

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation (EEC) laying down the principles governing the organization of veterinary checks on products entering the Community from third countries*COM(90) 385 final**(Submitted by the Commission on 24 August 1990)**(90/C 252/06)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the animal products or products of animal origin and plant products which are subject to checks intended to prevent the spread of contagious diseases in animals are listed in Annex II to the Treaty;

Whereas the laying down at Community level of principles governing the organization of veterinary checks on products from third countries helps to guarantee security of supply and market stability, at the same time harmonizing the measures necessary to ensure the protection of animal and public health;

Whereas Article 19 of Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market⁽¹⁾ provides, in particular, that the Council must fix, before 31 December 1990, the general principles applicable to checks on imports from third countries of products covered by the said Directive;

Whereas each consignment of products from third countries must be subjected to documentary checks on entering the Community;

Whereas principles valid throughout the Community should be fixed concerning the organization and follow-up of physical and identity checks to be carried out by the competent authorities;

Whereas provision must be made for safeguard arrangements; whereas, in this context, the Commission must be able to act, particularly by making visits to the places concerned and adopting appropriate measures to rectify the situation;

Whereas, if the system of checks is to function smoothly, inspection posts must be checked and exchanges should take place between officials empowered to carry out checks on products originating in third countries;

Whereas the laying down at Community level of common principles is all the more necessary given that border controls are to be abolished in view of the completion of the internal market;

Whereas the task of adopting measures for the application of this Regulation should be entrusted to the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

1. Without prejudice to special provisions arising from specific Community rules, Member States shall carry out veterinary checks in respect of products entering the Community from third countries in accordance with this Regulation.

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 13.

2. This Regulation shall be without prejudice to the continued application of veterinary requirements in respect of the products concerned, where such requirements arise from Community rules or from national rules which have not yet been harmonized at Community level.

Article 2

1. For the purposes of this Regulation, the definitions contained in Article 2 of Directive 89/662/EEC shall apply.

2. In addition:

(a) *'products'*

means animal products or products of animal origin, or plant products where the purpose of the check is to prevent the spread of contagious diseases in animals. If necessary, a list of such products shall be drawn up in accordance with the procedure laid down in Article 22;

(b) *'documentary check'*

means verification of the documents accompanying a product which is itself not subjected to any check;

(c) *'identity check'*

means verification, by visual inspection only, of the correspondence between the documents and a product which is itself not subjected to any physical check;

(d) *'physical check'*

means a check of the product itself, possibly including sampling and laboratory testing.

CHAPTER I

Organization and effects of checks

Article 3

1. Each consignment of products from a third country shall be subjected to a documentary check by the competent authorities irrespective of the customs destination of the products.

2. The documentary check referred to in paragraph 1 shall be carried out on entry into the territory defined in the Annex.

3. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 22.

Article 4

1. The competent authorities shall carry out an identity check of products to be placed under the customs warehousing or temporary storage procedure.

2. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 22.

Article 5

1. This Article shall apply in respect of products to be marketed for consumption in the territory of the Member State which carried out the check referred to in Article 3 and products which have been the subject of harmonization at Community level.

2. Such products shall be conveyed directly, under customs supervision, to the inspection post referred to in Article 6. Each consignment shall be subjected to an identity check and a physical check. The identity check and physical check shall be based on random sampling at intervals laid down in accordance with paragraph 5.

3. However, by way of derogation from paragraph 2, for products entering a port or an airport in the territory defined in the Annex, the checks may be carried out in the port or airport of destination, provided that such port or airport has an inspection post as referred to in Article 6, and that the products are transported, as the case may be, by sea or by air. In such cases, Article 8 (6) shall apply.

4. The derogations in paragraph 2 may be granted in accordance with the procedure laid down in Article 22 in order to take account of the type of product, particularly in the case of plant products.

5. Without prejudice to the provisions applicable to certain products, detailed rules for the application of paragraph 2 shall be adopted in accordance with the procedure laid down in Article 22.

Article 6

1. The inspection post must satisfy the requirements of this Article.

2. The inspection post must be located in the immediate vicinity of the point of entry into the territory defined in the Annex. In the case of goods entering the Community by rail or by road, however, where geographical conditions so warrant and where a Member State so requests and provides the necessary justification, a derogation may be granted in accordance with the procedure laid down in Article 22.

3. The inspection post must be subject to the authority of an official veterinarian, who shall be effectively responsible for the checks. The official veterinarian may be assisted in the performance of purely material duties by assistants specially trained for the purpose. The procedures for such assistance shall be adopted in accordance with the procedure laid down in Article 22.

4. Without prejudice to the provisions applicable to certain products, guidelines for the approval of inspection posts shall be adopted, where necessary, in accordance with the procedure laid down in Article 22.

5. Member States shall approve inspection posts and communicate to the Commission and the other Member States a list of approved inspection posts, specifying the type of product for which the approval has been granted.

Article 7

1. For products which have been the subject of harmonization at Community level and are not intended for consumption in the territory of the Member State which carried out the check referred to in Article 5 (2), the official veterinarian in charge of the inspection post referred to in Article 6 shall:

- provide the person concerned with a copy or, if the consignment of goods is split, copies of the original certificates accompanying the goods,
- issue a certificate showing that the checks referred to in Article 5 have been carried out,
- keep the original certificate or certificates accompanying the goods.

2. Without prejudice to the provisions applicable to certain products, detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure laid down in Article 22.

3. Intra-Community trade in the products referred to in paragraph 1 shall be conducted in accordance with the rules laid down in Directive 89/662/EEC.

Article 8

1. This Article shall apply in respect of products which have not yet been the subject of harmonization at Community level and which, after entering the Community, are to be forwarded to another Member State.

2. Each consignment of products shall be subjected to a random identity check carried out by the competent authority at intervals laid down in accordance with paragraph 10, before being forwarded to another Member State.

3. Before being released for consumption, each consignment of products shall be subjected to a random physical check at intervals laid down in accordance with paragraph 10.

4. The physical check referred to in paragraph 3 may be carried out at the inspection post referred to in Article 6, situated in the territory of the Member State of entry. In such cases, the official veterinarian at the inspection post shall:

- provide the person concerned with a copy or, if the consignment of goods is split, copies of the original certificates accompanying the goods,
- issue a certificate showing that checks have been carried out confirming that the products comply with the rules of the country of destination,
- keep the original certificate or certificates accompanying the goods.

5. In the case referred to in paragraph 4, intra-Community trade in the products concerned shall be conducted in accordance with the rules laid down in Directive 89/662/EEC.

6. The physical check referred to in paragraph 3 may be carried out at the inspection post referred to in Article 6, situated in the territory of the Member State of destination. In such cases, the competent authorities carrying out the check provided for in paragraph 2 shall:

- inform the official veterinarian at the inspection post of the Member State of destination of the passage of the products,
- specify the fact of passage on the copy or, if the consignment of goods is split, copies of the original certificates,
- keep the original certificate or certificates accompanying the goods.

7. Where special conditions so warrant and where a Member State so requests and provides the necessary justification, the physical check provided for in paragraph 3 may be carried out in a place other than those referred to in paragraphs 4 and 6. Such a place shall be determined in each case in accordance with the procedure laid down in Article 22. In such cases the products shall be transported under the Community transit system (external procedure) in vehicles or containers sealed by the competent authority.

8. Member States shall inform the Commission of the decision made as regards the place of the physical check provided for in paragraph 3. Where necessary, measures to ensure cooperation between Member States shall be adopted in accordance with the procedure laid down in Article 22.

9. If the physical check referred to in paragraph 3 shows that the product may not be cleared for consumption, Article 13 shall apply. However, where the product must be re-exported, such re-exportation may not take place until the consent of the competent authorities of any transit Member States has been obtained.

10. Without prejudice to the provisions applicable to certain products, detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 22.

Article 9

1. This Article shall apply in respect of products to be transported from one third country to another.

2. Transport as referred to in paragraph 1 shall be authorized by the competent authority subject to the following conditions:

- (a) the check referred to in Article 3 has been carried out, with satisfactory findings for the competent authority. Where fraud is suspected, the said authority may carry out all appropriate checks;
- (b) the person concerned provides the competent authority with evidence that the first third country to which the product is to be forwarded after transit across the territory defined in the Annex hereto undertakes not to re-consign the goods to the Community under any circumstances;
- (c) transport in the territory defined in the Annex must take place under the Community transit system (external procedure) or another customs transit system provided for in Community rules.

3. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 22.

Article 10

1. The competent authority shall carry out an identity check and, where appropriate, a physical check on products for which the customs destination is other than as provided for in Articles 4, 5, 8 and 9.

2. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 22.

Article 11

1. Derogations from this Chapter may be granted, in accordance with the procedure laid down in Article 22, in particular in respect of:

- products contained in the personal luggage of travellers and intended for their own consumption,
- products in small consignments addressed to private individuals insofar as such consignments are strictly non-commercial,
- products carried as supplies for staff and passengers aboard transport vehicles engaged in international transport.

2. For the purposes of paragraph 1, specific conditions under which such derogations may be granted shall be adopted in accordance with the procedure laid down in Article 22.

3. Pending decisions concerning the derogations referred to in paragraphs 1 and 2, derogations pursuant to Article 1 (2) (b), (c), (d) and (e) of Council Directive 72/462/EEC⁽¹⁾ shall apply in respect of this Chapter.

Article 12

Where fraud is suspected or there is doubt as to the identity of a product, the competent authority shall carry out any checks it deems appropriate.

Article 13

1. Where the checks referred to in this Regulation show the competent authority that the product does not satisfy the requirements laid down in the Community rules or national rules in matters which have not yet been the subject of Community harmonization, or where such checks reveal an irregularity, the competent authority, after consultation with the importer or his representative, shall decide either:

- to re-dispatch the consignment outside the territory defined in the Annex, or
- to destroy the consignment.

⁽¹⁾ OJ No L 302, 31. 12. 1972, p. 28.

2. Derogations from paragraph 1 may be provided for in specific Community rules, or in accordance with the procedure laid down in Article 22, in particular permitting the use of products for purposes other than human consumption. In the context of such derogations, conditions shall be adopted with regard to the use of the products concerned in accordance with the same procedure.

3. Costs incurred in the process of re-dispatching or destroying the consignment or using the product for other purposes shall be charged to the importer or his representative.

4. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 22.

5. Provisions concerning the communication of information to the Member States will be adopted in the context of the programme for developing the computerization of veterinary procedures in respect of imports (Shift project).

6. The competent authorities shall, where appropriate, communicate to the Commission and the other Member States any information at their disposal in accordance with Council Directive 89/608/EEC ⁽¹⁾.

CHAPTER II

Safeguard provisions

Article 14

1. If, in the territory of a third country, a disease referred to by Council Directive 82/894/EEC ⁽²⁾, a zoonosis, a disease or other cause liable to present a serious threat to animal or public health breaks out or spreads, or if any other serious animal health or public health reason so warrants, the Commission may, as a protective measure, prohibit imports or apply special conditions to imports of products originating directly or indirectly from the third country concerned or part of the territory thereof.

2. Representatives of the Commission may make an immediate visit to the third country concerned.

Article 15

1. Without delay the Commission shall review the situation within the committee referred to in Article 20. It may adopt the necessary decisions in accordance with the procedure laid down in Article 21, including those relating to intra-Community movements of products.

2. Decision to modify, cancel or prolong measures decided by virtue of Article 14(1) shall be taken in accordance with the procedure laid down in Article 21.

Article 16

Detailed rules for the application of this Chapter shall be adopted, where necessary, in accordance with the procedure laid down in Article 22.

CHAPTER III

Inspection

Article 17

1. Veterinary experts from the Commission shall, in collaboration with the competent authorities, check that the inspection posts approved in accordance with Article 6(5) satisfy the guidelines adopted in accordance with paragraph 4 of that Article.

2. Veterinary experts from the Commission may, in collaboration with the competent authorities, make on-the-spot checks.

3. A Member State in whose territory an inspection is made shall provide the veterinary experts from the Commission with any assistance they may require in the performance of their tasks.

4. The Commission shall inform the Member States of the outcome of the checks.

5. Where the Commission deems that the outcome of the checks so justifies, it shall review the situation within the committee referred to in Article 20. It may adopt the necessary decisions in accordance with the procedure laid down in Article 22.

6. The Commission shall monitor developments and, in accordance with the procedure laid down in Article 22, amend or repeal, in the light of the developments, the decisions referred to in paragraph 5.

7. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 22.

Article 18

1. Where, on the basis of the checks carried out at the point where the products are marketed, a competent authority of a Member State considers that this Regulation is not being complied with at an inspection post or at a point of arrival in another Member State, it shall contact the competent central authority of that Member State without delay. The latter shall take all the necessary measures and inform the competent authority of the first Member State of the decisions taken and the reasons for such decisions.

⁽¹⁾ OJ No L 351, 2. 12. 1989, p. 34.

⁽²⁾ OJ No L 378, 31. 12. 1982, p. 58.

2. If the competent authority of the first Member State believes the measures are insufficient it shall examine, with the competent authority of the Member State in question, the ways and means in which the situation could be rectified, where necessary by visiting the Member State in question.

3. Where the checks referred to in paragraph 1 show repeated non-compliance with this Regulation, the competent authority of the Member State of destination shall inform the Commission and the competent authorities of the other Member States.

4. The Commission may, at the request of the competent authority of the Member State of destination or on its own initiative, and taking account of the type of infringements ascertained:

— send an inspection team to the Member State in question,

— instruct an official veterinarian, whose name must be on a list to be drawn up by the Commission on the basis of proposals from the Member States and who must be acceptable to all the parties involved, to verify the facts at the inspection post or point of entry in question,

— request the competent authority to increase the checks carried out at the inspection post or point of entry in question.

5. The Commission shall inform the Member States of its conclusions. Where it deems it necessary, it shall review the situation within the committee referred to in Article 20. It may adopt the necessary decisions in accordance with the procedure laid down in Article 22.

6. The Commission shall monitor developments and, in accordance with the procedure laid down in Article 22, amend or repeal, in the light of the developments, the decisions referred to in paragraph 5.

7. Detailed rules for the application of this Article shall be adopted, where necessary, in accordance with the procedure laid down in Article 22.

Article 19

1. Each Member State shall draw up a programme for the exchange of officials empowered to carry out the checks on products originating in third countries.

2. The Commission and the Member States shall coordinate the programmes referred to in paragraph 1 within the committee referred to in Article 20.

3. Member States shall take the necessary measures to allow implementation of the programmes resulting from the coordination referred to in paragraph 2.

4. Each year, in the committee referred to in Article 20, the implementation of programmes shall be reviewed on the basis of reports drawn up by the Member States.

5. Member States shall take into account the experience gained in order to improve and develop the programme of exchanges.

6. A financial contribution from the Community may be granted in order to promote the efficient development of exchange programmes. Detailed rules for the Community's financial contribution and the estimated amount to be charged to the Community budget will be laid down in Council Decision 90/424/EEC [concerning certain expenditure in the veterinary field] ⁽¹⁾.

7. Detailed rules for the application of paragraphs 1, 4 and 5 shall be adopted, where necessary, in accordance with the procedure laid down in Article 22.

CHAPTER VI

General provisions

Article 20

The Commission shall be assisted by the Standing Veterinary Committee, set up by Council Decision 68/361/EEC ⁽²⁾, hereinafter referred to as 'the Committee'.

Article 21

Where the procedure laid down in this Article is to be followed, the following provisions shall apply:

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit of two days. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

⁽¹⁾ OJ No L 224, 18. 8. 1990, p. 19.

⁽²⁾ OJ No L 255, 18. 10. 1968, p. 23.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of 15 days from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 22

Where the procedure laid down in this Article is to be followed, the following provisions shall apply:

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 23

The Annex shall be amended in accordance with the procedure laid down in Article 22.

Article 24

This Regulation shall be without prejudice to obligations arising from customs rules.

Article 25

Directive 89/662/EEC is hereby amended as follows:

1. Article 6 (1) is replaced by the following:

'1. Member States shall ensure that, during the checks carried out at the places where products from a third country may be brought into the Community, such as ports, airports and frontier posts with third countries,

(a) a documentary check is made on the products' origin;

(b) products originating in the Community are subject to the rules on checks provided for in Article 5;

(c) products from third countries are subject to the rules laid down in Council Regulation (EEC) No ... (*).

(*) OJ No L ..., ..., p. ... '

2. Article 22 is replaced by the following:

'Article 22

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1991. They shall inform the Commission thereof immediately.

The provisions adopted pursuant to the first paragraph shall make express reference to this Directive.

However, Greece shall have a further period of one year within which to comply therewith.'

Article 26

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

It shall apply from 1 July 1991.

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

ANNEX

- 1 The territory of the Kingdom of Belgium
 - 2 The territory of the Kingdom of Denmark with the exception of the Faroe Islands and Greenland
 - 3 The German territories in which the Treaty establishing the European Economic Community is applicable
 - 4 The territory of the Kingdom of Spain, with the exception of the Canary Islands, Ceuta and Melilla
 - 5 The territory of the Hellenic Republic
 - 6 The territory of the French Republic in Europe
 - 7 The territory of Ireland
 - 8 The territory of the Italian Republic
 - 9 The territory of the Grand Duchy of Luxembourg
 - 10 The territory of the Kingdom of the Netherlands in Europe
 - 11 The territory of the Portuguese Republic
 - 12 The territory of the United Kingdom of Great Britain and Northern Ireland
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