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

**of **XXX****

**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)

# COMMISSION DELEGATED 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 (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) 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)<sup>1</sup>, and in particular Article 53(1)(a) and (e) thereof,

Whereas:

- (1) Regulation (EU) 2017/625 of the European Parliament and of the Council establishes the framework for official controls and other official activities to verify compliance with Union agri-food chain legislation. That framework includes official controls performed on animals and goods entering the Union from third countries.
- (2) In this regard, with a view to ensuring an efficient performance of official controls and a proper control of risks, the competent authorities of the border control post should be able to allow the performance of identity and physical checks on consignments of plants, plant products and other objects referred to in points (c) and (e) of Article 47(1) of Regulation (EU) 2017/625 at a control point other than the border control post, subject to certain conditions.
- (3) For the same reasons, this should also be the case for 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 that Regulation.

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<sup>1</sup> OJ L 95, 7.4.2017, p. 1.

- (4) Commission Regulations (EC) No 669/2009<sup>2</sup> and (EU) No 884/2014<sup>3</sup> lay down, among others, rules concerning the performance of identity and physical checks on consignments of food and feed of non-animal origin covered by them, at a control point other than the designated point of entry. In particular, Regulation (EU) No 884/2014 lays down conditions for the authorisation of the transfer of the consignment to a designated point of import for the performance of identity and physical checks, rules concerning documents required to accompany the consignment to the designated point of import, information obligations incumbent on the competent authorities at designated points of entry and on the operators responsible for the consignment, and rules applicable in the case the operator decides to change the designated point of import after the consignment has left the designated point of entry. Those Regulations are repealed with effect from 14 December 2019 and the aforementioned provisions should be replaced by this Regulation. In order to ensure an effective performance of official controls and an adequate traceability of the consignments, the rules laid down in this Regulation should also make full use of the possibilities of exchange of information on official controls and the traceability of the consignments offered by the information management system for official controls ('IMSOC') or existing national systems.
- (5) The competent authorities of the border control post should authorise under certain conditions the transfer of a consignment of goods to a control point other than a border control post designated for that category of goods at the request of the operator. In this case, the operator should provide the competent authorities with the name and the Trade Control and Expert System (Traces) code of the control point to which the consignment should be transferred.
- (6) To the extent necessary in order to perform effective identity and physical checks, the competent authorities of the border control post should be able to request the operator to transfer the goods to a control point other than the border control post. In such cases, the competent authorities of the border control post should obtain the agreement of the operator before authorising the transfer to the control point. The agreement of the operator should be necessary in view of the transportation costs endured by the operator or to avoid situations where consignments containing perishable goods are transferred to the control point that is not situated at an appropriate distance from the border control post.
- (7) In order to limit risks to plant health or to public health the transfer of consignments of plants, plant products and other objects and of food and feed of non-animal origin to the control point should be authorised based on the satisfactory outcome of documentary checks at the border control post.
- (8) In order to ensure traceability of consignments, the competent authorities of the control point should inform the competent authorities of the border control post of the arrival of the consignment. In the absence of such information, the competent authorities of the border control post should verify with the competent authorities of the control point whether the consignment has arrived at control point and where that verification shows that the consignment has not arrived, they should inform the

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<sup>2</sup> Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC (OJ L 194 25.7.2009, p. 11).

<sup>3</sup> Commission Implementing Regulation (EU) No 884/2014 of 13 August 2014 imposing special conditions governing the import of certain feed and food from certain third countries due to contamination risk by aflatoxins and repealing Regulation (EC) No 1152/2009 (OJ L 242 14.8.2014, p. 4).

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

- (9) In order for the competent authorities to be able to perform efficient identity and physical checks on consignments of plants, plant products and other objects, they should be transferred from the border control post to the control point. The transfer should be done in a way that does not cause infestation of or infection to other plants, plant products or other objects. For that reason, operators should ensure that the packaging or the means of transport are closed or sealed during the transfer to the control point. In specific cases, the competent authorities should be able to allow the packaging or the means of transport of consignments of wood of conifers not to be closed or sealed during their transportation from the border control post to the control point if specific conditions are met. In such cases, the wood of conifers contained in the consignments should have been 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.
- (10) In order to organise efficient official controls, the competent authorities, including customs authorities on which the Member State has conferred the responsibility to perform official controls, or the competent authorities at a control point other than the border control post, should be able to perform documentary checks at distance from the border control post.
- (11) With a view to ensuring an efficient performance of official controls at the point of entry into the Union other than the border control post, competent authorities, including customs authorities on which the Member State has conferred the responsibility to perform official controls, should be able to perform documentary checks on consignments of plants, plant products and other objects which are subject to a reduced frequency rate as laid down in Regulation (EC) No 1756/2004<sup>4</sup>.
- (12) Commission Decision 2010/313/EU<sup>5</sup> authorises physical checks pursuant to Regulation (EC) No 669/2009 to be carried out at approved premises of food and feed business operators in Cyprus. Similarly, Commission Decision 2010/458/EU<sup>6</sup> authorises physical checks pursuant to Regulation (EC) No 669/2009 to be carried out at approved premises of food and feed business operators in Malta. Since this Regulation applies to the areas covered by those Decisions it is appropriate to repeal Decisions 2010/313/EU and 2010/458/EU with effect from the date of application of this Regulation.
- (13) Since Regulation (EU) 2017/625 applies from 14 December 2019, this Regulation should also apply from that date for reasons of consistency and legal certainty. However, in accordance with Article 165(4) of Regulation (EU) 2017/625, rules laid down under point (e) of Article 53(1) may only become applicable at least 12 months

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<sup>4</sup> Commission Regulation (EC) No 1756/2004 of 11 October 2004 specifying the detailed conditions for the evidence required and the criteria for the type and level of the reduction of the plant health checks of certain plants, plant products or other objects listed in Part B of Annex V to Council Directive 2000/29/EC (OJ L 313, 12.10.2004, p. 6).

<sup>5</sup> Commission Decision 2010/313/EU of 7 June 2010 authorising physical checks pursuant to Regulation (EC) No 669/2009 to be carried out at approved premises of feed and food business operators in Cyprus (OJ L 140, 8.6.2010, p. 28).

<sup>6</sup> Commission Decision 2010/458/EU of 18 August 2010 authorising physical checks pursuant to Regulation (EC) No 669/2009 to be carried out at approved premises of feed and food business operators in Malta (OJ L 218, 19.8.2010, p. 26).

after their adoption insofar as consignments of plants, plant products and other objects referred to in point (c) of Article 47(1) of the same Regulation are concerned. For this reason, the transitional measures concerning the corresponding provisions of Directive 2000/29/EC<sup>7</sup> would be required until 13 December 2020. This period of one year is necessary to give additional time to the operators and to the competent authorities to implement specific requirements.

- (14) Since this Regulation applies to the areas covered by Commission Directive 2004/103/EC<sup>8</sup> relating to plants, plant products and other objects referred to in point (c) of Article 47(1) of Regulation (EU) 2017/625, it is appropriate to repeal that Directive from 14 December 2020,

HAS ADOPTED THIS REGULATION:

### *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<sup>9</sup> 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.
    - (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;
  - (b) documentary checks at distance from a border control post on consignments of plants, plant products, and other objects referred to Articles 72(1) and 74(1) of Regulation (EU) 2016/2031.
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 XXX/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 [C(2019)7002].

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<sup>7</sup> Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 169, 10.7.2000, p. 1).

<sup>8</sup> Commission Directive 2004/103/EC of 7 October 2004 on identity and plant health checks of plants, plant products or other objects, listed in Part B of Annex V to Council Directive 2000/29/EC, which may be carried out at a place other than the point of entry into the Community or at a place close by and specifying the conditions related to these checks (OJ L 313, 12.10.2004, p. 16).

<sup>9</sup> 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).

## **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. Identity and physical checks may be performed at a control point other than 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;
    - (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<sup>10</sup>.
- 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.

### *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. Identity checks and physical checks on consignments of food and feed of non-animal origin which are 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 may be performed by the competent authorities at a control point other than a border control post, where either of the following applies:

<sup>10</sup> 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).

- (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;
  - (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).

#### *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:
  - (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.
- 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).

#### *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,
  - (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) 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;
  - (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.

## **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**

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 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.

#### *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, or
    - (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<sup>11</sup>;
  - (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.
2. Where the consignment of plants, plant products and other objects is to be transported by the operator to a control point for the performance of identity checks and physical checks, Articles 2, 4 and 5 shall apply.
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.

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<sup>11</sup> 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).

## **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.

Done at Brussels,

*For the Commission*

*The President*

*Jean-Claude JUNCKER*