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[...] (2023) **XXX** draft

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

of XXX

amending Delegated Regulation (EU) 2021/630 as regards the inclusion of certain spreads and preparations for making beverages containing cocoa, certain prepared foods obtained from cereals or cereal products, certain prepared foods obtained from rice and other cereals, certain chips and crisps, and certain sauces and condiments in the list of composite products exempted from official controls at border control posts and amending Annexes I and III to Delegated Regulation (EU) 2019/2122

(Text with EEA relevance)

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

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

Article 48, points (d) and (h), of the OCR provides that certain categories of animals and goods referred to in Article 47(1) of the OCR coming from third countries may be exempted from official controls at border control posts.

Commission Delegated Regulation (EU) 2022/2292 laying down requirements for consignments of composite products repealed Commission Delegated Regulation (EU) 2019/625 from 15 December 2022. In order to ensure legal certainty, it is necessary to refer in Delegated Regulation (EU) 2021/630 to Article 20(2) and (3) of Delegated Regulation (EU) 2022/2292, laying down requirements for composite products entering the Union from third countries or regions thereof.

Commission Delegated Regulation (EU) 2021/630 exempts certain composite products from official controls at border control posts. The purpose of this Regulation is to extend the list of these low risk, shelf-stable, composite products that are exempted from official controls at border control posts in Delegated Regulation (EU) 2021/630 by including spreads and preparations for making beverages containing cocoa, products obtained from cereals, cereal products, prepared pastries, chips and crisps, prepared rice products, and miso and soy sauce containing a small amount of fish soup stock. These composite products should be controlled by the competent authorities at the place of destination, at the point of release for free circulation in the Union, or at the warehouses or the premises of the operator responsible for the consignment.

Commission Delegated Regulation (EU) 2019/2122 lays down cases and conditions under which certain goods which form part of passenger's personal luggage are exempted from official controls at border control posts. Since consignments of shelf-stable composite product such as, breads, cakes, prepared pastries, biscuits (including crackers), waffles and wafers, rusks, toasted bread and similar toasted products, chips and crisps, pasta, noodles and couscous, miso and soy sauce containing a small amount of fish soup stock, soup stocks and flavourings, food supplements are exempted from official controls at border control posts in accordance with Delegated Regulation (EU) 2021/630, these shelf-stable composite products posing low risk to animal and human health not containing meat should also be exempted from official controls at border control posts when they form part of passengers' personal luggage.

In all points of entry into the Union, the competent authority must display information on animal products, including composite products exempted from official controls, by means of the posters in accordance with Annex III to Delegated Regulation (EU) 2019/2122. Since the Annex of Delegated Regulation (EU) 2021/630 is amended to include new composite products exempted from official controls at border control posts, point 7 of Annex III to Delegated Regulation (EU) 2019/2122 should also be amended accordingly.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission Expert Group "official controls" (E00911) was consulted at several occasions.

No impact assessment has been carried out. This Regulation is not expected to have any significant impact since it extends the list of composite products that are already exempted from official controls at border control posts.

Before adopting this Delegated Regulation, the Commission published the draft Regulation for stakeholders feedback from XX to XXX. [The comments have been taken into account].

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis is Article 48, points (d) and (h), and Article 77(1), point (k), of Regulation (EU) 2017/625.

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amending Delegated Regulation (EU) 2021/630 as regards the inclusion of certain spreads and preparations for making beverages containing cocoa, certain prepared foods obtained from cereals or cereal products, certain prepared foods obtained from rice and other cereals, certain chips and crisps, and certain sauces and condiments in the list of composite products exempted from official controls at border control posts and amending Annexes I and III to Delegated Regulation (EU) 2019/2122

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation)¹, and in particular Article 48, points (d) and (h), and Article 77(1), point (k), thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2021/630² establishes the list of low risk shelf-stable composite products that are exempted from official controls at border control posts.
- (2) Commission Delegated Regulation (EU) 2019/625³ laid down certain requirements for consignments of composite products entering the Union from third countries or regions thereof. Shelf-stable composite products exempted from official controls at border control posts had to comply with those requirements. Commission Delegated

¹ OJ L 95, 7.4.2017, p. 1.

² Commission Delegated Regulation (EU) 2021/630 of 16 February 2021 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of goods exempted from official controls at border control posts and amending Commission Decision 2007/275/EC (OJ L 132, 19.4.2021, p. 17).

³ Commission Delegated Regulation (EU) 2019/625 of 4 March 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption (OJ L 131, 17.5.2019, p. 18).

Regulation (EU) 2022/2292⁴ repealed Delegated Regulation (EU) 2019/625 from 15 December 2022. Since Delegated Regulation (EU) 2021/630 refers to Delegated Regulation (EU) 2019/625, in order to ensure legal certainty, it is necessary to replace the reference to the repealed Article 12(2) of Delegated Regulation (EU) 2019/625 in Delegated Regulation (EU) 2021/630 with a reference to Article 20(2) and (3) of Delegated Regulation (EU) 2022/2292, laying down requirements for composite products entering the Union from third countries or regions thereof.

- (3) Since the shelf-stable composite products under CN codes 1806 90 60, 1806 90 70, 1904 10, 1904 20, 1904 90, 1905 90, 2005 20 20 and 2103 in the form of certain spreads and preparations for making beverages containing cocoa, certain prepared foods obtained from cereals, cereal products, certain prepared foods obtained from rice, certain chips and crisps, and miso containing fish soup stock and soy sauce containing fish soup stock pose a low risk to human and animal health, these products should also be exempted from official controls at border control posts. Crackers are considered a type of biscuit and, therefore, they should be also exempted from official controls at border control posts.
- (4) Commission Delegated Regulation (EU) 2019/2122⁵ lays down rules for the cases where and the conditions under which certain categories of animals and goods which form part of passengers' personal luggage are exempted from official controls at border control posts.
- (5) Since by virtue of this Regulation certain low-risk shelf-stable composite products not containing meat are exempted from official controls at border control posts in accordance with Delegated Regulation (EU) 2021/630, those composite products should also be referred to in Part 2 of Annex I to Delegated Regulation (EU) 2019/2122 as exempted from official controls at border control posts. Given that the latter amendments are a direct consequence of the former, it is appropriate to make these amendments in one single act.
- (6) The list of exempted products in Annex III to Delegated Regulation (EU) 2019/2122 refers to the same goods as those that are contained in the list of composite products exempted from official controls at border control posts in the Annex to Delegated Regulation (EU) 2021/630. Since by virtue of this Regulation certain low-risk shelf-stable composite products not containing meat are added in the Annex to Delegated Regulation (EU) 2021/630, it is necessary to amend also point 7 of Annex III to Delegated Regulation (EU) 2019/2122 and align the lists of exempted composite products in both Delegated Regulations. Given that the two lists are substantively linked and are intended to be applied in tandem, it is appropriate to make the amendments to those lists in one single act.
- (7) Delegated Regulations (EU) 2019/2122 and (EU) 2021/630 should therefore be amended accordingly,

⁴ Commission Delegated Regulation (EU) 2022/2292 of 6 September 2022 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of food-producing animals and certain goods intended for human consumption (OJ L 304, 24.11.2022, p. 1).

⁵ Commission Delegated Regulation (EU) 2019/2122 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market and amending Commission Regulation (EU) No 142/2011 (OJ L 321, 12.12.2019, p. 45).

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2021/630 is amended as follows:

- (1) in Article 3(1), point (a)(i) is replaced by the following:
- ‘(i) they comply with the requirements for entry into the Union laid down in Article 20(2) and (3) of Commission Delegated Regulation (EU) 2022/2292(*);
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- (*) Commission Delegated Regulation (EU) 2022/2292 of 6 September 2022 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of food-producing animals and certain goods intended for human consumption (OJ L 304, 24.11.2022, p. 1).’;
- (2) the Annex is replaced by the text set out in the Annex to this Regulation.

Article 2

Delegated Regulation (EU) 2019/2122 is amended as follows:

- (1) in Annex I, Part 2 is replaced by the following:

‘PART 2

List of goods which are not exempted from official controls at border control posts provided for in Article 7, point (c)

Combined Nomenclature code (*)	Description	Qualification and explanation
ex Chapter 2 (0201-0210)	Meat and edible meat offal	All, excluding frogs’ legs (CN code 0208 90 70)
0401-0406	Dairy produce	All
ex 0504 00 00	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked	All, excluding casings
ex 0511	Animal products not elsewhere specified or included; dead animals of Part 2, Section 1, Chapter 1 or 3, of Annex I to Regulation (EEC) No 2658/87, unfit for human consumption	Only petfood
1501 00	Pig fat (including lard) and poultry fat, other than that of heading 0209 or 1503	All
1502 00	Fats of bovine animals, sheep or goats, other than those of heading 1503	All

1503 00	Lard stearin, lard oil, oleostearin, oleo-oil and tallow oil, not emulsified or mixed or otherwise prepared	All
1506 00 00	Other animal fats and oils and their fractions, whether or not refined, but not chemically modified	All
1601 00	Sausages and similar products, of meat, meat offal, blood; food preparations based on these products	All
1602	Other prepared or preserved meat, meat offal or blood	All
1702 11 00 1702 19 00	Lactose and lactose syrup	All
ex 1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included	Only those preparations containing meat or milk, or both
ex 1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared	Preparations containing meat or milk, or both, excluding shelf-stable pasta, noodles and couscous not containing meat (**)
ex 1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products	Preparations containing meat or milk, or both, excluding shelf-stable breads, cakes, prepared pastries, biscuits (including crackers), waffles and wafers, rusks, toasted bread and similar toasted products, and chips and crisps not containing meat (***)
ex 2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006 (****)	Only those preparations containing meat or milk, or both
ex 2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006	Preparations containing meat or milk, or both, excluding shelf-stable potato chips and crisps suitable for immediate consumption and not containing meat (*****)

ex 2103	Sauces and preparations thereof; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard	Only preparations containing meat or milk, or both
ex 2104	Soups and broths and preparations therefore; homogenised composite food preparations	Preparations containing meat or milk, or both, excluding shelf-stable soup stocks and flavourings packaged for the final consumer and not containing meat (*****)
ex 2105 00	Ice cream and other edible ice, whether or not containing cocoa	Only those preparations containing milk
ex 2106	Food preparations not elsewhere specified or included	Preparations containing meat or milk, or both, excluding shelf-stable food supplements packaged for the final consumer, containing processed animal products (including glucosamine, chondroitin or chitosan) and not containing meat (*****)
ex 2309	Preparations of a kind used in animal feeding	Only petfood, dog chews and mixtures of meals containing meat or milk, or both

Notes:

1. Column 1: Where only certain products under any code are required to be examined and no specific subdivision under this code exists in the goods nomenclature, the code is marked “ex” (e.g. ex 19 01: only those preparations containing meat or milk, or both should be included).
2. Column 2: The description of the goods is as laid down in the description column of Annex I to Regulation (EEC) No 2658/87.
3. Column 3: This column gives details of the products covered.

(*) Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

(**) In accordance with Commission Delegated Regulation (EU) 2021/630 of 16 February 2021 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of goods exempted from official controls at border control posts and amending Commission Decision 2007/275/EC (OJ L 132, 19.4.2021, p.17).

(***) In accordance with Delegated Regulation (EU) 2021/630.

(****) Heading 2006 reads: “vegetables, fruit, nuts, fruit-peel and other parts of plants, preserved by sugar (drained, glacé or crystallised)”.

(*****) In accordance with Delegated Regulation (EU) 2021/630.

(*****) In accordance with Delegated Regulation (EU) 2021/630.

(*****) In accordance with Delegated Regulation (EU) 2021/630.’;

(2) in Annex III, point 7 is replaced by the following:

7. Exempted products

The following products are exempted from the rules set out in points 1 to 6 provided that they meet the requirements of Article 3(1), point (a), of Delegated Regulation (EU) 2021/630:

- confectionery (including sweets), white chocolate and other food preparations, not containing cocoa, and confectionery (including sweets), chocolate and other food preparations, spreads, and preparations for making beverages, containing cocoa;
- pasta, noodles and couscous;
- prepared foods obtained by the swelling or roasting of cereals or cereal products, prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals (e.g. breakfast cereals, mueslis, granolas), and prepared foods obtained from rice and other cereals;
- breads, cakes, prepared pastries, biscuits (including crackers), waffles and wafers, rusks, toasted bread and similar toasted products, and chips and crisps (including potato chips and crisps);
- olives stuffed with fish;
- extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté thereof;
- roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof;
- miso containing a small amount of fish soup stock and soy sauce containing a small amount of fish soup stock;
- soup stocks and flavourings packaged for the final consumer;
- food supplements packaged for the final consumer, containing processed animal products (including glucosamine, chondroitin or chitosan);
- liqueurs and cordials.

Composite products that have in their composition as products of animal origin only enzymes, flavourings, additives or vitamin D3 are exempted from the rules set out in points 1 to 6 provided that they meet the requirements of Article 3(1), point (b), of Delegated Regulation (EU) 2021/630.’.

Article 3

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

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