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COMMISSION DELEGATED REGULATION (EU) 2019/2123

of 10 October 2019

supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts

(Text with EEA relevance)

(OJ L 321, 12.12.2019, p. 64)

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COMMISSION DELEGATED REGULATION (EU) 2019/2123

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supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts

(Text with EEA relevance)

Article 1

Subject matter

1. This Regulation lays down rules for cases where and conditions under which competent authorities may perform:

(a) identity checks and physical checks at a control point other than the border control post on:

(i) consignments of plants, plant products, and other objects referred to in Articles 72(1) and 74(1) of Regulation (EU) 2016/2031 of the European Parliament and of the Council [1] 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;

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(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 [2];

(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;

[1] Regulation (EU) 2016/2031 of the European Parliament 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).

[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).

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(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.

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2. The competent authorities situated at a distance from the border control post, including at a control point other than the border control post and at an entry point into the Union, shall perform operations during and after documentary, identity and physical checks in accordance with Commission Implementing Regulation 2019/2130 ([1]).

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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 ([2]).

([1]) Commission Implementing Regulation 2019/2130 of 25 November 2019 establishing detailed rules on the operations to be carried out during and after documentary checks, identity checks and physical checks on animals and goods subject to official controls at border control posts (see page 128 of this Official Journal).

([2]) 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).

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CHAPTER I

Identity checks and physical checks performed at control points other than the border control posts

Article 2

Conditions for the performance of identity and physical checks at a control point other than the border control post

1. ►M1 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: ◄

(a) the operator when giving the prior notification in accordance with point (a) of Article 56(3) of Regulation (EU) 2017/625 or the competent authority of the border control post has indicated in the Common Health Entry Document ('CHED') the control point where identity checks and physical checks are to be performed;

(b) the outcome of documentary checks performed by the competent authorities of the border control post is satisfactory;

(c) the competent authorities of the border control post has recorded in the CHED their authorisation to transfer the consignment to the control point;

(d) before the consignment leaves the border control post, the operator has notified the competent authorities of the control point where identity and physical checks are to be performed of the expected time of the arrival of the consignment and of the means of transport by completing and submitting a separate CHED into the information management system for official controls ('IMSOC');

(e) the operator has transported the consignment from the border control post to the control point under customs supervision without the goods being unloaded during the transport;

(f) the operator has ensured that the consignment is accompanied to the control point by a copy of the CHED referred to in point (c), in paper format or in electronic format;

(g) the operator has ensured that:

(i) the consignments of plants, plant products, and other objects referred to in Articles 72(1) and 74(1) of Regulation (EU) 2016/2031 and consignments of plants, plant products, and other objects subject to an emergency measure provided for in acts adopted in accordance with Articles 28(1), 30(1), 40(3), 41(3), 49(1), 53(3) and 54(3) of Regulation (EU) 2016/2031 and consignments of food and feed of non-animal origin referred to in points (e) and (f) of Article 47(1) of Regulation (EU) 2017/625 are accompanied to the control point by an authenticated copy of the official certificates referred to in Article 50(1) of Regulation (EU) 2017/625, issued in accordance with Article 50(2) of that Regulation;

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(ii) consignments of food and feed of non-animal origin subject to the measures provided for by the acts referred to in points (e) and (f) of Article 47(1) of Regulation (EU) 2017/625 are accompanied to the control point by an authenticated copy of the results of laboratory analysis performed by the competent authorities of the third country, issued in accordance with Article 50(2) of that Regulation.

(h) the operator has indicated the reference number of the CHED referred to in point (c) in the customs declaration lodged with the customs authorities for the purposes of the transfer of the consignment to the control point and has kept a copy of that CHED at the disposal of the customs authorities as referred to in Article 163 of Regulation (EU) No 952/2013 of the European Parliament and of the Council ([1]).

2. The requirement for the authenticated copy referred to in points (i) and (ii) of paragraph 1(g) to accompany the consignment shall not apply where the respective official certificates or results of laboratory analysis have been submitted in IMSOC by the competent authorities of the third country or uploaded in IMSOC by the operator and the competent authorities of the border control post have checked that they correspond to the original certificates or results of laboratory analyses.

3. Where the competent authority of a Member State manages an existing national system which records the results of documentary, identity and physical checks, points (d) and (h) of paragraph 1 shall not apply to consignments leaving the border control post to the control point within the same Member State, provided that the following requirements are fulfilled:

(a) information on the expected time of arrival of the consignment to the control point and of the type of the means of transport is available in the existing national system;

(b) the existing national system complies with the following conditions:

(i) it ensures timely information of customs authorities and of the operator on the authorisation referred to in point (c) of paragraph 1 and of the competent authorities of the border control post of the arrival of the consignment at control point,

(ii) it exchanges electronic data with IMSOC, including information on rejections of consignments and information which allows for clear identification of each consignment, such as by way of a unique reference number,

(iii) it ensures that the finalisation of the CHED referred to in point (c) of paragraph 1 may only take place after electronic data exchange and confirmation by IMSOC.

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

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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.

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 ([1]) 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;

([1]) 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).

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(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.

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Article 3

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

1. ►M1 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: ◄

(a) the operator responsible for the consignment has requested the competent authorities of the border control post that identity checks and physical checks be carried out at the control point, which has been designated for the category of goods of such consignment, and the competent authorities of the border control post authorise the transfer of the consignment to that control point;

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(b) the competent authorities of the border control post have decided that identity checks and physical checks be performed at the control point, which has been designated for the category of goods of such consignment and the operator does not object to this decision.

2. The identity checks and physical checks referred in paragraph 1 shall be performed by the competent authorities of the border control post if either of the following applies:

(a) there is no authorisation by the competent authority of the border control post as referred in paragraph 1(a),

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

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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.

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Article 4

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

1. Identity checks and physical checks may be performed by the competent authorities at a control point other than the border control post on consignments of:

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

(b) plants, plant products, and other objects subject to an emergency measure provided for in acts adopted in accordance with Articles 28(1), 30(1), 40(3), 41(3), 49(1), 53(3) and 54(3) of Regulation (EU) 2016/2031 ,

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(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.

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2. The identity checks and physical checks referred to in paragraph 1 may be performed by the competent authorities at a control point other than a border control post where either of the following applies:

(a) the operator responsible for the consignment has requested the competent authorities of the border control post that identity checks and physical checks be carried out at a control point, which has been designated for the category of goods of such consignment, and the competent authorities of the border control post authorise the transfer of the consignment to the control point;

(b) the competent authorities of the border control post have decided that identity checks and physical checks be performed at a control point, which has been designated for the category of goods of such consignment and the operator does not object to this decision.

3. The identity checks and physical checks referred to in paragraph 1 shall be performed by the competent authorities of the border control post if either of the following applies:

(a) there is no authorisation by the competent authority of the border control post as referred in paragraph 2(a),

(b) the operator objects to the decision to transfer consignment to the control point as referred in paragraph 2(b).

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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;

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(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.

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Article 5

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

1. The identity checks and physical checks may be performed at a control point for consignments referred to in Article 4(1) provided the operator has ensured that packaging or the means of transport of consignments are closed or sealed in such a way that, during their transfer to the control point they cannot cause infestation of or infection to other plants, plant products or other objects with the pests listed as Union quarantine pests or as Union regulated non-quarantine pests referred to in Articles 5(2) and 30(1) of Regulation (EU) 2016/2031 and, in the case of protected zones, with the respective pests included on list established pursuant to Article 32(3) of that Regulation.

2. By way of derogation from paragraph 1 the competent authorities of the border control post of entry may allow that the packaging or the means of transport of consignments of plants, plant products and other objects is not closed or sealed, where the following conditions apply:

(a) the consignment consists of wood of conifers grown or produced in a geographical area of a third country where that third country shares a land border with the Member State for which the competent authority is responsible and where there is information that the wood has the same phytosanitary status in that third country and that Member State,

(b) the consignments of wood of conifers are transported to a control point that is situated in the same Member State as the border control post of entry,

(c) the consignments of wood of conifers do not pose a specific risk of spreading Union quarantine pests, or pests subject to measures adopted pursuant to Article 30(1) of Regulation (EU) 2016/2031, during transport to the control point,

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(d) before leaving the territory of that Member State, the competent authority ensures that such wood is processed in a way that the wood does not represent a phytosanitary risk.

3. Member States that make use of provisions referred to in paragraph 2 shall:

(a) inform the Commission and the other Member States of the area of the third country concerned and on the phytosanitary status of this area;

(b) annually submit a report with the volume and results of official controls performed on the wood of conifers concerned.

Article 6

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

1. After the competent authorities of the border control post have authorised or decided on the transfer of the consignment to the control point indicated in the CHED, the operator responsible for the consignment shall not present the consignment for identity and physical checks to a control point different from the one indicated in the CHED, unless the competent authorities of the border control post authorise the transfer of the consignment to another control point in accordance with point (a) of Article 3(1) and point (a) of Article 4(2).

2. The competent authorities of the control point shall confirm the arrival of the consignment to the competent authorities of the border control post by completing in IMSOC the CHED referred to in point (a) of Article 2(1).

3. The competent authorities of the control point shall finalise the separate CHED referred to in point (d) of Article 2(1), or where Article 2(3) applies, the CHED referred to in point (c) of Article 2(1), by recording therein the outcome of the identity checks and physical checks and any decision on the consignment taken in accordance with Article 55 of Regulation (EU) 2017/625.

4. The operator shall provide the reference number of the finalised CHED referred to in paragraph 3 in the customs declaration which is lodged for the consignment with the customs authorities and shall keep a copy of that CHED at the disposal of the customs authorities as a supporting document as referred to in Article 163 of Regulation (EU) No 952/2013.

5. Where the competent authorities of the border control post have not received, within 15 days from the day on which the transfer of a consignment to the control point was authorised, confirmation of the arrival of the consignment from the competent authorities of the control point, they shall:

(a) verify with the competent authorities of the control point whether the consignment has arrived at the control point;

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(b) where the verification provided for in point (a) shows that the consignment has not arrived at control point, inform the customs authorities and other authorities referred to in Article 75(1) of Regulation (EU) 2017/625 of not having received confirmation of the arrival of the consignment to destination;

(c) undertake further investigation to determine the actual location of the goods in cooperation with customs authorities and other authorities as referred to in Article 75(1) of Regulation (EU) 2017/625.

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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.

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CHAPTER II

Documentary checks performed at a distance from a border control post

Article 7

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

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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:

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(a) where consignments arrive at a border control post, competent authorities situated at a distance from the border control post or at a control point other than a border control post, provided they are situated in the same Member State as the border control post of arrival of the consignment;

(b) where consignments are subject to a reduced frequency rate as laid down in the rules referred to in point (g) of Article 1(2) of Regulation (EU) 2017/625 and arrive at a point of entry other than the border control post, the competent authorities at the point of entry into the Union.

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Article 8

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

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

(a) the competent authorities referred to in Article 7 shall perform documentary checks on:

(i) official certificates and results of laboratory tests uploaded in IMSOC by the competent authorities of the border control post of arrival of consignment,

(ii) official certificates and results of laboratory tests uploaded in IMSOC by the operator where the competent authorities of the border control post have checked that they correspond to the original certificates or results of laboratory tests,

(iii) official certificates and results of laboratory tests submitted in IMSOC by the competent authorities of third countries,

(iv) original official certificates, when the competent authorities referred to in Article 7 are part of the designated border control post as referred to in Article 4(2) of Commission Implementing Regulation (EU) 2019/1012 ([1]); or

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(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.

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(b) the consignment shall not be transported to the control point for identity and physical checks by the operator from the border control post until the competent authorities referred to in Article 7 have informed the competent authorities of the border control post of the satisfactory results of the documentary checks.

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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.

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

([1]) Commission Delegated Regulation (EU) 2019/1012 of 12 March 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts (OJ L 165, 21.6.2019, p. 4).

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CHAPTER III

Final provisions

Article 9

Repeals

1. Commission Directive 2004/103/EC is repealed with effect from 14 December 2020.

2. Commission Decisions 2010/313/EU and 2010/458/EU are repealed with effect from 14 December 2019.

Article 10

Entry into force and application

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

It shall apply from 14 December 2019.

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

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

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