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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 8 April 2022 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
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| Subject: | COMMISSION DELEGATED REGULATION (EU) .../... of 8.4.2022 amending Delegated Regulation (EU) 2021/2306 as regards the transitional provisions for certificates of inspection issued in Ukraine |

Delegations will find attached document C(2022) 2164 final.

Encl.: C(2022) 2164 final



EUROPEAN
COMMISSION

Brussels, 8.4.2022
C(2022) 2164 final

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

of 8.4.2022

**amending Delegated Regulation (EU) 2021/2306 as regards the transitional provisions
for certificates of inspection issued in Ukraine**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Certain control authorities and control bodies recognised in Ukraine for exporting organic products to the Union cannot issue certificates of inspection (COI) with a qualified electronic seal (e-Seal) as required by Article 5(3) of Commission Delegated Regulation (EU) 2021/2306. This is because not all such control authorities and control bodies are equipped with an e-Seal. Pursuant to Article 11(1) of Delegated Regulation (EU) 2021/2306, and by way of derogation from Article 5(3), first subparagraph of that Regulation, the COI may be issued on paper until 30 June 2022 after being completed in TRACES and printed. Because of the invasion of Ukraine by Russia, its postal and mail services are disrupted.

In order to ensure that organic products leaving Ukraine can continue to be exported to the EU, this delegated act allows, until 30 June 2022, control authorities and control bodies in Ukraine to produce and submit the COI in TRACES in electronic format without the application of an e-Seal in box 18 of the COI. Furthermore, this delegated act establishes that the competent authorities at the border control post or at the point of release for free circulation in the Member States presented with a COI produced and submitted in TRACES in electronic format without the application of an e-Seal may subsequently endorse it in TRACES with a qualified electronic seal or on paper with the hand signature of the authorised person, after being completed in TRACES and printed.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The draft delegated act was discussed thoroughly with the Member States at the Group of Experts on Organic Production. DG AGRI cooperated closely with other DGs in the field of their specific expertise when drafting these rules, in particular DG SANTE and DG TAXUD. This act corresponds to the urgency following the invasion of Ukraine by Russia.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 11(1) of Delegated Regulation (EU) 2021/2306 enables the control authorities and control bodies in the third countries, until 30 June 2022, to issue the COI on paper after being completed in TRACES and printed. That paper COI must bear in box 18 a hand signature of the authorised person.

This delegated act will add a new paragraph in Article 11 of Delegated Regulation (EU) 2021/2306 according to which an authorised person located in Ukraine of a control authority or a control body that is not equipped with a qualified electronic seal will be able to produce and submit in TRACES in electronic format the COI without the application of an e-Seal in box 18 of that certificate. In such a case, the competent authority at the border control post or at the point of release for free circulation will be able to endorse the COI either electronically in TRACES with the application of an e-Seal, in accordance with Article 6(3), last subparagraph, of Delegated Regulation (EU) 2021/2306 or on paper with the hand signature of the authorised person of the competent authority at the border control post or at the point of release for free circulation after being completed in TRACES and printed.

Such a provision will apply retroactively from 24 February 2022 because, since that date, postal services in Ukraine are disrupted.

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

of 8.4.2022

amending Delegated Regulation (EU) 2021/2306 as regards the transitional provisions for certificates of inspection issued in Ukraine

THE EUROPEAN COMMISSION,

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

Having regard to 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 834/2007¹, and in particular Article 38(8), point (a)(ii), Article 46(7), point (b), and Article 57(3) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2021/2306² lays down rules on the official controls in respect of organic products and in-conversion products intended for import into the Union and on the certificate of inspection.
- (2) In accordance with Article 5(3), first subparagraph, of Delegated Regulation (EU) 2021/2306, the certificate of inspection is to be issued in TRACES and is to bear a qualified electronic seal. The transitional provision laid down in Article 11(1) of that Regulation provides that, by way of derogation from Article 5(3), first subparagraph, of that Regulation, until 30 June 2022, the certificate of inspection may be issued on paper after being completed in TRACES and printed. The process for the enrolment of control authorities and control bodies for the qualified electronic seal is on-going.
- (3) Russia's invasion of Ukraine on 24 February 2022 constitutes an exceptional and unprecedented challenge for the control authorities and control bodies that have been recognised for the purpose of the export of organic products from Ukraine to the Union. In Ukraine, the postal services are also disrupted.
- (4) Thus, an authorised person located in Ukraine of a control authority or a control body that is not yet equipped with a qualified electronic seal cannot issue electronic certificates of inspection in accordance Article 5(3), first subparagraph, of Delegated Regulation (EU) 2021/2306. On the other hand, that authorised person cannot make use of the possibility to issue the certificate of inspection on paper, in accordance with the transitional provision in Article 11(1) of that Regulation either, given that the postal services in Ukraine are currently disrupted.
- (5) In this context, it is therefore necessary to allow an authorised person located in Ukraine of a control authority or a control body that is not yet equipped with a qualified electronic seal, to produce and submit in TRACES the certificate of

¹ OJ L 150, 14.6.2018, p. 1.

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).

inspection in an electronic format without the application of a qualified electronic seal in box 18 of that certificate. Similarly, it is necessary to allow the competent authorities in the Member States at border control posts or points of release for free circulation to carry out import controls on such certificates of inspection and to endorse them in TRACES with a qualified electronic seal or on paper with the hand signature of the authorised person after being completed in TRACES and printed.

- (6) Delegated Regulation (EU) 2021/2306 should therefore be amended accordingly.
- (7) Due to Russia's invasion of Ukraine and the immediate reaction necessary, this Regulation should apply retroactively from 24 February 2022,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2021/2306

Article 11 of Delegated Regulation (EU) 2021/2306 is amended as follows:

- (1) the following paragraph is inserted:

‘1a. By way of derogation from Article 5(3), first subparagraph, until 30 June 2022, an authorised person located in Ukraine of a control authority or a control body which is not equipped with a qualified electronic seal may produce and submit in TRACES the certificate of inspection in electronic format without the application of a qualified electronic seal in box 18 thereof. Such certificate shall be issued before the consignment to which it relates leaves the third country of export or of origin.’;

- (2) in paragraph 2, the following point is added:

‘(c) in case the certificate of inspection is produced and submitted in TRACES in electronic format in accordance with paragraph 1a, that certificate shall be endorsed in TRACES with a qualified electronic seal or on paper with the hand signature of the authorised person of the competent authority at the border control post or at the point of release for free circulation, in boxes 23, 25 and 30, as appropriate, after being completed in TRACES and printed.’.

Article 2

Entry into force and application

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

It shall apply from 24 February 2022.

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

Done at Brussels, 8.4.2022

For the Commission
The President
Ursula VON DER LEYEN