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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

amending Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No 178/2002 of the European Parliament and of the Council

(Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) .../...

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to 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 safety¹, and in particular Article 53(1), point (b)(ii), thereof,

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)², and in particular Article 47(2), first subparagraph, point (b), and Article 54(4), first subparagraph, points (a) and (b), thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2019/1793³ lays down rules on the temporary increase of official controls at the entry into the Union on certain food and feed of non-animal origin from certain third countries listed in Annex I to that Implementing Regulation, and on the imposition of special conditions governing the entry into the Union of certain consignments of food and feed from certain third countries due to the risk of contamination by mycotoxins, including aflatoxins, pesticide residues, pentachlorophenol and dioxins, and microbiological contamination, listed in Annex II to that Implementing Regulation.

¹ OJ L 31, 1.2.2002, p. 1.

² OJ L 95, 7.4.2017, p. 1.

³ Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No 178/2002 of the European Parliament and of the Council and repealing Commission Regulations (EC) No 669/2009, (EU) No 884/2014, (EU) 2015/175, (EU) 2017/186 and (EU) 2018/1660 (OJ L 277, 29.10.2019, p. 89).

- (2) Article 12 of Implementing Regulation (EU) 2019/1793 provides that the lists set out in the Annexes to that Implementing Regulation are to be reviewed at regular intervals not exceeding six months, in order to take into account new information related to risks to human health and non-compliance with Union legislation, such as the data resulting from notifications received through the Rapid Alert System for Food and Feed ('RASFF') established by Regulation (EC) No 178/2002, as well as data and information concerning consignments and the results of the documentary, identity and physical checks communicated by the Member States to the Commission.
- (3) Recent notifications through the RASFF indicate the existence of a serious direct or indirect risk to human health deriving from some food or feed. Additionally, official controls performed by Member States on some food and feed of non-animal origin in the second semester of 2021 indicate that the lists set out in Annexes I and II to Implementing Regulation (EU) 2019/1793 should be amended in order to protect human health in the Union.
- (4) Certain consignments of food and feed of non-animal origin are exempt from official controls in accordance with Implementing Regulation (EU) 2019/1793, if they do not exceed 30 kg. Such consignments include trade samples, laboratory samples, display items and consignments intended for scientific purposes. In the light of experience with the application of Implementing Regulation (EU) 2019/1793, Member States have indicated that in certain cases such consignments exceed 30 kg. Since such consignments are not intended to be placed on the market, it is unnecessarily burdensome to perform official controls on such consignments. Therefore, the weight limit for exemption from official controls in accordance with Implementing Regulation (EU) 2019/1793 should be increased to 50 kg. In addition, where such consignments exceed 50 kg, Member States should be able to accept such consignments, provided the Member State of destination has issued an authorisation in advance and adequate control arrangements are in place to ensure that the consignments are not placed on the market.
- (5) Consignments of food and feed which form part of passengers' personal luggage and are intended for personal consumption or use, and non-commercial consignments of food or feed sent to natural persons, which are not intended to be placed on the market, are exempt from official controls in accordance with Implementing Regulation (EU) 2019/1793, if they do not exceed 30 kg. Experience with the application of Implementing Regulation (EU) 2019/1793 shows that, the weight limit of 30 kg leads to the exclusion of a wide range of consignments from such controls. The weight limit of 30 kg also goes beyond standard baggage allowances in international passenger transport. In case of non-commercial consignments of 30 kg sent to natural persons, it is difficult to ensure by way of official controls that parts of such consignments are not placed on the market. Therefore, the weight limit for consignments which form part of passengers' personal luggage, and for non-commercial consignments sent to natural persons should be reduced to a level that reflects more adequately the intended personal use of the consignments and the physical properties of the consignments.
- (6) Where exemptions from official controls at border control posts for certain goods are granted, conditions for these exemptions, such as adequate control arrangements, should be established to ensure that there are no unacceptable risks to human and animal health from the entry of such goods into the Union.
- (7) In relation to the term 'consignment', Implementing Regulation (EU) 2019/1793 provides several definitions, which leads to uncertainty and differences in application. Article 3, point (37), of Regulation (EU) 2017/625 already provides a definition of

‘consignment’. Therefore, for the purpose of clarity, the additional definitions of ‘consignment’ in Article 2(2) of Implementing Regulation (EU) 2019/1793 should be deleted.

- (8) The Combined Nomenclature (‘CN’) codes 2008 19 13 40 and 2008 19 93 40 can only be used for mixtures containing almonds or pistachios but not for mixtures containing groundnuts. Since only mixtures containing groundnuts are likely to pose a risk of contamination by aflatoxins, these CN codes should be deleted for the entries for Argentina in Annex I to Implementing Regulation (EU) 2019/1793 and for Egypt, Ghana, Gambia, India and Sudan in the table in point 1, of Annex II to that Implementing Regulation.
- (9) In relation to consignments of oranges from Egypt, data from RASFF notifications and information regarding official controls performed by Member States indicate the emergence of new risks to human health, due to a possible contamination by pesticide residues. It is therefore necessary to require an increased level of official controls on entries of those commodities from Egypt. Such commodities should therefore be included in Annex I to Implementing Regulation (EU) 2019/1793, with a frequency of identity and physical checks set at 20 % of consignments entering the Union.
- (10) In relation to consignments of hazelnuts from Georgia, a high frequency of non-compliance with the relevant requirements provided for in Union legislation with respect to contamination by aflatoxins was detected during official controls performed by Member States in accordance with Annex I to Implementing Regulation (EU) 2019/1793. It is therefore appropriate to increase the frequency of identity and physical checks to be performed on such consignments to 30 %.
- (11) Palm oil from Ghana has been subject to an increased level of official controls due to the risk of contamination by Sudan dyes since April 2016. The official controls carried out on that commodity by the Member States show a persistent high rate of non-compliance since the establishment of the increased level of official controls. Those controls provide evidence that the entry of that commodity into the Union constitutes a serious risk for human health.
- (12) It is therefore necessary, in addition to the increased level of official controls, to provide for special conditions in relation to the importation of palm oil from Ghana. In particular, all consignments of palm oil from Ghana should be accompanied by an official certificate stating that all the results of sampling and analyses show compliance with Union requirements. The results of sampling and analyses should be attached to that certificate. Therefore, the entry on palm oil from Ghana in Annex I to Implementing Regulation (EU) 2019/1793 should be deleted and transferred to Annex II to that Implementing Regulation, with a frequency of identity and physical checks set at 50 % of consignments entering the Union.
- (13) In relation to consignments of rice from India and Pakistan, the data resulting from notifications in the RASFF and information regarding official controls performed by Member States indicate the emergence of new risks to human health, due to a possible contamination by pesticide residues. It is therefore necessary to require an increased level of official controls on entries of this commodity from India and Pakistan. Such commodity should therefore be included in Annex I to Implementing Regulation (EU) 2019/1793, with a frequency of identity and physical checks set at 5 % of consignments entering the Union.

- (14) The potential health risks arising from contamination of rice from India and Pakistan by aflatoxins and ochratoxine A is not limited to certain types of rice classified under CN code 1006 10 79. Therefore, to ensure efficient protection against potential health risks arising from contamination of rice from India and Pakistan by aflatoxins and ochratoxine A, the relevant CN code in Annex I to Implementing Regulation (EU) 2019/1793 should be extended to cover all types of rice. Due to the extension of the CN code and the volumes traded, the administrative burden for Member States is expected to increase significantly. Therefore, the frequency of controls should be decreased to 5 % of consignments entering the Union, as such frequency will provide sufficient information for an assessment of risks associated with possible contamination of rice by aflatoxins and ochratoxine A.
- (15) In relation to consignments of yardlong beans (*Vigna unguiculata* ssp. *sesquipedalis*, *Vigna unguiculata* ssp. *unguiculata*) and guava (*Psidium guajava*) from India, the data resulting from notifications in the RASFF and information regarding official controls performed by Member States indicate the emergence of new risks to human health, due to a possible contamination by pesticide residues. It is therefore necessary to require an increased level of official controls on entries of those commodities from India. Such commodities should therefore be included in Annex I to Implementing Regulation (EU) 2019/1793, with a frequency of identity and physical checks set at 20 % of consignments entering the Union.
- (16) Nutmeg from India, under CN codes 0908 11 00 and 0908 12 00, has been subject to an increased level of official controls due to the risk of contamination by aflatoxins since July 2019. The official controls carried out by the Member States and available information show improvements in compliance with the relevant requirements provided for in Union legislation. Those controls and that information provide evidence that the entry of this foodstuff into the Union no longer constitutes a serious risk to human health. Consequently, it is not necessary to continue to require that all consignments of nutmeg from India, under CN codes 0908 11 00 and 0908 12 00, are to be accompanied by an official certificate stating that all the results of sampling and analyses show compliance with Commission Regulation (EC) No 1881/2006⁴. At the same time, Member States should continue to carry out controls to ensure that the current level of compliance will be maintained. Therefore, the entry concerning nutmeg from India, under CN codes 0908 11 00 and 0908 12 00, in the table in point 1, of Annex II to Implementing Regulation (EU) 2019/1793 should be deleted and transferred to Annex I to that Implementing Regulation, with a frequency of identity and physical checks set at 30 % of consignments entering the Union.
- (17) In relation to consignments of peppers of the genus *Capsicum* (other than sweet) from Thailand, a high frequency of non-compliance with the relevant requirements provided for in Union legislation with respect to contamination by pesticide residues was detected during official controls performed by Member States in accordance with Annex I to Implementing Regulation (EU) 2019/1793. It is therefore appropriate to increase the frequency of identity and physical checks to be performed on such consignments to 30 % of consignments entering the Union.
- (18) Several CN codes do not match the commodities referred to in certain entries in Annex I to Implementing Regulation (EU) 2019/1793 and are therefore redundant. The following CN codes should be deleted in Annex I to that Implementing Regulation: CN

⁴ Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5).

code ex 080719 00 70 in the entry on galia melon (*C.melo var.reticulatus*) from Honduras, CN code ex 0709 99 00 25 in the entry on gotukola (*Centella asiatica*) from Sri Lanka, and CN code 1211 90 86 10 in the entry on dried oregano from Turkey.

- (19) To allow for a more precise identification of commodities subject to increased official controls, it is appropriate to specify the TARIC sub-division for CN code ex 0709 99 90 in the entry on drumsticks (*Moringa oleifera*) from India and for CN code ex 1211 90 86 in the entry on gotukola (*Centella asiatica*) from Sri Lanka in Annex I to Implementing Regulation (EU) 2019/1793.
- (20) In relation to consignments of nutmeg from Indonesia, a high frequency of non-compliance with the relevant requirements provided for in Union legislation with respect to contamination by aflatoxins was detected during official controls performed by Member States in accordance with the table in point 1, of Annex II to Implementing Regulation (EU) 2019/1793. It is therefore appropriate to increase the frequency of identity and physical checks to be performed on such consignments to 30 % of consignments entering the Union.
- (21) The potential health risk from contamination by ethylene oxide affects mixtures of food additives containing locust bean gum or guar gum. Therefore, in the columns referring to ‘food and feed (intended use)’ and ‘CN code’ in the table in point 1, of Annex II to Implementing Regulation (EU) 2019/1793 in the entry related to India, the category ‘mixtures of food additives containing locust bean gum or guar gum’ and relevant CN codes for mixtures of food additives should be added. Equally, in the entries related to Malaysia and to Turkey, the category ‘mixtures of food additives containing locust bean gum’ and relevant CN codes for mixtures of food additives should be added. A frequency of identity and physical checks should be set at 20 % for such consignments entering the Union from India, Malaysia and Turkey.
- (22) In relation to spices from India, CN code 0910 covers commodities in the form of roots, flowers and leaves, such as turmeric (curcuma) root. Taking into account that no contamination by ethylene oxide was detected during official controls performed by Member States in accordance with the table in point 1, of Annex II to Implementing Regulation (EU) 2019/1793, such commodities can be excluded from increased official controls. Therefore, it is appropriate to indicate in Annex II to Implementing Regulation (EU) 2019/1793 that only dried spices from India should be subject to official controls at border control posts, with a frequency of identity and physical checks set at 20 % of consignments entering the Union.
- (23) In relation to instant noodles from South Korea and Vietnam, in order to ensure clarity concerning the type of noodles subject to increased controls, and to exclude from official controls other varieties of noodles, such as wheat noodles, egg noodles, vermicelli and other types of such products which cannot be classified as instant noodles and which are declared under the same CN code 1902 30 10, it is appropriate to provide clarifications in the columns referring to ‘food and feed (intended use)’, ‘CN code’ and ‘TARIC sub-division’ in the relevant entries in the table in point 1, of Annex II to Implementing Regulation (EU) 2019/1793.
- (24) In order to ensure consistency and clarity, it is appropriate to replace Annexes I and II to Implementing Regulation (EU) 2019/1793 in their entirety by the text set out in the Annex to this Regulation.
- (25) In order to allow entry into the Union of consignments which have already been dispatched from the country of origin or from another third country if that country is

different from the country of origin, when this Regulation enters into force, and so as to take into account the possibility to know and comply with this Regulation, it is appropriate to provide for a transitional period for consignments of palm oil from Ghana, mixtures of food additives containing locust bean gum or guar gum from India and mixtures of food additives containing locust bean gum from Malaysia and Turkey, which are not accompanied by the results of sampling and analyses and an official certificate. At the same time, public health continues to be protected for such consignments of palm oil from Ghana, which remain subject to identity and physical checks at a frequency of 50 % of consignments entering the Union.

- (26) Implementing Regulation (EU) 2019/1793 should therefore be amended accordingly.
- (27) 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

Implementing Regulation (EU) 2019/1793 is amended as follows:

1. in Article 1, paragraphs 3, 4 and 5 are replaced by the following:
 - ‘3. This Regulation shall not apply to the following categories of consignments of products, unless their net weight exceeds 5 kg of fresh products or 2 kg of other products:
 - (a) consignments which form part of passengers’ personal luggage and are intended for personal consumption or use;
 - (b) non-commercial consignments sent to natural persons, which are not intended to be placed on the market.
 - This Regulation shall not apply to the following categories of consignments of products, unless their net weight exceeds 50 kg of fresh products or 10 kg of other products:
 - (a) consignments sent as trade samples, laboratory samples or as display items for exhibitions, which are not intended to be placed on the market;
 - (b) consignments intended for scientific purposes.
 4. This Regulation shall not apply to food and feed referred to in paragraph 1, points (a) and (b) on board means of transport operating internationally, which are not unloaded and are intended for consumption by the crew and passengers.
 5. In case of doubt on the intended use of the consignments of products referred to in paragraph 3, first subparagraph, the burden of proof lies with the owners of the personal luggage and with the recipients of the consignments, respectively.
 6. The competent authority may exempt from identity and physical checks, including sampling and laboratory analyses, in accordance with this Regulation consignments of food and feed of non-animal origin sent as trade samples, laboratory samples, display items for exhibitions and consignments of food and feed intended for scientific purposes, which exceed the weight limits provided for in paragraph 3, second subparagraph, and are not intended to be placed on the market, provided that:

- (a) they are accompanied by an authorisation for introduction into the Union issued in advance by the competent authority of the Member State of destination and providing:
 - (i) the purpose for introduction into the Union;
 - (ii) the place of destination;
 - (iii) guarantees that the consignments will not be placed on the market as food or feed;
 - (b) the operator presents the consignments at the border control post of entry into the Union;
 - (c) the competent authority of the border control post of entry into the Union informs the competent authority of the Member State of destination, through the IMSOC, about the introduction of the consignments.’;
2. in Article 2, paragraph 2 is deleted;
3. Article 14 is replaced by the following:

‘Article 14
Transitional period

Consignments of palm oil from Ghana, mixtures of food additives containing locust bean gum or guar gum from India and mixtures of food additives containing locust bean gum from Malaysia and Turkey, which have been dispatched from the country of origin, or from another third country if that country is different from the country of origin, before the date of entry into force of Commission Implementing Regulation (EU) ...⁺, may enter the Union until ... [two months after the date of entry into force of Commission Implementing Regulation (EU) ... amending Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No 178/2002 of the European Parliament and of the Council] without being accompanied by the results of sampling and analyses and the official certificate provided for in Articles 10 and 11.

* Commission Implementing Regulation (EU) ... of ... amending Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No 178/2002 of the European Parliament and of the Council (OJ ...).’;

⁺ OJ: Please insert in the text the number of Commission Implementing Regulation (EU) ... amending Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No 178/2002 of the European Parliament and of the Council and insert the number, date and OJ reference of that Implementing Regulation in the footnote.

4. Annexes I and II are replaced by the text set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth 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,

For the Commission
The President
Ursula VON DER LEYEN