactively collected shall be the difference between the residual duty of 36,1 % and the amount that was actually paid.

6. Annex II to Implementing Regulation (EU) 2019/1198 is hereby replaced by the Annexes 2 and 3 to this Regulation. The application of the individual anti-dumping duty rates for the companies mentioned in paragraph 3 shall be conditional upon presentation to the customs authorities of the Member States of the following documents:

- a) If the importer buys directly from the Chinese exporting producer, the import declaration must be accompanied by the commercial invoice bearing a declaration of the exporting producer as specified in Annex 2 ('manufacturer declaration for direct export sale');
- b) If the importer buys from a trader or other intermediate legal person, whether located in mainland China or not, the import declaration must be accompanied by the commercial invoice from the manufacturer to the trader bearing a declaration of the manufacturer as specified in Annex 3 ('manufacturer declaration for indirect export sale') and by the commercial invoice from the trader to the importer.

7. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### Article 2

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Implementing Regulation (EU) 2019/464.

*Article 3*

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

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

Done at Brussels, 28 November 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX 1

**Cooperating Chinese exporting producers not sampled**

Company	TARIC Additional Code
Amaida Ceramic Product Co., Ltd.	B357
Asianera Porcelain (Tangshan) Ltd.	B358
Beiliu Changlong Ceramics Co., Ltd.	B359
Beiliu City Heyun Building Materials Co., Ltd.	B361
Beiliu Quanli Ceramic Co., Ltd.	B363
Beiliu Shimin Porcelain Co., Ltd.	B364
Beiliu Windview Industries Ltd.	B365
Cameo China (Fengfeng) Co., Ltd.	B366
Changsha Happy Go Products Developing Co., Ltd.	B367
Chao An Huadayu Craftwork Factory	B368
Chaoan County Fengtang Town HaoYe Ceramic Fty	B369
Chao'an Lian Xing Yuan Ceramics Co., Ltd.	B370
Chaoan Oh Yeah Ceramics Industrial Co., Ltd.	B371
Chaoan Shengyang Crafts Industrial Co., Ltd	B372
Chaoan Xin Yuan Ceramics Factory	B373
Chao'an Yongsheng Ceramic Industry Co., Ltd.	B374
Guangdong Baodayi Porcelain Co., Ltd.	B375
Chaozhou Baode Ceramics Co., Ltd,	B376
Chaozhou Baolian Ceramics Co., Ltd.	B377
Chaozhou Big Arrow Ceramics Industrial Co., Ltd.	B378
Chaozhou Boshifa Ceramics Making Co., Ltd.	B379
Chaozhou Cantake Craft Co., Ltd.	B380
Chaozhou Ceramics Industry and Trade General Corp.	B381
Chaozhou Chaofeng Ceramic Making Co., Ltd.	B382
Chaozhou Chengxi Jijie Art & Craft Painted Porcelain Fty.	B383
Chaozhou Chengxinda Ceramics Industry Co., Ltd.	B384
Chaozhou Chenhui Ceramics Co., Ltd.	B385
Chaozhou Chonvson Ceramics Industry Co., Ltd.	B386
Chaozhou Daxin Arts & Crafts Co., Ltd.	B387
Chaozhou DaXing Ceramics Manufactory Co., Ltd	B388
Chaozhou Dayi Ceramics Industries Co., Ltd.	B389
Chaozhou Dehong Ceramics Making Co., Ltd.	B390
Chaozhou Deko Ceramic Co., Ltd.	B391
Chaozhou Diamond Ceramics Industrial Co., Ltd.	B392
Chaozhou Dongyi Ceramics Co., Ltd.	B393
Chaozhou Dragon Porcelain Industrial Co., Ltd.	B394

Company	TARIC Additional Code
Chaozhou Fairway Ceramics Manufacturing Co., Ltd.	B395
Chaozhou Feida Ceramics Industries Co., Ltd.	B396
Chaozhou Fengxi Baita Ceramics Fty.	B397
Chaozhou Fengxi Dongtian Porcelain Fty. No 2	B398
Chaozhou Fengxi Fenger Ceramics Craft Fty.	B399
Chaozhou Fengxi Hongrong Color Porcelain Fty.	B400
Chaozhou Fengxi Jiaxiang Ceramic Manufactory	B401
Guangdong GMT Foreign Trade Service Corp.	B402
Chaozhou Fengxi Shengshui Porcelain Art Factory	B403
Chaozhou Fengxi Zone Jinbaichuan Porcelain Crafts Factory	B404
Chaozhou Fromone Ceramic Co., Ltd.	B405
Chaozhou Genol Ceramics Manufacture Co., Ltd.	B406
Chaozhou Good Concept Ceramics Co., Ltd.	B407
Chaozhou Grand Collection Ceramics Manufacturing Co. Ltd.	B408
Chaozhou Guangjia Ceramics Manufacture Co., Ltd.	B409
Chaozhou Guidu Ceramics Co., Ltd.	B410
Chaozhou Haihong Ceramics Making Co., Ltd.	B411
Chaozhou Hengchuang Porcelain Co., Ltd.	B412
Chaozhou Henglibao Porcelain Industrial Co., Ltd.	B413
Chaozhou Hongbo Ceramics Industrial Co., Ltd.	B414
Chaozhou Hongjia Ceramics Making Co., Ltd.	B415
Chaozhou Hongye Ceramics Manufactory Co., Ltd.	B416
Chaozhou Hongye Porcelain Development Co., Ltd.	B417
Chaozhou Hongyue Porcelain Industry Co., Ltd.	B418
Chaozhou Hongzhan Ceramic Manufacture Co., Ltd.	B419
Chaozhou Hua Da Ceramics Making Co., Ltd.	B420
Chaozhou Huabo Ceramic Co., Ltd.	B421
Chaozhou Huade Ceramics Manufacture Co., Ltd.	B422
Chaozhou Huashan Industrial Co., Ltd.	B423
Chaozhou Huayu Ceramics Co., Ltd.	B424
Chaozhou Huazhong Ceramics Industries Co., Ltd.	B425
Chaozhou Huifeng Ceramics Craft Making Co., Ltd.	B426
Chaozhou J&M Ceramics Industrial Co., Ltd.	B427
Chaozhou Jencymic Co., Ltd.	B428
Chaozhou Jiahua Ceramics Co., Ltd.	B429
Chaozhou Jiahuobao Ceramics Industrial Co., Ltd.	B430
Chaozhou JiaHui Ceramic Factory	B431

Company	TARIC Additional Code
Chaozhou Jiaye Ceramics Making Co., Ltd.	B432
Chaozhou Jiayi Ceramics Making Co., Ltd.	B433
Chaozhou Jiayu Ceramics Making Co., Ltd.	B434
Chaozhou Jin Jia Da Porcelain Industry Co., Ltd.	B435
Chaozhou Jingfeng Ceramics Craft Co., Ltd.	B436
Guangdong Jinqiangyi Ceramics Co., Ltd.	B437
Chaozhou Jinxin Ceramics Making Co., Ltd.	B438
Chaozhou Jinyuanli Ceramics Manufacture Co., Ltd.	B439
Chaozhou Kaibo Ceramics Making Co., Ltd.	B440
Chaozhou Kedali Porcelain Industrial Co., Ltd.	B441
Chaozhou King's Porcelain Industry Co., Ltd.	B442
Chaozhou Kingwave Porcelain & Pigment Co., Ltd.	B443
Chaozhou Lemontree Tableware Co., Ltd.	B444
Chaozhou Lianfeng Porcelain Co., Ltd.	B445
Chaozhou Lianyu Ceramics Co., Ltd.	B447
Chaozhou Lianyuan Ceramic Making Co., Ltd.	B448
Chaozhou Lisheng Ceramics Co., Ltd.	B449
Chaozhou Loving Home Porcelain Co., Ltd.	B450
Chaozhou Maocheng Industry Dve. Co., Ltd.	B451
Chaozhou MBB Porcelain Factory	B452
Guangdong Mingyu Technology Joint Stock Limited Company	B453
Chaozhou New Power Co., Ltd.	B454
Chaozhou Ohga Porcelain Co., Ltd.	B455
Chaozhou Oubo Ceramics Co., Ltd.	B456
Chaozhou Pengfa Ceramics Manufactory Co., Ltd.	B457
Chaozhou Pengxing Ceramics Co., Ltd.	B458
Chaozhou Qingfa Ceramics Co., Ltd.	B459
Chaozhou Ronghua Ceramics Making Co., Ltd.	B460
Guangdong Ronglibao Homeware Co., Ltd.	B461
Chaozhou Rui Cheng Porcelain Industry Co., Ltd.	B462
Chaozhou Rui Xiang Porcelain Industrial Co., Ltd.	B463
Chaozhou Ruilong Ceramics Co., Ltd.	B464
Chaozhou Sanhua Ceramics Industrial Co., Ltd.	B465
Chaozhou Sanming Industrial Co., Ltd.	B466
Chaozhou Santai Porcelain Co., Ltd.	B467
Chaozhou Shuntai Ceramic Manufactory Co., Ltd.	B468
Chaozhou Songfa Ceramics Co., Ltd.	B469

Company	TARIC Additional Code
Chaozhou Sundisk Ceramics Making Co., Ltd.	B470
Chaozhou Teemjade Ceramics Co., Ltd.	B471
Chaozhou Thyme Ceramics Co., Ltd.	B472
Chaozhou Tongxing Huajiang Ceramics Making Co., Ltd	B473
Guangdong Totye Ceramics Industrial Co., Ltd.	B474
Chaozhou Trend Arts & Crafts Co., Ltd.	B475
Chaozhou Uncommon Craft Industrial Co., Ltd.	B476
Chaozhou Weida Ceramic Making Co., Ltd.	B477
Chaozhou Weigao Ceramic Craft Co., Ltd.	B478
Chaozhou Wingoal Ceramics Industrial Co., Ltd.	B479
Chaozhou Wood House Porcelain Co., Ltd.	B480
Chaozhou Xiangye Ceramics Craft Making Co., Ltd.	B481
Chaozhou Xin Weicheng Co., Ltd.	B482
Chaozhou Xincheng Ceramics Co., Ltd.	B483
Chaozhou Xingguang Ceramics Co., Ltd.	B485
Chaozhou Wenhui Porcelain Co., Ltd.	B486
Chaozhou Xinkai Porcelain Co., Ltd.	B487
Chaozhou Xinlong Porcelain Industrial Co., Ltd.	B488
Chaozhou Xinyu Porcelain Industrial Co., Ltd.	B489
Chaozhou Xinyue Ceramics Manufacture Co., Ltd.	B490
Chaozhou Yangguang Ceramics Co., Ltd.	B491
Chaozhou Yinhe Ceramics Co., Ltd.	B493
Chaozhou Yongsheng Ceramics Manufacturing Co., Ltd.	B494
Chaozhou Yongxuan Domestic Ceramics Manufactory Co., Ltd.	B495
Chaozhou Yu Ri Ceramics Making Co., Ltd.	B496
Chaozhou Yuefeng Ceramics Ind. Co., Ltd.	B497
Chaozhou Yufeng Ceramics Making Factory	B498
Chaozhou Zhongxia Porcelain Factory Co., Ltd.	B499
Chaozhou Zhongye Ceramics Co., Ltd.	B500
Dabu Yongxingxiang Ceramics Co., Ltd.	B501
Dapu Fuda Ceramics Co., Ltd.	B502
Dapu Taoyuan Porcelain Factory	B503
Dasheng Ceramics Co., Ltd. Dehua	B504
De Hua Hongshun Ceramic Co., Ltd.	B505
Dehua Hongsheng Ceramic Co., Ltd.	B506
Dehua Jianyi Porcelain Industry Co., Ltd.	B507
Dehua Kaiyuan Porcelain Industry Co., Ltd.	B508



Company	TARIC Additional Code
Dehua Ruyuan Gifts Co., Ltd.	B509
Dehua Xinmei Ceramics Co., Ltd.	B510
Dongguan Kennex Ceramic Ltd.	B511
Dongguan Shilong Kyocera Co., Ltd.	B512
Dongguan Yongfuda Ceramics Co., Ltd.	B513
Excellent Porcelain Co., Ltd.	B515
Fair-Link Limited (Xiamen)	B516
Far East (chaozhou) Ceramics Factory Co., Ltd.	B518
Fengfeng Mining District Yuhang Ceramic Co. Ltd. ('Yuhang')	B519
Foshan Metart Company Limited	B520
Fujian Jiashun Art&Crafts Co., Ltd.	B521
Fujian Dehua Chengyi Ceramics Co., Ltd.	B522
Fujian Dehua Five Continents Ceramic Manufacturing Co., Ltd.	B523
Fujian Dehua Fujue Ceramics Co., Ltd.	B524
Fujian Dehua Full Win Crafts Co., Ltd.	B525
Fujian Dehua Fusheng Ceramics Co., Ltd.	B526
Fujian Dehua Gentle Porcelain Co., Ltd.	B527
Fujian Dehua Guanhong Ceramic Co., Ltd.	B528
Fujian Dehua Guanjie Ceramics Co., Ltd.	B529
Luzerne (Fujian) Group Co., Ltd.	B530
Fujian Dehua Hongda Ceramics Co., Ltd.	B531
Fujian Dehua Hongsheng Arts & Crafts Co., Ltd.	B532
Fujian Dehua Hongyu Ceramic Co., Ltd.	B533
Fujian Dehua Huachen Ceramics Co., Ltd.	B534
Fujian Dehua Huaxia Ceramics Co., Ltd.	B535
Fujian Dehua Huilong Ceramic Co., Ltd.	B536
Fujian Dehua Jingyi Ceramics Co., Ltd.	B537
Fujian Dehua Jinhua Porcelain Co., Ltd.	B538
Fujian Dehua Jinzhu Ceramics Co., Ltd.	B539
Fujian Dehua Lianda Ceramic Co., Ltd.	B540
Fujian Dehua Myinghua Ceramics Co., Ltd.	B541
Fujian Dehua Pengxin Ceramics Co., Ltd.	B542
Fujian Dehua Shisheng Ceramics Co., Ltd.	B544
Fujian Dehua Will Ceramic Co., Ltd.	B545
Fujian Dehua Xianda Ceramic Factory	B546
Fujian Dehua Xianghui Ceramic Co., Ltd.	B547
Fujian Dehua Yonghuang Ceramic Co., Ltd.	B549

Company	TARIC Additional Code
Fujian Dehua Yousheng Ceramics Co., Ltd.	B550
Fujian Dehua You-Young Crafts Co., Ltd.	B551
Fujian Dehua Zhenfeng Ceramics Co., Ltd.	B552
Fujian Dehua Zhennan Ceramics Co., Ltd.	B553
Fujian Jackson Arts and Crafts Co., Ltd.	B554
Fujian Jiamei Group Corporation	B555
Fujian Province Dehua County Beatrot Ceramic Co., Ltd.	B557
Fujian Province Yongchun County Foreign Processing and Assembling Corporation	B558
Fujian Quanzhou Longpeng Group Co., Ltd.	B559
Fujian Dehua S&M Arts Co., Ltd., and Fujian Taigu Ceramics Co., Ltd.	B560
Fung Lin Wah Group	B561
Ganzhou Koin Structure Ceramics Co., Ltd.	B562
Global Housewares Factory	B563
Guangdong Baofeng Ceramic Technology Development Co., Ltd.	B564
Guangdong Bening Ceramics Industries Co., Ltd.	B565
Guangdong Daye Porcelain Co., Ltd.	B566
Guangdong Dongbao Group Co., Ltd.	B567
Guangdong Huaxing Ceramics Co., Ltd.	B568
Guangdong Quanfu Ceramics Ind. Co., Ltd.	B569
Guangdong Shunqiang Ceramics Co., Ltd.	B570
Guangdong Shunxiang Porcelain Co., Ltd.	B571
Guangdong Sitong Group Co., Ltd.	B572
GuangDong XingTaiYi Porcelain Co., Ltd.	B574
Guangdong Yutai Porcelain Co., Ltd.	B575
Guangdong Zhentong Ceramics Co., Ltd.	B576
Guangxi Baian Ceramic Co. Ltd.	B577
Guangxi Beiliu City Ming Chao Porcelain Co., Ltd.	B578
Guangxi Beiliu Huasheng Porcelain Ltd.	B580
Guangxi Beiliu Newcentury Ceramic Llc.	B581
Guangxi Beiliu Qinglang Porcelain Trade Co., Ltd.	B582
Guangxi Beiliu Xiongfa Ceramics Co., Ltd.	B584
Guangxi Beiliu Yujie Porcelain Co., Ltd.	B585
Guangxi Beiliu Zhongli Ceramics Co., Ltd.	B586
Guangxi Nanshan Porcelain Co., Ltd.	B587
Guangxi Yulin Rongxing Ceramics Co., Ltd.	B589
Guangzhou Chaintime Porcelain Co., Ltd.	B590

Company	TARIC Additional Code
Haofa Ceramics Co., Ltd. of Dehua Fujian	B591
Hebei Dersun Ceramic Co., Ltd.	B592
Hebei Great Wall Ceramic Co., Ltd.	B593
Henan Ruilong Ceramics Co., Ltd	B594
Henghui Porcelain Plant Liling Hunan China	B595
Huanyu Ceramic Industrial Co., Ltd. Liling Hunan China	B596
Hunan Baihua Ceramics Co., Ltd.	B597
Hunan Eka Ceramics Co., Ltd.	B598
Hunan Fungdeli Ceramics Co., Ltd.	B599
Hunan Gaofeng Ceramic Manufacturing Co., Ltd.	B600
Hunan Huari Ceramic Industry Co., Ltd	B601
Hunan Huayun Ceramics Factory Co., Ltd	B603
Hunan Liling Tianxin China Industry Ltd.	B604
Hunan Provincial Liling Chuhua Ceramic Industrial Co., Ltd.	B605
Hunan Quanxiang Ceramics Corp. Ltd.	B606
Hunan Rslee Ceramics Co., Ltd	B607
Hunan Taisun Ceramics Co., Ltd.	B608
Hunan Victor Imp. & Exp. Co., Ltd	B609
Hunan Xianfeng Ceramic Industry Co.,Ltd	B611
Jiangsu Gaochun Ceramics Co., Ltd.	B612
Jiangsu Yixing Fine Pottery Corp., Ltd.	B613
Jiangxi Global Ceramic Co., Ltd.	B614
Jiangxi Kangshu Porcelain Co.,Ltd.	B615
Jingdezhen F&B Porcelain Co., Ltd.	B616
Jingdezhen Yuanjing Porcelain Industry Co., Ltd.	B617
Jiyuan Jukang Xinxing Ceramics Co., Ltd.	B618
Junior Star Ent's Co., Ltd.	B620
K&T Ceramics International Co., Ltd.	B621
Kam Lee (Xing Guo) Metal and Plastic Fty. Co., Ltd.	B622
Karperry Industrial Co., Ltd. Hunan China	B623
Kilncraft Ceramics Ltd.	B624
Lian Jiang Golden Faith Porcelain Co., Ltd.	B625
Liling Gaojia Ceramic Industry Co., Ltd	B626
Liling GuanQian Ceramic Manufacture Co., Ltd.	B627
Liling Huahui Ceramic Manufacturing Co., Ltd.	B628
Liling Huawang Ceramics Manufacturing Co., Ltd.	B629
Liling Jiahua Porcelain Manufacturing Co., Ltd	B630
Liling Jialong Porcelain Industry Co., Ltd	B631

Company	TARIC Additional Code
Liling Kaiwei Ceramic Co., Ltd.	B633
Liling Liangsheng Ceramic Manufacture Co., Ltd.	B634
Liling Liuxingtang Ceramics Co., Ltd	B635
Liling Minghui Ceramics Factory	B636
Liling Pengxing Ceramic Factory	B637
Liling Quanhu Industries General Company	B638
Liling Ruixiang Ceramics Industrial Co., Ltd.	B640
Liling Santang Ceramics Manufacturing Co., Ltd.	B641
Liling Shenghua Industrial Co., Ltd.	B642
Liling Spring Ceramic Industry Co., Ltd	B643
Liling Tengrui Industrial and Trading Co., Ltd.	B644
Liling Top Collection Industrial Co., Ltd	B645
Liling United Ceramic-Ware Manufacturing Co., Ltd.	B646
Liling Yonghe Porcelain Factory	B647
Liling Yucha Ceramics Co., Ltd.	B648
Liling Zhengcai Ceramic Manufacturing Co., Ltd	B649
Linyi Jinli Ceramics Co., Ltd.	B650
Linyi Pengcheng Industry Co., Ltd.	B651
Linyi Wanqiang Ceramics Co., Ltd.	B652
Linyi Zhaogang Ceramics Co., Ltd.	B653
Liveon Industrial Co., Ltd.	B654
Long Da Bone China Co., Ltd.	B655
Meizhou Lianshunchang Trading Co., Ltd.	B657
Meizhou Xinma Ceramics Co., Ltd.	B658
Meizhou Yuanfeng Ceramic Industry Co., Ltd.	B659
Meizhou Zhong Guang Industrial Co., Ltd.	B660
Miracle Dynasty Fine Bone China (Shanghai) Co., Ltd.	B661
Photo USA Electronic Graphic Inc.	B662
Quanzhou Allen Light Industry Co., Ltd.	B663
Quanzhou Chuangli Craft Co., Ltd.	B664
Quanzhou Dehua Fangsheng Arts Co., Ltd.	B665
Quanzhou Haofu Gifts Co., Ltd.	B666
Quanzhou Hongsheng Group Corporation	B667
Quanzhou Jianwen Craft Co., Ltd.	B668
Quanzhou Kunda Gifts Co., Ltd.	B669
Quanzhou Yongchun Shengyi Ceramics Co., Ltd.	B670
Raoping Bright Future Porcelain Factory ('RBF')	B671
Raoping Sanrao Yicheng Porcelain Factory	B672

Company	TARIC Additional Code
Raoping Sanyi Industrial Co., Ltd.	B673
Raoping Suifeng Ceramics and Glass Factory	B674
Raoping Xinfeng Yangda Colour Porcelain FTY	B675
Red Star Ceramics Limited	B676
Rong Lin Wah Industrial (Shenzhen) Co., Ltd.	B677
Shandong Futai Ceramics Co., Ltd.	B679
Shandong Gaode Hongye Ceramics Co., Ltd.	B680
Shandong Kunlun Ceramic Co., Ltd.	B681
Shandong Zhaoding Porcelain Co., Ltd.	B682
Shantou Ceramics Industry Supply & Marketing Corp.	B683
Sheng Hua Ceramics Co., Ltd.	B684
Shenzhen Baoshengfeng Imp. & Exp. Co., Ltd.	B685
Shenzhen Bright Future Industry Co., Ltd. ('SBF')	B686
Shenzhen Ehome Enterprise Ltd	B688
Shenzhen Ever Nice Industry Co., Ltd.	B689
Shenzhen Fuliuyan Porcelain Co., Ltd.	B690
Shenzhen Full Amass Ind. Dev. Co. Ltd	B691
Shenzhen Gottawa Industrial Ltd.	B694
Shenzhen Hiker Housewares Ltd.	B695
Shenzhen Hua Mei Industry Development Ltd	B696
Shenzhen Mingsheng Ceramic Ltd.	B697
Shenzhen Senyi Porcelain Industry Co. Ltd.	B698
Shenzhen SMF Investment Co., Ltd	B699
Shenzhen Tao Hui Industrial Co., Ltd.	B700
Shenzhen Topchoice Industries Limited	B701
Shenzhen Trueland Industrial Co., Ltd.	B702
Shenzhen Universal Industrial Co., Ltd.	B703
Shenzhen Zhan Peng Xiang Industrial Co., Ltd.	B704
Shijiazhuang Kuangqu Huakang Porcelain Co., Ltd.	B705
Shun Sheng Da Group Co., Ltd. Quanzhou Fujian	B706
Stechcol Ceramic Crafts Development (Shenzhen) Co., Ltd.	B707
Taiyu Ceramic Co., Ltd. Liling Hunan China	B708
Tangshan Beifangcidu Ceramic Group Co., Ltd.	B709
Tangshan Boyu Osseous Ceramic Co., Ltd.	B710
Tangshan Chinawares Trading Co., Ltd	B711
Tangshan Golden Ceramic Co., Ltd.	B713
Tangshan Haigelei Fine Bone Porcelain Co., Ltd.	B714
Tangshan Hengrui Porcelain Industry Co., Ltd.	B715

Company	TARIC Additional Code
Tangshan Huamei Porcelain Co., Ltd.	B716
Tangshan Huaxincheng Ceramic Products Co., Ltd.	B717
Tangshan Huyuan Bone China Co., Ltd.	B718
Tangshan Imperial-Hero Ceramics Co., Ltd.	B719
Tangshan Jinfangyuan Bone China Manufacturing Co., Ltd.	B720
Tangshan Keyhandle Ceramic Co., Ltd.	B721
Tangshan Longchang Ceramics Co., Ltd.	B722
Tangshan Masterwell Ceramic Co., Ltd.	B723
Tangshan Shiyu Commerce Co., Ltd.	B725
Tangshan Xueyan Industrial Co., Ltd.	B726
Tangshan Yida Industrial Corp.	B727
Tao Yuan Porcelain Factory	B728
Teammann Co., Ltd.	B729
The China & Hong Kong Resources Co., Ltd.	B730
The Great Wall of Culture Group Holding Co., Ltd Guangdong	B731
Tienshan (Handan) Tableware Co., Ltd. ('Tienshan')	B732
Topking Industry (China) Ltd.	B733
Weijian Ceramic Industrial Co., Ltd.	B734
Weiyee Ceramics Co., Ltd.	B735
Winpat Industrial Co., Ltd.	B736
Xiamen Acrobat Splendor Ceramics Co., Ltd.	B737
Xiamen Johnchina Fine Polishing Tech Co., Ltd.	B738
Xiangqiang Ceramic Manufacturing Co., Ltd. Liling City Hunan	B739
Xin Xing Xian Xinjiang Pottery Co., Ltd.	B740
Xinhua County Huayang Porcelain Co., Ltd.	B741
Yangjiang Shi Ba Zi Kitchen Ware Manufacturing Co., Ltd.	B743
Yanling Hongyi Import N Export Trade Co., Ltd.	B744
Ying-Hai (Shenzhen) Industry Dev. Co., Ltd.	B745
Yiyang Red Star Ceramics Ltd.	B746
China Yong Feng Yuan Co., Ltd.	B747
Yongchun Dahui Crafts Co., Ltd.	B748
Yu Yuan Ceramics Co., Ltd.	B749
Yuzhou City Kongjia Porcelain Co., Ltd.	B750
Zeal Ceramics Development Co., Ltd, Shenzhen, China	B753
Zhangjiakou Xuanhua Yici Ceramics Co., Ltd. ('Xuanhua Yici')	B754
Zhejiang Nansong Ceramics Co., Ltd.	B755

Company	TARIC Additional Code
Zibo Boshan Shantou Ceramic Factory	B756
Zibo CAC Chinaware Co., Ltd.	B757
Zibo Fortune Light Industrial Products Co., Ltd.	B758
Zibo GaoDe Ceramic Technology & Development Co., Ltd.	B760
Zibo Hongda Ceramics Co., Ltd.	B761
Zibo Jinxin Light Industrial Products Co., Ltd.	B762
Zibo Kunyang Ceramic Corporation Limited	B763
Liling Xinyi Ceramics Industry Ltd.	B957
Gemmi (Shantou) Industrial Co., Ltd.	B958
Jing He Ceramics Co., Ltd	B959
Fujian Dehua Huamao Ceramics Co., Ltd	C303
Fujian Dehua Jiawei Ceramics Co., Ltd	C304
Fujian Dehua New Qili Arts Co., Ltd	C305
Quanzhou Dehua Hengfeng Ceramics Co., Ltd	C306
Fujian Dehua Sanfeng Ceramics Co. Ltd	C485

## ANNEX 2

**Manufacturer declaration for direct export sale**

A declaration signed by an official of the manufacturer, in the following format, must appear on the valid commercial invoice referred to in Article 1(6)(a):

- (1) The name and function of the official of the manufacturer.
- (2) The following declaration: 'I, the undersigned, certify that the (volume in kg) of ceramic tableware and kitchenware sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.'
- (3) Date and signature.

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## ANNEX 3

**Manufacturer declaration for indirect export sale**

A declaration of the Chinese manufacturer, signed by an official of the manufacturer issuing the invoice for this transaction to the trader, in the following format, must appear on the commercial invoice of the manufacturer to the trader referred to in Article 1(6)(b):

- (1) The name and function of the official of the manufacturer.
  - (2) The following declaration: 'I, the undersigned, certify that the (volume in kg) of the tableware and kitchenware sold to the trader (name of the trader) (country of the trader), covered by this invoice, was manufactured by our company (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.'
  - (3) Date and signature.
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## III

(Other acts)

## EUROPEAN ECONOMIC AREA

## DECISION OF THE EEA JOINT COMMITTEE

No 256/2018

of 5 December 2018

amending Annex IX (Financial Services) to the EEA Agreement [2019/2132]

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2017/1800 of 29 June 2017 amending Delegated Regulation (EU) No 151/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(1)</sup> is to be incorporated into the EEA Agreement.
- (2) Commission Implementing Decision (EU) 2016/1073 of 1 July 2016 on the equivalence of designated contract markets in the United States of America in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(2)</sup> is to be incorporated into the EEA Agreement.
- (3) Commission Implementing Decision (EU) 2016/2270 of 15 December 2016 on the equivalence of approved exchanges in Singapore in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(3)</sup> is to be incorporated into the EEA Agreement.
- (4) Commission Implementing Decision (EU) 2016/2271 of 15 December 2016 on the equivalence of financial instrument exchanges and commodity exchanges in Japan in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(4)</sup> is to be incorporated into the EEA Agreement.
- (5) Commission Implementing Decision (EU) 2016/2272 of 15 December 2016 on the equivalence of financial markets in Australia in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(5)</sup> is to be incorporated into the EEA Agreement.
- (6) Commission Implementing Decision (EU) 2016/2273 of 15 December 2016 on the equivalence of recognised exchanges in Canada in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(6)</sup> is to be incorporated into the EEA Agreement.
- (7) Annex IX to the EEA Agreement should therefore be amended accordingly,

<sup>(1)</sup> OJ L 259, 7.10.2017, p. 14.

<sup>(2)</sup> OJ L 178, 2.7.2016, p. 24.

<sup>(3)</sup> OJ L 342, 16.12.2016, p. 42.

<sup>(4)</sup> OJ L 342, 16.12.2016, p. 45.

<sup>(5)</sup> OJ L 342, 16.12.2016, p. 48.

<sup>(6)</sup> OJ L 342, 16.12.2016, p. 51.

HAS ADOPTED THIS DECISION:

*Article 1*

Annex IX to the EEA Agreement shall be amended as follows:

1. The following points are inserted after point 31bcai (Commission Implementing Decision (EU) 2015/2042):

- ‘31bcaj. **32016 D 1073**: Commission Implementing Decision (EU) 2016/1073 of 1 July 2016 on the equivalence of designated contract markets in the United States of America in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 178, 2.7.2016, p. 24).
- 31bcak. **32016 D 2270**: Commission Implementing Decision (EU) 2016/2270 of 15 December 2016 on the equivalence of approved exchanges in Singapore in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 42).
- 31bcac. **32016 D 2271**: Commission Implementing Decision (EU) 2016/2271 of 15 December 2016 on the equivalence of financial instrument exchanges and commodity exchanges in Japan in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 45).
- 31bcam. **32016 D 2272**: Commission Implementing Decision (EU) 2016/2272 of 15 December 2016 on the equivalence of financial markets in Australia in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 48).
- 31bcan. **32016 D 2273**: Commission Implementing Decision (EU) 2016/2273 of 15 December 2016 on the equivalence of recognised exchanges in Canada in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 51).’

2. The following is added in point 31bch (Commission Delegated Regulation (EU) No 151/2013):

‘, as amended by:

- **32017 R 1800**: Commission Delegated Regulation (EU) 2017/1800 of 29 June 2017 (OJ L 259, 7.10.2017, p. 14).’

*Article 2*

The texts of Delegated Regulation (EU) 2017/1800 and Implementing Decisions (EU) 2016/1073, (EU) 2016/2270, (EU) 2016/2271, (EU) 2016/2272 and (EU) 2016/2273 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

*Article 3*

This Decision shall enter into force on 6 December 2018, provided that all the notifications under Article 103(1) of the EEA Agreement have been made (?).

*Article 4*

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 5 December 2018.

For the EEA Joint Committee  
The President  
Oda Helen SLETNES

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(?) No constitutional requirements indicated.

**DECISION OF THE EEA JOINT COMMITTEE No 79/2019**  
**of 29 March 2019**  
**amending Annex IX (Financial services) to the EEA Agreement [2019/2133]**

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 <sup>(1)</sup>, as corrected by OJ L 208, 2.8.2013, p. 68, OJ L 321, 30.11.2013, p. 6 and OJ L 20, 25.1.2017, p. 2, is to be incorporated into the EEA Agreement.
- (2) Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 as regards transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds and for the large exposures treatment of certain public sector exposures denominated in the domestic currency of any Member State <sup>(2)</sup>, is to be incorporated into the EEA Agreement.
- (3) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC <sup>(3)</sup>, as corrected by OJ L 208, 2.8.2013, p. 73 and OJ L 20, 25.1.2017, p. 1, is to be incorporated into the EEA Agreement.
- (4) Regulation (EU) No 575/2013 and Directive 2013/36/EU refer to 'EU parent institutions', 'EU parent financial holding companies' and 'EU parent mixed financial holding companies', which in the context of the EEA Agreement are understood as referring to entities fulfilling the relevant definitions set out in the Regulation that are established in an EEA Contracting Party and which are not subsidiaries of any other institution set up in any other EEA Contracting Party.
- (5) Directive 2013/36/EU repeals Directives 2006/48/EC <sup>(4)</sup> and 2006/49/EC <sup>(5)</sup> of the European Parliament and of the Council, which are incorporated into the EEA Agreement and which are consequently to be repealed under the EEA Agreement.
- (6) The potential for unwarranted reductions in own funds requirements from the use of internal models has, inter alia, been limited by national legislation implementing Article 152 of Directive 2006/48/EC, which, by the end of 2017 was replaced by Article 500 of Regulation (EU) 575/2013. There are, however, still several other provisions in Regulation (EU) 575/2013 and Directive 2013/36/EU which allow competent authorities to address the same issue, including the possibility for measures to counterbalance unwarranted reductions in the risk-weighted exposure amounts, see for instance Article 104 of Directive 2013/36/EU, and to impose prudent margins of conservatism in the calibration of internal models, see for instance Article 144 of Regulation (EU) 575/2013 and Article 101 of Directive 2013/36/EU.
- (7) Annex IX to the EEA Agreement should therefore be amended accordingly,

<sup>(1)</sup> OJ L 176, 27.6.2013, p. 1.

<sup>(2)</sup> OJ L 345, 27.12.2017, p. 27.

<sup>(3)</sup> OJ L 176, 27.6.2013, p. 338.

<sup>(4)</sup> OJ L 177, 30.6.2006, p. 1.

<sup>(5)</sup> OJ L 177, 30.6.2006, p. 201.

HAS ADOPTED THIS DECISION:

*Article 1*

Annex IX to the EEA Agreement shall be amended as follows:

- (1) The text of point 14 (Directive 2006/48/EC of the European Parliament and of the Council) is replaced by the following:

**‘32013 L 0036:** Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338), as corrected by OJ L 208, 2.8.2013, p. 73 and OJ L 20, 25.1.2017, p. 1.

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) Notwithstanding the provisions of Protocol 1 to this Agreement, and unless otherwise provided for in this Agreement, the terms “Member State(s)” and “competent authorities” shall be understood to include, in addition to their meaning in the Directive, the EFTA States and their competent authorities, respectively.
- (b) References to “ESCB central banks” or to “central banks” shall be understood to include, in addition to their meaning in the Directive, the national central banks of the EFTA States.
- (c) References to other acts in the Directive shall apply to the extent and in the form that those acts are incorporated into this Agreement.
- (d) References to the powers of EBA under Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council in the Directive shall be understood as referring, in the cases provided for in and in accordance with point 31g of this Annex, to the powers of the EFTA Surveillance Authority as regards the EFTA States.
- (e) In Article 2(5), the following point shall be inserted:

“(11a) In Iceland, the ‘Bygðastofnun’, the ‘Íbúðalánasjóður’ and the ‘Lánasjóður sveitarfélaga ohf.’;”

- (f) In Article 6, the following subparagraph is added to point (a):

“The competent authorities of the EFTA States cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information between them and the parties to the ESFS and with the EFTA Surveillance Authority. Competent authorities of the EU Member States shall cooperate with the competent authorities of the EFTA States in the same manner.”

- (g) Article 47(3) shall not apply as regards the EFTA States. An EFTA State may, through agreements concluded with one or more third countries, agree to apply provisions which accord to branches of a credit institution having its head office in a third country identical treatment on the territory of that EFTA State.

The Contracting Parties shall inform and consult each other prior to concluding agreements with third countries on the basis of Article 47(3) or the first paragraph of this point, as the case may be.

Whenever the European Union negotiates with one or more third countries towards the conclusion of an agreement on the basis of Article 47(3), and that such an agreement pertains to obtain national treatment or effective market access for branches of credit institutions having their head office in a Member State of the European Union in the third countries concerned, the European Union shall endeavour to obtain equal treatment for branches of credit institutions having their head office in an EFTA State.

- (h) Article 48 shall not apply. Where an EFTA State concludes an agreement with one or more third countries regarding the means of exercising supervision on a consolidated basis over institutions the parent undertakings of which have their head offices in a third country and institutions situated in third countries the parent undertakings of which, whether institutions, financial holding companies or mixed financial holding companies, have their head offices in that EFTA State, that agreement shall seek to ensure that EBA is able to obtain from the competent authority of that EFTA State the information received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010.
- (i) In Article 53(2), the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted before the words “in accordance with this Directive”.

- (j) In Article 58(1)(d), the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”.
- (k) In Article 89(5), the words “future Union legislative acts for disclosure obligations” shall be replaced by the words “future legislative acts applicable pursuant to the EEA Agreement provide for disclosure obligations that”.
- (l) In Article 114(1), as regards Liechtenstein, the words “an ESCB central bank” shall be replaced by the words “the competent authority”.
- (m) In the second subparagraph of Article 117(1), the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “EBA”.
- (n) In Article 133(14) and (15), the words “or, as regards the EFTA States, the Standing Committee of the EFTA States” shall be inserted after the words “the Commission”.
- (o) In Article 151(1), as regards the EFTA States, the words “a decision of the EEA Joint Committee containing” shall be inserted after the words “in accordance with”.

(2) The following is inserted after point 14 (Directive 2013/36/EU of the European Parliament and of the Council):

‘14a. **32013 R 0575**: Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1), as corrected by OJ L 208, 2.8.2013, p. 68, OJ L 321, 30.11.2013, p. 6 and OJ L 20, 25.1.2017, p. 2, as amended by:

— **32017 R 2395**: Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017 (OJ L 345, 27.12.2017, p. 27).

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) Notwithstanding the provisions of Protocol 1 to this Agreement, and unless otherwise provided for in this Agreement, the terms “Member State(s)” and “competent authorities” shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their competent authorities, respectively.
- (b) References to “ESCB central banks” or to “central banks” shall be understood to include, in addition to their meaning in the Regulation, the national central banks of the EFTA States.
- (c) References to other acts in the Regulation shall apply to the extent and in the form that those acts are incorporated into this Agreement.
- (d) References to the powers of EBA under Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council in the Regulation shall be understood as referring, in the cases provided for in and in accordance with point 31g of this Annex, to the powers of the EFTA Surveillance Authority as regards the EFTA States.
- (e) In point (75) of Article 4(1), the words “Norway and” shall be inserted before the word “Sweden”.
- (f) In Article 31(1)(b), as regards the EFTA States, the words “the Commission” shall read “the EFTA Surveillance Authority”.
- (g) In paragraphs 1 and 2 of Article 80, the words “or, in case an EFTA State is concerned, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (h) In Articles 329(4), 344(2), 352(6), 358(4) and 416(5), as regards the EFTA States, the words “the decisions of the EEA Joint Committee containing” shall be inserted after the words “entry into force of”.
- (i) In Article 395:
  - (i) in paragraphs 7 and 8, as regards the EFTA States, the words “the Council,” shall not apply;
  - (ii) as regards the EFTA States, the first subparagraph of paragraph 8 shall read as follows:

“The power to adopt a decision to accept or reject the proposed national measure referred to in paragraph 7 is conferred on the Standing Committee of the EFTA States.”;
  - (iii) the first sentence of the second subparagraph of paragraph 8 shall be replaced by the following:

“Within one month of receiving the notification referred to in paragraph 7, EBA shall provide its opinion on the points mentioned in that paragraph to the Council, the Commission and the Member State concerned or, where its opinion concerns national measures proposed by an EFTA State, to the Standing Committee of the EFTA States and the EFTA State concerned.”

(j) In Article 458:

(i) as regards the EFTA States, the first subparagraph of paragraph 2 shall read as follows:

“Where the authority determined in accordance with paragraph 1 identifies changes in the intensity of macroprudential or systemic risk in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific EFTA State and which that authority considers would better be addressed by means of stricter national measures, it shall notify the Standing Committee of the EFTA States, the EFTA Surveillance Authority, the ESRB and EBA of that fact and submit relevant quantitative or qualitative evidence of all of the following:”;

(ii) as regards the EFTA States, the first subparagraph of paragraph 4 shall read as follows:

“The power to adopt an implementing act to reject the draft national measures referred to in point (d) of paragraph 2 is conferred on the Standing Committee of the EFTA States, acting on a proposal from the EFTA Surveillance Authority.”;

(iii) in the second subparagraph of paragraph 4, the following shall be added:

“Where their opinions concern draft national measures of an EFTA State, the ESRB and EBA shall provide their opinions to the Standing Committee of the EFTA States, the EFTA Surveillance Authority and the EFTA State concerned.”;

(iv) as regards the EFTA States, the third to eighth subparagraphs of paragraph 4 shall read as follows:

“Taking utmost account of the opinions referred to in the second subparagraph and if there is robust, strong and detailed evidence that the measure will have a negative impact on the internal market that outweighs the financial stability benefits resulting in a reduction of the macroprudential or systemic risk identified, the EFTA Surveillance Authority may, within one month, propose to the Standing Committee of the EFTA States to reject the draft national measures.

In the absence of an EFTA Surveillance Authority proposal within that period of one month, the EFTA State concerned may immediately adopt the draft national measures for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner.

The Standing Committee of the EFTA States shall decide on the proposal by the EFTA Surveillance Authority within one month after receipt of the proposal and state its reasons for rejecting or not rejecting the draft national measures.

The Standing Committee of the EFTA States shall only reject the draft national measures if it considers that one or more of the following conditions are not complied with:

- (a) the changes in the intensity of macroprudential or systemic risk are of such nature as to pose risk to financial stability at national level;
- (b) Articles 124 and 164 of this Regulation and Articles 101, 103, 104, 105, 133, and 136 of Directive 2013/36/EU cannot adequately address the macroprudential or systemic risk identified, taking into account the relative effectiveness of those measures;
- (c) the draft national measures are more suitable to address the identified macroprudential or systemic risk and do not entail disproportionate adverse effects on the whole or parts of the financial system in other Contracting Parties or in the EEA as a whole, thus forming or creating an obstacle to the functioning of the internal market;
- (d) the issue concerns only one EFTA State; and
- (e) the risks have not already been addressed by other measures in this Regulation or in Directive 2013/36/EU.

The assessment of the Standing Committee of the EFTA States shall take into account the opinion of the ESRB and EBA and shall be based on the evidence presented in accordance with paragraph 2 by the authority determined in accordance with paragraph 1.

In the absence of a decision of the Standing Committee of the EFTA States to reject the draft national measures within one month after receipt of the proposal by the EFTA Surveillance Authority, the EFTA State may adopt the measures and apply them for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner.”;

- (v) as regards the EFTA States, paragraph 6 shall read as follows:  
“Where an EFTA State recognises the measures set in accordance with this Article, it shall notify the Standing Committee of the EFTA States, the EFTA Surveillance Authority, EBA, the ESRB and the Contracting Party to the EEA Agreement authorised to apply the measures.”
- (k) In Article 467(2), as regards the EFTA States, the words “the Commission has adopted a regulation” shall read “the entry into force of a decision of the EEA Joint Committee containing a regulation adopted”.
- (l) In Article 497, as regards the EFTA States:
- (i) in paragraphs 1 and 2, the words “the decisions of the EEA Joint Committee containing” shall be inserted after the words “entry into force of the latest of”;
- (ii) in paragraph 1, the words “have been adopted” shall read “apply in the EEA”.
- (3) In point 31bc (Regulation (EU) No 648/2012 of the European Parliament and of the Council):
- (a) the following indent is added:
- ‘— **32013 R 0575:** Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 (OJ L 176, 27.6.2013, p. 1), as corrected by OJ L 208, 2.8.2013, p. 68, OJ L 321, 30.11.2013, p. 6 and OJ L 20, 25.1.2017, p. 2.’
- (b) in adaptation (zh), the following is added:
- ‘(v) in paragraph 5a, as regards the EFTA States, the words “the decisions of the EEA Joint Committee containing” shall be inserted after the words “entry into force of the latest of”.’
- (4) The following indent is added in point 31ea (Directive 2002/87/EC of the European Parliament and of the Council):
- ‘— **32013 L 0036:** Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 (OJ L 176, 27.6.2013, p. 338), as corrected by OJ L 208, 2.8.2013, p. 73 and OJ L 20, 25.1.2017, p. 1.’
- (5) The text of point 31 (Directive 2006/49/EC of the European Parliament and of the Council) is deleted.

#### Article 2

The texts of Regulations (EU) No 575/2013, as corrected by OJ L 208, 2.8.2013, p. 68, OJ L 321, 30.11.2013, p. 6 and OJ L 20, 25.1.2017, p. 2, and (EU) 2017/2395 and Directive 2013/36/EU, as corrected by OJ L 208, 2.8.2013, p. 73 and OJ L 20, 25.1.2017, p. 1, in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

#### Article 3

This Decision shall enter into force on 30 March 2019, provided that all the notifications under Article 103(1) of the EEA Agreement have been made (\*).

#### Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 29 March 2019.

For the EEA Joint Committee  
The President  
Claude MAERTEN

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(\*) Constitutional requirements indicated.



**Joint Declaration by the Contracting Parties**  
**to Decision of the EEA Joint Committee No 79/2019 of 29 March 2019 incorporating Directive**  
**2013/36/EU into the EEA Agreement**

The Contracting Parties share the understanding that the incorporation into the EEA Agreement of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC is without prejudice to national rules of general application concerning the screening for security or public order of foreign direct investment.

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## DECISION OF THE EEA JOINT COMMITTEE No 125/2019

of 8 May 2019

## amending Annex IX (Financial services) and Annex XIX (Consumer protection) to the EEA Agreement [2019/2134]

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010<sup>(1)</sup>, as corrected by OJ L 246, 23.9.2015, p. 11, is to be incorporated into the EEA Agreement.
- (2) Annexes IX and XIX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Annex IX to the EEA Agreement shall be amended as follows:

- (1) The following indent is added in point 31g (Regulation (EU) No 1093/2010 of the European Parliament and of the Council):  
‘— **32014 L 0017**: Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 (OJ L 60, 28.2.2014, p. 34), as corrected by OJ L 246, 23.9.2015, p. 11.’
- (2) The following is inserted after point 31i (Regulation (EU) No 1095/2010 of the European Parliament and of the Council):  
‘31j. **32014 L 0017**: Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34), as corrected by OJ L 246, 23.9.2015, p. 11.’

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) Notwithstanding the provisions of Protocol 1 to this Agreement, and unless otherwise provided for in this Agreement, the terms “Member State(s)” and “competent authorities” shall be understood to include, in addition to their meaning in the Directive, the EFTA States and their competent authorities, respectively.
- (b) In point (b) of Article 5(3), the words “or, as the case may be, the EFTA Surveillance Authority” shall be inserted after the words “the European Supervisory Authority (European Banking Authority) (EBA)”.
- (c) In Articles 12(3) and 27(3), as regards the EFTA States, the words “20 March 2014” shall read “the date of entry into force of Decision of the EEA Joint Committee No 125/2019 of 8 May 2019”.
- (d) In Article 14(5), as regards the EFTA States, the words “20 March 2014” shall read “the date of entry into force of Decision of the EEA Joint Committee No 125/2019 of 8 May 2019” and the words “until 21 March 2019” shall read “for five years thereafter”.
- (e) In Article 26(2), the following subparagraph is added:  
“Liechtenstein is exempted from the statistical monitoring required by paragraph 2 of Article 26.”
- (f) In the fifth subparagraph of paragraph 2, and in point (b) of paragraph 4 of Article 34, the words “EBA may act” shall be replaced by the words “EBA or, as the case may be, the EFTA Surveillance Authority may act”.

<sup>(1)</sup> OJ L 60, 28.2.2014, p. 34.

- (g) In Article 37, the words “EBA may act in accordance with the powers conferred on it by that Article and any binding decision made by EBA” shall be replaced by the words “EBA or, as the case may be, the EFTA Surveillance Authority may act in accordance with the powers conferred on it by that Article and any binding decision made by EBA or, as the case may be, the EFTA Surveillance Authority”.
- (h) In Article 43, as regards the EFTA States, the words “21 March 2016” and “20 March 2014” shall read “the date of entry into force of Decision of the EEA Joint Committee No 125/2019 of 8 May 2019” and the words “21 March 2017” shall read “one year after the date of entry into force of Decision of the EEA Joint Committee No 125/2019 of 8 May 2019”.

#### Article 2

The following indent is added in point 7h (Directive 2008/48/EC of the European Parliament and of the Council) of Annex XIX to the EEA Agreement:

‘— **32014 L 0017**: Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 (OJ L 60, 28.2.2014, p. 34), as corrected by OJ L 246, 23.9.2015, p. 11.’

#### Article 3

The text of Directive 2014/17/EU, as corrected by OJ L 246, 23.9.2015, p. 11, in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

#### Article 4

This Decision shall enter into force on 1 June 2019, provided that all the notifications under Article 103(1) of the EEA Agreement have been made <sup>(2)</sup>.

#### Article 5

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 8 May 2019.

For the EEA Joint Committee  
The President  
Claude MAERTEN

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<sup>(2)</sup> Constitutional requirements indicated.





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