



EUROPEAN
COMMISSION

Brussels, **XXX**
SANTE/7148/2021
(POOL/G3/2021/7148/7148-EN.docx)
[...] (2021) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

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)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2018/848 of the European Parliament and of the Council¹ establishes the principles of organic production and lays down the rules concerning organic production, related certification and the use of indications referring to organic production in labelling and advertising, conditions and measures for the import into the Union of products for the purpose of placing on the market within the Union as organic products or in-conversion products, as well as rules on controls additional to those laid down in Regulation (EU) 2017/625 of the European Parliament and of the Council² on Official Controls (Official Controls Regulation).

Pursuant to Article 45(5) of Regulation (EU) 2018/848, compliance with the conditions and measures for the import of organic products and in-conversion products referred to in that Regulation must be ascertained at border control posts, in accordance with Article 47(1) of Regulation (EU) 2017/625.

Regulation (EU) 2017/625 establishes the framework for official controls and other official activities to verify the correct application of Union agri-food chain legislation. This includes official controls performed on animals and goods entering the Union from third countries.

Article 47(1) of Regulation (EU) 2017/625 specifies the categories of animals and goods on which competent authorities are to perform official controls at border control posts of first arrival into the Union. Organic 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.

Article 48(h) of Regulation (EU) 2017/625 provides that animals and goods posing low risk or no specific risk may be exempted from official controls at border control posts. According to Article 77(1)(k) of Regulation (EU) 2017/625, arrangements for specific official controls might be laid down in delegated acts for those animals and goods exempted from official controls at border control posts.

Commission Delegated Regulation (EU) 2019/2123³ lays down rules for cases where and conditions under which competent authorities may perform identity checks and physical checks at a control point other than the border control post on consignments of certain food and feed of non-animal origin, subject to the measures provided for in the acts referred to in points (d), (e) and (f) of Article 47(1) of Regulation (EU) 2017/625, and on consignments of

¹ 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 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) (OJ L 95, 7.4.2017, p. 1).

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. 64–72).

certain plants, plant products and other objects, as well as rules for cases where and conditions under which competent authorities may 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 Council⁴.

Commission Delegated Regulation (EU) 2019/2124⁵ lays down rules establishing the cases where and the conditions under which, the competent authorities at border control posts may authorise the onward transportation to the place of final destination in the Union pending the availability of the results of laboratory analyses and tests of consignments of certain plants, plant products, and other objects and 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.

The purpose of this Regulation is to lay down the cases where and the conditions under which certain organic products and in-conversion products entering the Union from third countries that 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, as well as rules on the place where the official controls for such exempted products are to be carried out.

This Regulation also amends Delegated Regulations (EU) 2019/2123 and (EU) 2019/2124. The amendment ensures that Regulations (EU) 2019/2123 and (EU) 2019/2124 apply to plants, plant products and other objects currently under their scope, 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. However, the amendment to Delegated Regulation (EU) 2019/2123 does not apply Delegated Regulation (EU) 2019/2123 to documentary or to identity and physical checks to verify compliance with the rules on organic production and labelling of organic products, referred to in Article 1(2), point (i), of Regulation (EU) 2017/625.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission Expert Group "official controls" (E00911) was consulted at several occasions, and a number of meetings have been held with relevant stakeholders.

No impact assessment has been carried out, as this Regulation is not expected to have any significant impact. This Regulation is based on the possibility already provided for in Article 48, point (h), of Regulation (EU) 2017/625 to exempt from official controls at border control posts, categories of animals and goods posing a low risk or no specific risk to human, animal or plant health, animal welfare or to the environment.

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).

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis is Article 48, point (h), and 77(1), point (k), of Regulation (EU) 2017/625. In addition, this Regulation is also based on Article 53(1), points (a) and (e), and on Article 51(1), point (a), because Articles 5 and 6 of this Regulation amend Delegated Regulations (EU) 2019/2123 and (EU) 2019/2124, respectively. As explained above, this amendment ensures that Delegated Regulations (EU) 2019/2123 and (EU) 2019/2124 apply to plants, plant products and other objects currently under their scope, 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. However, as also explained above, the amendment to Delegated Regulation (EU) 2019/2123 does not apply that Regulation to documentary or to identity and physical checks to verify compliance with the rules on organic production and labelling of organic products, referred to in Article 1(2), point (i), of Regulation (EU) 2017/625. In the interest of legal certainty, it is appropriate to lay down in a single act rules on organic products and in-conversion products exempted from official controls at border control posts, rules on the place where the official controls for such exempted products are to be carried out and rules amending Delegated Regulations (EU) 2019/2123 and (EU) 2019/2124.

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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 Council², 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

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).

(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 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) 2019/2123³ 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 at border control posts 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 Council⁴. However, Delegated Regulation (EU)

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

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 to ensure that official controls for the verification of compliance with the rules referred to in Article 1(2), point (i), of Regulation (EU) 2017/625 are carried out at border control posts.
- (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) 2019/2124⁵, 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.
- (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

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).

- (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 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 Trade Control and Expert System (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) in point (a), point (i) is replaced by the following:

‘(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* 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, including in the case where such plants, plant products and other objects 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) 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).

** 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).’;

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

‘(b) 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, including in the case where such plants, plant products and other objects are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848.’;

2. in Article 3, the following paragraph 3 is added:

‘3. Paragraphs 1 and 2 shall not apply in relation to identity and physical checks performed in accordance with rules on organic production and labelling of organic products referred to in Article 1(2), point (i), of Regulation (EU) 2017/625.’;

3. in Article 4, the following paragraph 4 is added:

‘4. Paragraph 1 shall also apply in the case where the plants, plant products and other objects referred to in that paragraph are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848. However, that paragraph shall not apply in relation to identity and physical checks performed in accordance with rules on organic production and labelling of organic products, referred to in Article 1(2), point (i), of Regulation (EU) 2017/625.’;

4. Article 7 is replaced by the following:

‘Article 7

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

1. 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 Article 1(2), point (g), 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.
2. Paragraph 1 shall also apply in the case where the plants, plant products and other objects referred to in that paragraph are subject to official controls at border control posts pursuant to Article 45(5) of Regulation (EU) 2018/848. However, that paragraph shall not apply to documentary checks performed in accordance with rules on organic production and labelling of organic products referred to in Article 1(2), point (i), of Regulation (EU) 2017/625.’.

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 twentieth 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,

For the Commission
The President

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