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

of **XXX**

amending Annex III to Regulation (EC) No 853/2004 of the European Parliament and of the Council as regards emergency slaughter of domestic ungulates outside the slaughterhouse

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EC) No 853/2004 of the European Parliament and of the Council¹ lays down specific rules on the hygiene of food of animal origin for food business operators. It empowers the Commission to adopt delegated acts amending Annexes II and III thereto.

Annex III, Section I, Chapter VI to Regulation (EC) No 853/2004 allows the meat from domestic ungulates that have undergone emergency slaughter outside the slaughterhouse to be used for human consumption if complying with certain strict requirements, including that an otherwise healthy animal must have suffered an accident that prevented its transport to the slaughterhouse for welfare reasons. ‘Otherwise, healthy animal’, and ‘accident’ are not specified. Experience gained by the Commission revealed differences in interpretation of these legal requirements and for emergency slaughter in Member States and therefore unequal trading practices. Better harmonization of implementation of emergency slaughter is needed.

In addition, in Member States applying a strict interpretation of animals allowed for emergency slaughter, certain animals are not considered as complying with the conditions for applying emergency slaughter. At the same time, it may not be possible to transport these animals alive to the slaughterhouse because they cannot be transported in conditions guaranteeing not to cause them injury or unnecessary suffering in accordance with the technical rules on fitness for transport in Chapter I of Annex I to Council Regulation (EC) No 1/2005². In such cases often, euthanasia of the animal, e.g. killing without complying with the requirements in Chapter IV of Section I to of Annex III to Regulation (EC) No 853/2004, is the only possibility to avoid non-compliance with the animal welfare requirements in Regulation 1/2005. This means that the value of the animal as source of meat for human consumption is lost because the meat cannot be declared as fit for human consumption due to non-compliance with hygiene requirements, while such meat might not pose a public health risk. To avoid loss of such meat from domestic ungulates, the requirements for using meat of domestic ungulates for human consumption should be revised and aligned to the conditions for transport to a slaughterhouse in accordance with the rules in Chapter I of Annex I to Regulation (EC) 1/2005, while keep on guaranteeing that there is no public health risk for consumers.. Annex III, Section I, Chapter VI to Regulation (EC) 853/2004 should be amended accordingly.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The proposed amendments have been discussed during several meetings of the relevant expert group, representing the competent authorities of all Member States, and are largely supported by those experts.

In addition, private stakeholders’ organisations were consulted.

Before adopting this Delegated Regulation, the Commission conducted public consultations in an open and transparent way in accordance with the procedures laid down in the Interinstitutional Agreement of 13 April 2016 between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making³.

¹ Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55).

² Council Regulation (EC) No 1/2005 of December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97
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³ OJ L 123, 12.5.2016, p. 1.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The amendments to Annex III to Regulation (EC) No 853/2004 should be made by a Delegated Regulation adopted pursuant to Article 10(1), second subparagraph, letter (e) thereof.

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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 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin⁴, and in particular Article 10(1), second subparagraph, point (e), thereof,

Whereas:

- (1) Regulation (EC) No 853/2004 lays down specific rules on the hygiene of food of animal origin for food business operators. In particular, Section I, Chapter VI, of Annex III to Regulation (EC) No 853/2004, lays down requirements for the use for human consumption of meat of domestic ungulates that have undergone emergency slaughter outside the slaughterhouse. Section I, Chapter VI, point 1, of Annex III to Regulation (EC) No 853/2004 requires that only otherwise healthy animals that have suffered an accident that prevented their transport to the slaughterhouse for welfare reasons may be subject to emergency slaughter.
- (2) Experience gained by the Commission has demonstrated that some competent authorities of Member States interpret these requirements more strictly than others, leading to a non-uniform implementation of these requirements in the Union. In particular, “otherwise healthy animals” and an “accident” are not defined or described in Union rules leading to a problematic difference in interpretation by Member States. For example, Member states applying a strict approach interpret “otherwise healthy animals” as animals not having a general infection, excluding emerging metabolic diseases such as downer cow syndrome from emergency slaughter, or interpret “accident” as a physical one only (e.g. broken leg). Other Member States apply a broader interpretation, considering any incident, not causing a public health risk for the meat as allowed for emergency slaughter and resulting in the use of the meat for human consumption. It is therefore necessary to amend Section I, Chapter VI, of Annex III to Regulation (EC) No 853/2004 to ensure a harmonized application of the use of meat from emergency slaughter for human consumption, while securing a high level of consumer protection with regard to food safety.
- (3) In addition, Chapter I of Annex I to Council Regulation (EC) No 1/2005 lays down the technical rules for the fitness for transport of animals and, in certain cases, prohibits the transport of live domestic ungulates to the slaughterhouse. In those cases where the rules related to emergency slaughter in Annex III to Regulation (EC) No 853/2004 do not

⁴ OJ L 139, 30.4.2004, p. 55, ELI: <http://data.europa.eu/eli/reg/2004/853/oj>.

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allow the use of the meat, the only way to avoid suffering during transport is by euthanising the animal e.g. by killing without complying with the requirements in Chapter IV of Section I to of Annex III to Regulation (EC) No 853/2004. This results in classifying such meat as unfit for human consumption, although it may not pose a public health risk. This causes unnecessary economic loss and leads to waste while the meat of the animal might not represent a public health risk. Where their meat is otherwise fit for human consumption, it is in line with the objectives of Regulation (EC) No 853/2004 to align the conditions for the possibility to use the meat of animals having undergone an emergency slaughter to those prohibiting the transport of animals in Annex I, Chapter I to Regulation (EC) No 1/2005.

- (4) Articles 43 and 45 of Commission Implementing Regulation (EU) 2019/627⁵ lay down measures to be taken in cases of non-compliance with certain requirements for live animals, and for fresh meat. Compliance with these requirements guarantees that the meat is fit for human consumption including in case of emergency slaughtered animals. Ante-mortem inspection, as defined in Article 17(c) of Regulation (EU) 2017/625, must be carried out before any slaughter and provides an indication if live animals and fresh meat are expected to comply with these requirements.
- (5) If the transport of the animals to the slaughterhouse is not possible for animal welfare reasons and the results of ante-mortem inspection of the animals are considered to be satisfactory, the meat of such animals having undergone an emergency slaughter should be allowed for human consumption under certain conditions. Section I, Chapter VI, of Annex III to Regulation (EC) No 853/2004 should, therefore, be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Section I, Chapter VI, of Annex III to Regulation (EC) No 853/2004, points 1 and 2 are replaced by the following:

- ‘1. An animal must be unfit for transport to a slaughterhouse in accordance with the technical rules on fitness for transport laid down in Point 2 of Chapter I of Annex I to Council Regulation (EC) No 1/2005*.
- 2. The official veterinarian must carry out an ante-mortem inspection of the animal, verifying in particular compliance with the requirements for:
 - (a) live animals to be accepted for slaughter for human consumption in accordance with Article 43 of Implementing Regulation (EU) 2019/627;
 - (b) fresh meat to be fit for human consumption in accordance with Article 45 of Implementing Regulation (EU) 2019/627.

*Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ L 3, 5.1.2005, p. 1, ELI: <http://data.europa.eu/eli/reg/2005/1/oj>).’.

⁵ Commission Implementing Regulation (EU) 2019/627 of 15 March 2019 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No 2074/2005 as regards official controls (OJ L 131, 17.5.2019, p. 51, ELI: http://data.europa.eu/eli/reg_impl/2019/627/oj).

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