

COMMISSION DELEGATED REGULATION (EU) 2021/2305**of 21 October 2021****supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with rules on the cases where and conditions under which organic products and in-conversion products are exempted from official controls at border control posts, the place of official controls for such products and amending Commission Delegated Regulations (EU) 2019/2123 and (EU) 2019/2124****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) ⁽¹⁾, and in particular Article 48, point (h), and Articles 51(1), point (a), 53(1), points (a) and (e), and 77(1), point (k), thereof,

Whereas:

- (1) Pursuant to Article 45(5) of Regulation (EU) 2018/848 of the European Parliament and of the Council ⁽²⁾, official controls in Member States to verify compliance with the conditions and measures for the import into the Union of products that are intended to be placed on the market within the Union as organic products or in-conversion products, are to be performed at border control posts in accordance with Article 47(1) of Regulation (EU) 2017/625.
- (2) Article 47(1) of Regulation (EU) 2017/625 specifies the categories of animals and goods entering the Union from third countries on which competent authorities are to perform official controls at border control posts of first arrival into the Union. Organic products and in-conversion products referred to in Article 45(5) of Regulation (EU) 2018/848 fall within the categories of animals and goods referred to in Article 47(1), point (f), of Regulation (EU) 2017/625, by virtue of that provision of Regulation (EU) 2018/848. In addition, organic products and in-conversion products may fall within the categories of animals and goods referred to in Article 47(1), point (f), of Regulation (EU) 2017/625, also by virtue of acts or rules referred to in that provision, other than Article 45(5) of Regulation (EU) 2018/848. Similarly, organic and in-conversion products may also fall within the categories of animals and goods referred to in Article 47(1), points (a) to (e), of Regulation (EU) 2017/625, provided that they meet the relevant requirements.
- (3) In accordance with Article 48, point (h), of Regulation (EU) 2017/625, animals and goods posing a low risk or no specific risk may be exempted from official controls at border control posts. Article 3, point (24), of Regulation (EU) 2017/625 defines 'risk' with reference to adverse effects on human, animal or plant health, animal welfare or the environment, but not in relation to the quality of food. Organic products and in-conversion products entering the Union may be considered as posing a low risk or no specific risk to human, animal or plant health, animal welfare or to the environment, where they do not fall within the categories of animals and goods subject to official controls at border control posts pursuant to Article 47(1), points (a) to (e), of Regulation (EU) 2017/625, or within the categories of animals and goods referred to in Article 47(1), point (f), of Regulation (EU) 2017/625, in relation to

⁽¹⁾ OJ L 95, 7.4.2017, p. 1.

⁽²⁾ 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).

whose entry into the Union conditions or measures have been established in accordance with Article 126 or 128 of Regulation (EU) 2017/625 respectively, or with the rules referred to in Article 1(2), points (a) to (h) and (j), of that Regulation, which require that compliance with those conditions or measures be ascertained at the entry of the animals and goods into the Union. Therefore, it is appropriate to exempt such products from official controls at border control posts.

- (4) Official controls of organic products and in-conversion products intended to be placed on the Union market that are exempted from official controls at border control posts in accordance with this Regulation should be carried out at the point of release for free circulation into the Union. Member States should inform the Commission of the points of release for free circulation where such controls are performed. The Commission should keep up-to-date in the Trade Control Expert System (TRACES) referred to in Article 133(4) of Regulation (EU) 2017/625 the list of points of release for free circulation.
- (5) Commission Delegated Regulation (EU) 2019/2123 ⁽³⁾ enables competent authorities at border control posts to allow the performance of identity and physical checks at a control point other than a border control post on consignments of plants, plant products and other objects referred to in Article 47(1), points (c) and (e), of Regulation (EU) 2017/625 and on consignments of food and feed of non-animal origin subject to measures provided for by the acts referred to in points (d), (e) and (f) of Article 47(1) of that Regulation. Similarly, Delegated Regulation (EU) 2019/2123 enables competent authorities to perform documentary checks at distance from a border control post on 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 ⁽⁴⁾. However, Delegated Regulation (EU) 2019/2123 does not apply to consignments of plants, plant products and other objects referred to in Article 47(1), points (c) and (e), of Regulation (EU) 2017/625 if they are organic products or in-conversion products subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848.
- (6) In order to ensure the application of Delegated Regulation (EU) 2019/2123 to consignments of plants, plant products and other objects referred to in Article 47(1), points (c) and (e), of Regulation (EU) 2017/625 that are organic products or in-conversion products subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848, it is necessary to extend its scope. In addition, provisions should be established in Delegated Regulation (EU) 2019/2123 setting out the cases where, and the conditions under which, identity and physical checks may be performed at a control point other than a border control post in relation to consignments of certain products subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848.
- (7) In order to facilitate the swift handling of animals and goods entering the Union, the competent authorities at 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 plants, plant products and other objects referred to in Article 47(1), points (c) and (e), of Regulation (EU) 2017/625, in accordance with Chapter II of Commission Delegated Regulation (EU) 2019/2124 ⁽⁵⁾, including where such goods are organic products or in-conversion products subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848.

⁽³⁾ 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 (OJ L 321, 12.12.2019, p. 64).

⁽⁴⁾ 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).

⁽⁵⁾ 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 (OJ L 321, 12.12.2019, p. 73).

- (8) Delegated Regulations (EU) 2019/2123 and (EU) 2019/2124 should therefore be amended accordingly.
- (9) In the interest of clarity and legal certainty, this Regulation should apply from the date of application of Regulation (EU) 2018/848,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down rules on:

- (a) the cases where and the conditions under which certain organic products and in-conversion products entering the Union which pose a low risk or no specific risk to human, animal or plant health, animal welfare or to the environment, are exempted from official controls at border control posts performed for the verification of compliance with the rules on organic production and labelling of organic products;
- (b) the place where the official controls for the products referred to in point (a) intended to be placed on the Union market are to be carried out; and
- (c) amendments to Delegated Regulations (EU) 2019/2123 and (EU) 2019/2124.

Article 2

Definitions

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

- (1) 'organic product' means a product as defined in Article 3, point (2), of Regulation (EU) 2018/848;
- (2) 'in-conversion product' means a product as defined in Article 3, point (7), of Regulation (EU) 2018/848.

Article 3

Organic products and in-conversion products exempted from official controls at border control posts

The following organic products and in-conversion products entering the Union shall be exempted from official controls at the border control post of first arrival into the Union:

- (a) organic products and in-conversion products other than those belonging to the categories of animals and goods referred to in Article 47(1), points (a) to (e), of Regulation (EU) 2017/625; and
- (b) organic products and in-conversion products belonging to the category of animals and goods referred to in Article 47(1), point (f), of Regulation (EU) 2017/625, other than those in relation to whose entry into the Union conditions or measures have been established by acts adopted in accordance with Article 126 or 128 of Regulation (EU) 2017/625 respectively, or in relation to whose entry into the Union conditions or measures have been established in accordance with the rules referred to in Article 1(2), points (a) to (h) and (j), of that Regulation.

Article 4

Place of official controls on organic products and in-conversion products exempted from official controls at border control posts

1. For organic products and in-conversion products referred to in Article 3 that are intended to be placed on the Union market, the competent authorities shall carry out the official controls at points of release for free circulation in the Member State in which the consignment is released for free circulation into the Union.

2. Member States shall inform the Commission of the points of release for free circulation where the competent authorities carry out official controls in accordance with paragraph 1, indicating their name, address and contact details.

The Commission shall keep up-to-date in the Trade Control and Expert System (TRACES) the list of those points of release for free circulation.

3. Member States shall ensure that competent authorities at the points of release for free circulation referred to in paragraph 1 have the technology and equipment necessary for the efficient operation of TRACES.

Article 5

Amendment to Delegated Regulation (EU) 2019/2123

Delegated Regulation (EU) 2019/2123 is amended as follows:

(1) Article 1(1) is amended as follows:

(a) point (a) is amended as follows:

(i) the following point (ia) is inserted:

‘(ia) consignments of plants, plant products and other objects referred to in point (i) that are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848 of the European Parliament and of the Council (*);

(*) 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).;’

(ii) point (ii) is replaced by the following:

‘(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, including those that are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848;’

(b) point (b) is replaced by the following:

‘(b) documentary checks at distance from a border control post on consignments of:

(i) plants, plant products and other objects referred to in Articles 72(1) and 74(1) of Regulation (EU) 2016/2031;

(ii) plants, plant products and other objects referred to in point (i) that are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848.’;

(2) the following Article 1a is inserted before Chapter I:

‘Article 1a

Definitions

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

(1) “food and feed safety checks” means official controls performed for the verification of compliance with the rules referred to in Article 1(2), points (a) and (c), of Regulation (EU) 2017/625;

(2) “phytosanitary checks” means official controls performed for the verification of compliance with the rules referred to in Article 1(2), point (g), of Regulation (EU) 2017/625;

- (3) “organic checks” means official controls referred to in Article 6(1) of Commission Delegated Regulation (EU) 2021/2306 (*).

(*) Commission Delegated Regulation (EU) 2021/2306 of 21 October 2021 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council with rules on the official controls in respect of consignments of organic products and in-conversion products intended for import into the Union and on the certificate of inspection (OJ L 461, 27.12.2021, p. 13).;

- (3) Article 2 is amended as follows:

- (a) in paragraph 1, the introductory phrase is replaced by the following:

‘Identity and physical checks for the verification of compliance with Union rules on food safety, feed safety and on protective measures against pests of plants may be performed at a control point other than a border control post where the following conditions apply:’;

- (b) the following paragraph 4 is added:

‘4. The competent authorities may perform the following official controls at a control point indicated in the CHED other than the border control post, unless in box 30 of the certificate of inspection referred to in Article 5 of Delegated Regulation (EU) 2021/2306 (“certificate of inspection”) the check box “the consignment cannot be released for free circulation” has been ticked:

- (a) phytosanitary checks in the form of identity and physical checks in relation to consignments of plants, plant products and other objects referred to in Article 1(1), point (a)(ia), of this Regulation;
- (b) food and feed safety checks in the form of identity and physical checks in relation to consignments of food and feed of non-animal origin referred to in Article 1(1), point (a)(ii), of this Regulation that are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848.’;

- (4) the following Article 2a is inserted:

‘Article 2a

Conditions for the performance of organic checks in the form of identity and physical checks at control points other than border control posts in relation to consignments of certain products subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848

1. The competent authorities may perform organic checks in the form of identity and physical checks in relation to consignments of plants, plant products and other objects referred to in Article 1(1), point (a)(ia), and in relation to consignments of food and feed of non-animal origin referred to in Article 1(1), point (a)(ii), that are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848, at a control point indicated in the certificate of inspection other than the border control post, if the following conditions are met:

- (a) the control point where organic checks in the form of identity and physical checks are to be performed has been indicated in the certificate of inspection either by the operator responsible for the consignment when giving prior notification in accordance with Article 3(1) of Commission Implementing Regulation (EU) 2021/2307 (*) or by the competent authority at the border control post;
- (b) the outcome of organic checks in the form of documentary checks performed by the competent authorities of the border control post is satisfactory;
- (c) the competent authorities of the border control post have recorded in box 26 of the certificate of inspection their authorisation to transfer the consignment to the control point;

- (d) the competent authorities of the border control post have recorded in the CHED their authorisation to transfer the consignment to a control point for food and feed safety checks in the form of identity and physical checks or for phytosanitary checks in the form of identity and physical checks, as appropriate;
- (e) before the consignment leaves the border control post, the competent authority at the border control post responsible for organic checks informs the competent authority at the control point responsible for organic checks of the arrival of the consignment by submitting in the Trade Control and Expert System (TRACES) the certificate of inspection;
- (f) 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;
- (g) the operator has ensured that consignments of plants, plant products and other objects referred to in Article 1(1), point (a)(ia), and of food and feed of non-animal origin referred to in Article 1(1), point (a)(ii), that are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848, are accompanied to the control point by an authenticated copy of the certificate of inspection;
- (h) the operator has indicated the reference number of the certificate of inspection 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 certificate at the disposal of the customs authorities as referred to in Article 163 of Regulation (EU) No 952/2013.

2. The requirement for an authenticated copy of the certificate of inspection referred to in paragraph 1, point (g), to accompany the consignment shall not apply where that certificate has been issued in TRACES by the control authority or control body in the third country in accordance with Delegated Regulation (EU) 2021/2306 or uploaded in TRACES by the operator and the competent authorities of the border control post have checked that it corresponds to the original certificate of inspection.

(*) Commission Implementing Regulation (EU) 2021/2307 of 21 October 2021 laying down rules on documents and notifications required for organic and in-conversion products intended for import into the Union (OJ L 461, 27.12.2021, p. 30).;

(5) Article 3 is amended as follows:

(a) in paragraph 1, the introductory phrase is replaced by the following:

'Identity checks and physical checks on consignments of food and feed of non-animal origin referred to in Article 1(1), point (a)(ii), may be performed by the competent authorities at a control point other than a border control post, where either of the following applies:':

(b) the following paragraphs 3 and 4 are added:

'3. The competent authorities may perform identity and physical checks in relation to consignments of food and feed of non-animal origin referred to in Article 1(1), point (a)(ii), that are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848, at a control point other than a border control post, where, in addition to one of the conditions set out in paragraph 1 of this Article:

(a) the operator responsible for the consignment has requested the transfer to a control point both for food and feed safety checks in the form of identity and physical checks and for organic checks in the form of identity and physical checks;

(b) in case the consignment is selected by the competent authorities of the border control post both for food and feed safety checks in the form of identity and physical checks and for organic checks in the form of identity and physical checks, the competent authorities of the border control post have authorised or decided such transfer, as appropriate, in relation to all those checks. Those checks shall be performed at the same control point, which has to be designated for the category of goods in the consignment and to be located in the Member State where the consignment is to be released for free circulation.

4. Where consignments are transferred to a control point in accordance with paragraph 3, the competent authorities of the border control post responsible for food and feed safety checks shall record the transfer in the CHED and the competent authorities of the border control post responsible for organic checks shall record the transfer in the certificate of inspection.;

(6) Article 4 is amended as follows:

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

‘(c) plants, plant products and other objects referred to in points (a) and (b) that are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848.;

(b) the following paragraphs 4 and 5 are added:

‘4. In relation to plants, plant products and other objects referred to in paragraph 1, point (c), identity and physical checks may be performed by the competent authorities at a control point other than a border control post, where, in addition to one of the conditions set out in paragraph 2, the following applies:

(a) the operator responsible for the consignment has requested the transfer to a control point both for phytosanitary checks in the form of identity and physical checks and for organic checks in the form of identity and physical checks;

(b) in case the consignment is selected by the competent authorities of the border control post both for phytosanitary checks in the form of identity and physical checks and for organic checks in the form of identity and physical checks, the competent authorities of the border control post have authorised or decided such transfer, as appropriate, in relation to all those checks. Those checks shall be performed at the same control point, which has to be designated for the category of goods in the consignment and to be located in the Member State where the consignment is to be released for free circulation.

5. Where consignments are transferred to a control point in accordance with paragraph 4, the competent authorities of the border control post responsible for phytosanitary checks shall record the transfer in the CHED and the competent authorities of the border control post responsible for organic checks shall record the transfer in the certificate of inspection.;

(7) in Article 6, the following paragraph 6 is added:

‘6. In relation to consignments transferred to a control point for the performance of organic checks in the form of identity and physical checks, the competent authorities of the control point shall:

(a) confirm the arrival of the consignment to the competent authorities of the border control post responsible for organic checks via TRACES;

(b) record in the certificate of inspection the outcome of the organic checks in the form of identity and physical checks and the decision on the consignment in accordance with Article 6(3) of Delegated Regulation (EU) 2021/2306.;

(8) in Article 7, the introductory phrase is replaced by the following:

‘Documentary checks on consignments of plants, plant products and other objects referred to in Article 1(1), point (b), entering the Union may be performed by either of the following.;

(9) Article 8 is amended as follows:

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

‘(v) in respect of plants, plant products and other objects referred to in Article 4(1), point (c), of this Regulation, the certificate of inspection referred to in Delegated Regulation (EU) 2021/2306.;

(b) paragraph 2 is replaced by the following:

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

Article 6

Amendment to Delegated Regulation (EU) 2019/2124

Delegated Regulation (EU) 2019/2124 is amended as follows:

(1) in Article 1(1), point (a), the following point is inserted:

‘(ia) plants, plant products and other objects referred to in points (i) and (ii) that are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848 of the European Parliament and of the Council (*).’.

(*) 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).’;

(2) in Article 6(3), the introductory phrase is replaced by the following:

‘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 Article 1(1), point (a)(i), (ii) and (ia), has been closed or sealed in such a way that, during their transport to and storage at the onward transportation facility:’.

Article 7

Entry into force and application

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

It shall apply from 1 January 2022.

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

Done at Brussels, 21 October 2021.

For the Commission
The President
Ursula VON DER LEYEN