

Brussels, 8 May 2024
Case No: 91116
Document No: 1406607
Decision No: 070/24/COL

Icelandic Ministry of Food, Agriculture and Fisheries
Borgartún 26
105 Reykjavík
Iceland

CC: Icelandic Ministry of Finance and Economic Affairs

Dear Sir or Madam,

Subject: Letter of formal notice to Iceland concerning incorrect application by Iceland of rules relating to import controls and use of TRACES

1 Introduction

From 12 to 16 June 2017, the Authority carried out a mission to Iceland on import controls and use of the European Commission's Trade and Control Expert System ("TRACES") in import and trade ("the 2017 Mission")¹. The objective of the 2017 Mission was to verify that official controls related to import and transit of products of animal origin, animal by-products and live animals were carried out in compliance with the European Economic Area (EEA) legislation, and to follow up on the recommendations issued in previous missions carried out by the Authority in this area in 2010 and 2012.

The Authority found that Iceland had not implemented a system that could identify all consignments from non-EEA countries in transit or transshipment that are required to undergo veterinary checks under the relevant EEA legislation. The relevant Icelandic authorities, Iceland Customs and Revenues ("Customs") and the Food and Veterinary Authority ("MAST"), did not cooperate and share information to the extent required by EEA legislation. This led to consignments in transit or transshipment not being correctly identified. As a result, these consignments did not always undergo veterinary checks as required by EEA legislation.

Furthermore, there were not measures in place to ensure that Customs were informed about the completion of the veterinary checks that MAST carried out on consignments in transit or transshipment. Accordingly, such consignments might be released for free circulation by Customs without having undergone the required veterinary checks.

The Authority concluded that most consignments in transit and transshipment were not presented for veterinary checks and remained undetected by MAST. It could therefore not be excluded that non-conforming consignments of products of animal origin were entering Iceland and freely circulating on the EEA market.²

Consequently, in its report from the 2017 Mission, the Authority issued recommendations to Iceland to correct these shortcomings, as well as other shortcomings identified during the mission. In relation to the issues set out in the present letter of formal notice, the

¹ Final report, Doc No 872741.

² Section 6.4 of the 2017 Mission Report.

Authority recommended that Iceland should ensure that all pertinent intelligence is gathered and analysed to ensure that eligible consignments are subject to veterinary checks.³ Furthermore, the Authority recommended that Iceland should ensure that no consignments in transit and transshipment from a non-EEA country are introduced into the EEA without undergoing the necessary veterinary checks.⁴

In 2020 Iceland adopted an amendment to Icelandic Regulation No. 1100/2006 on custody and customs clearance of goods which made it compulsory for operators to include the Harmonized Commodity Description and Coding System (“HS”) subheading in the customs cargo manifest (“the Amendment”).⁵ The HS subheading is a numeric code which identifies the nature of the imported goods. This Amendment allowed Customs to identify consignments more reliably, including consignments for transit or transshipment which are required to undergo veterinary checks, and to notify MAST accordingly. This, together with enhanced cooperation between the relevant authorities, could have addressed the Authority’s recommendations issued following the 2017 Mission.

However, the Amendment was repealed in 2022.⁶ Furthermore, since 2021, Iceland has not provided information on the progress of various projects to improve the cooperation between Customs and MAST. These projects include reciprocal access to their respective IT systems and the connection of Customs’ IT system to TRACES.

In light of its correspondence and discussions with the Icelandic Government since the 2017 Mission, and the fact that a previously notified Amendment to the Icelandic Regulation No. 1100/2006 was since repealed, the Authority has reached the conclusion that the Icelandic Government has failed to take appropriate follow-up measures to remedy the shortcomings identified in the 2017 Mission. Iceland is therefore in breach of Regulation (EU) 2017/625 and relevant provisions of its delegated and implementing legislation as further detailed in Section 6 of this letter.

2 The 2017 Mission and Iceland’s corrective actions

The Authority described its findings from the 2017 Mission in its final report (Doc No 872741) (“the 2017 Mission Report”).⁷ The Authority observed that Customs did not flag to MAST consignments in transit or transshipment containing animal products originating from outside the EEA. Such consignments were customs-cleared without being presented for veterinary checks, and therefore without a Common Veterinary Entry Document (“CVED⁸”) having been issued by a Border Inspection Post (“BIP”⁹). Neither did Customs differentiate between consignments in transit and those being transhipped.¹⁰

MAST was informed by Customs by email every time such a consignment was cleared but it did not systematically consider or record such consignments. In practice, in order to identify consignments in transit or transshipment which are required to undergo veterinary checks, MAST relied on pre-notification (which was rarely undertaken), information in cargo

³ 2017 Mission Report, Recommendation No 3.

⁴ 2017 Mission report, Recommendation No 7.

⁵ IS Regulation No. 1007/2020, entry into force 1 January 2020.

⁶ IS Regulation No. 952/2022, entry into force 18 August 2022.

⁷ See sections 6.3.1, 6.3.2 and 6.4 of the 2017 Mission Report.

⁸ Following the adoption of Regulation (EU) 2017/625 (“the Official Controls Regulation” – see Section 3 *Relevant EEA Law*), the CVED has been replaced by the Common Health Entry Document (“CHED”).

⁹ Following the adoption of Regulation (EU) 2017/625 (“the Official Controls Regulation” – see Section 3 *Relevant EEA Law*), BIPs have been replaced by Border Control Posts (“BCPs”).

¹⁰ Section 6.4 of the 2017 Mission Report.

manifests pre-filtered by carriers (which could be incomplete), flagging by Customs on the basis of Common Nomenclature (“CN”) codes¹¹ (not in fact applied by Customs to consignments in transit and transhipments) and notifications from the Coast Guards for landing vessels.¹²

MAST explained that staff only kept records for the consignments in transhipment at Keflavík airport BIP, according to which, between January and June 2017, there had been 100 consignments in transhipment. According to TRACES data, there were no consignments in transhipment in 2017 in Iceland. The mission team noted that, whilst commodity, weight, incoming and outgoing flight numbers, country of origin and of destination and confirmation of flight departure were recorded by MAST, date of arrival and departure had been recorded in only 7 out of 100 consignments. No veterinary checks and exit checks had been recorded or carried out for any of these consignments.¹³

The Authority concluded that most such consignments were not presented for veterinary checks and remained undetected by MAST. It could therefore not be excluded that non-conforming consignments of products of animal origin were entering Iceland and freely circulating on the EEA market.¹⁴

The Authority’s 2017 Mission Report included, *inter alia*, the following two recommendations (“the Recommendations”):¹⁵

Recommendation No 3: *“The competent authority should ensure that all pertinent intelligence is gathered and analysed as required by Articles 6 and 7 of Regulation (EC) No 136/2004 and Articles 5 and 6 of Commission Regulation (EC) No 282/2004 to ensure that eligible consignments are subject to veterinary checks.”*

Recommendation No 7: *“The competent authority should ensure that no consignments in transit and transhipment from a non-EEA country are introduced into the EEA without undergoing the necessary veterinary checks as required by Article 3(1) of Directive 97/78/EC and Article 11(2)(a) and (b) of the same Directive.”*

Similar recommendations had also been issued following missions by the Authority in 2012 (final mission report, Doc No 659945) and in 2010 (final mission report, Doc No 571347). The final reports from those missions included a table of corrective actions proposed by Iceland to address the recommendations in these reports. The Authority assessed and followed-up on the recommendations and implementation of these corrective actions in the context of the related mission cases.

In response to the Authority’s draft mission report from the 2017 Mission, MAST submitted a plan for corrective actions dated 25 August 2017 (MAST reference 1704318, Doc No 871373). Iceland did not dispute the Authority’s findings or the Recommendations.

Concerning Recommendation No 3, MAST stated in the plan for corrective actions that *“cross checks will be carried out on entire cargo manifests from carrier companies”*.

Concerning Recommendation No 7, MAST stated in the plan for corrective actions that *“All consignments in transhipment will be checked according to time limits and further checks*

¹¹ The Combined Nomenclature (CN) is the EU's eight-digit coding system, comprising the Harmonised System (HS) codes with further EU subdivisions.

¹² Section 6.4 of the 2017 Mission Report.

¹³ Section 6.4 of the 2017 Mission Report.

¹⁴ Section 6.4 of the 2017 Mission Report.

¹⁵ Section 8 of the 2017 Mission Report.

when necessary. Consignments in transit will be checked. The cooperation with customs on consignments in transit/transshipment will be reinforced.”

Noting that the estimated dates for most of the corrective actions identified by Iceland in its action plan varied between September 2017 and February 2018, the Authority asked Iceland to provide updated detailed information on all corrective actions planned and taken by letter dated 23 February 2018 (Doc No 899003).

Between 2018 and 2021, Iceland provided the following additional updates on the progress of the corrective actions:

- letter from MAST to the Authority dated 27 March 2018 (MAST reference 1704318, Doc No 906375) replying to the Authority’s follow-up letter dated 23 February 2018 (Doc No 899003) and enclosing an updated corrective action table (Doc No 906373) (“MAST’s March 2018 Letter”);
- letter from MAST to the Authority dated 11 September 2018 (MAST reference 1704318, Doc No 929571) replying to the Authority’s follow-up letter dated 29 June 2018 (Doc No 920249) and enclosing an updated corrective action table (Doc No 929567) (“MAST’s September 2018 Letter”);
- letter from MAST to the Authority dated 12 April 2019 (MAST reference 1704318, Doc No 1065943) replying to the Authority’s follow-up letter dated 14 March 2019 (Doc No 1058828) and enclosing an updated corrective action table (Doc No 1065949) (“MAST’s April 2019 Letter”);
- letter from MAST to the Authority dated 24 October 2019 (MAST reference 1908507, Doc No 1093615) enclosing an updated corrective action table (Doc No 1093617) (“MAST’s October 2019 Letter”);
- letter from MAST to the Authority dated 15 October 2021 (MAST reference 1704318, Doc No 1234765) replying to the Authority’s follow-up letter dated 18 August 2021 (Doc No 1214188) and enclosing an updated corrective action table (“MAST’s October 2021 Letter”) (Doc No 1234773) and a letter from Customs to the Ministry of Industries and Innovation dated 11 October 2021 concerning the same follow-up letter (Customs reference 20211000827, Doc No 1234781) (“Customs’ October 2021 Letter”); and
- letter from the Ministry of Industries and Innovation to the Authority dated 22 November 2021 (Ministry reference ANR20090609/15.02.02, Doc No 1250401) enclosing Customs notice concerning changes to cargo manifest requirements.

In MAST’s March 2018 Letter, MAST provided information about a project launched with Customs. The aim of the project was to analyse how to ensure effective import control including the detection of all relevant consignments.

In MAST’s September 2018 Letter, MAST informed the Authority that the project with Customs was still ongoing and provided *inter alia* copies of minutes of meetings between Customs and MAST. In MAST’s April and October 2019 Letters no specific updates about this project were provided. However, in its October 2019 Letter, MAST informed the Authority that it cross-checked cargo manifests against information from Customs on average every other month.¹⁶

In MAST’s October 2021 Letter, MAST provided copies of several documents, including guidelines published by MAST on “transit and direct transit”. MAST also informed the

¹⁶ MAST’s October 2019 Letter, table of corrective actions, page 1.

Authority that it was working on sending an official request to Customs to access Customs' IT system. Additionally, minutes of two cooperation meetings between MAST and Customs were provided.

In Customs' October 2021 Letter, Customs provided information about steps taken to implement technical changes in its IT systems to *inter alia* connect the Customs IT system to TRACES. To prevent clearance of non-approved consignments, Customs had requested its IT provider for assistance with an ongoing project to automate import permissions from TRACES to the Customs IT system. However, due to technical problems encountered, Customs had also engaged with the European Commission and with its counterparts in Denmark and Norway for this purpose. The project on connecting Customs' IT system to TRACES was still ongoing, and no closing date could be provided.¹⁷

Customs also provided information on steps taken to improve the existing Customs Manifest System by registering the HS codes for consignments separately in the IT system; and on the use of simplified HS classifications for consignments in transit or transshipment, including the introduction of a specific subheading for items of animal origin (CN codes 9815.3000 and 9815.4000 for products of animal origin with EEA and non-EEA origin, respectively). This would allow for easier filtering and searches in the IT systems to detect relevant consignments.¹⁸

In both Customs and MAST's October 2021 Letters, it was noted that MAST receives a list from Customs every week with an overview of consignments with CN codes 9815.3000 and 9815.4000. MAST furthermore stated that consignments in transit and transshipment cannot be released from customs supervision without MAST's permission, as they would be suspended in the Customs IT system and the importer would need a license number from MAST in the import declaration.¹⁹ Customs also noted that it was working on a project to create a list of uncleared consignments to be shared with MAST. This overview was intended to prevent consignments in transit or transshipment to exceed the time limits for MAST to carry out veterinary checks on the consignments in question. The timeframe for completion of this project was end of 2021 or at the latest end of February 2022.²⁰

As a corrective action to Recommendation No 3, Customs highlighted an amendment to Icelandic Regulation No 1100/2006 ("the Amendment"), which had entered into force on 1 January 2020.²¹ The Amendment made it compulsory for operators to include the HS subheading into the customs cargo manifest. This Amendment would make it easier for Customs to identify consignments, including consignments for transit or transshipment, which are required to undergo veterinary checks, and to notify MAST accordingly.²²

By letter dated 28 April 2023 (Doc No 1367573) ("the Authority's Latest Request for Information"), the Authority invited the Icelandic Government to provide, by 3 July 2023 at the latest, the further information requested in the table annexed to that letter (Doc No 1367872) concerning implementation of certain corrective actions anticipated in MAST and Customs' October 2021 Letters.

In relation to Recommendations No 3 and 7, the Authority asked Iceland the following questions:

- *"Do all relevant MAST personnel now have full access to Customs' IT system and do all relevant Customs personnel now have full access to*

¹⁷ Customs' October 2021 Letter, pages 1-3.

¹⁸ Customs' October 2021 Letter, pages 5-6.

¹⁹ MAST's October 2021 Letter, updated table of corrective actions, page 1.

²⁰ Customs' October 2021 Letter, page 8.

²¹ IS Regulation No. 1007/2020.

²² Customs' October 2021 Letter, page 3.

TRACES? If not, what further steps need to be taken and subject to what timelines?

- *What is the status of the project to connect Customs' IT with TRACES in order to enable automatic communication of MAST import permissions to the Customs' IT System and therefore a comparison of customs declaration information with the CHED (with the aim of preventing Customs clearance of consignments which have not been subject to veterinary checks) [mentioned in Customs' October 2021 Letter]? Has this project now been completed? If so, please provide details. If not, please indicate the timeline for completion.*
- *The Authority notes that [the Amendment] requiring transporters to include the HS Code for consignments in transit and transshipment in cargo manifest notifications has since been repealed by Icelandic Regulation No 952/2022. Please explain the reason for such repeal. Has the Icelandic Government decided not to pursue this action? If so, what alternative actions are being taken to enable Customs to extract information on relevant non-declared/uncleared consignments which could then be notified to MAST to enable MAST to undertake required veterinary checks?"*

By letter dated 3 May 2023 (Customs' reference 20230500732, Doc No 1377635), not received by the Authority until 6 June 2023 (Doc No 1377535), Customs informed the Authority that the previously notified Amendment to Icelandic Regulation No. 1100/2006 had since been repealed by Icelandic Regulation No. 952/2022 with effect from 18 August 2022. No reasons for the repeal were provided. As noted above, the Amendment had been suggested by Customs in its October 2021 Letter as a corrective action to address the outstanding recommendations from the 2017 Mission (particularly Recommendation No 3).

The status of implementation of the corrective actions to address the remaining outstanding recommendations anticipated in MAST and Customs' October 2021 Letters and the further information requested by the Authority's Latest Request for Information were discussed in the package meeting in Reykjavík on 7 and 8 June 2023.

At the package meeting, the representatives of the Icelandic Government explained that the requirement to include the HS subheading on cargo manifests (i.e. the changes introduced by the Amendment) had been repealed following complaints from stakeholders. There were currently no plans for alternative measures to compensate for the repealed legislation. Following the meeting, the Authority sent a follow-up letter dated 23 June 2023 (Doc No 1379821) asking the Icelandic Government to reply to the Authority's Latest Request for Information by 3 July 2023. By letter dated 18 August 2023, the Icelandic Government requested an extension to reply to this letter until 15 September 2023 (IS ref. MAR22020411/12.03, Doc No 1392693). By letter of 28 August 2023 (Doc No 1394383), the Authority noted that the deadline of 3 July 2023 had already passed at the time of the request for an extension and consequently it was not possible to grant an extension. The Icelandic Government was invited to submit its reply as soon as possible.

By letter dated 15 September 2023 (IS ref. MAR22020411/12.03, Doc No 1397812), the Icelandic Government confirmed that there were no alternative measures to compensate for the repealed legislation. However, the Ministry of Food, Agriculture and Fisheries was currently consulting with the Ministry of Finance and Economic Affairs to find a solution "that all parties, i.e. MAST, [Customs] and importers can work with". A meeting was planned in the coming weeks to start this work. However, no further timeframe for completion of the work was provided.

By letter of 24 October 2023 (Doc No 1407402), the Authority acknowledged receipt of the letter from the Icelandic Government of 15 September 2023 but noted that the letter did not fully address the other questions raised in the Authority's Latest Request for Information.

The Authority asked that any additional information the Icelandic Government would like to provide should be submitted by 31 October 2023.

By letter dated 11 January 2024 (IS ref. MAR23120142, Doc No 1428935), the Icelandic Government informed the Authority that the Ministry of Food, Agriculture and Fisheries had consulted with the Ministry of Finance and Economic Affairs. The two Ministries had sent letters to MAST and Customs on 22 December 2023, asking the two authorities to “*work [together] on finding a solution that all parties can work with*”. Copies of the letters sent to MAST and Customs were also provided (IS ref. MAR23120142, Doc No 1429285 and 1429283). These letters referred to the Authority’s 2017 Mission and to the Amendment. The letters further noted that, due to the subsequent repeal of the Amendment, the situation remains unchanged with regard to the outstanding recommendations in the Authority’s 2017 Mission Report.

The Icelandic Government further stated that it would keep the Authority informed of results of the consultation and any proposals made. However, no timeline for the completion of this work was provided. At the time of issue of this letter of formal notice, no further information has been provided by the Icelandic Government.

3 Relevant EEA law

3.1 Relationship between former and current EEA legislation

The 2017 Mission Report cited provisions of Regulation (EC) No 136/2004²³ and Commission Regulation (EC) No 282/2004 (“the Repealed Regulations”).²⁴ Those Regulations have since been repealed by Commission Implementing Regulation (EU) 2019/2130.²⁵ The rules for documentary checks, identity checks and physical checks in the Implementing Regulation are equivalent to the requirements in the Repealed Regulations.²⁶ However, the provisions of the Repealed Regulations related to cooperation between authorities in relation to consignments from third countries that Recommendations 3 and 7 in the 2017 Mission Report were based on are now in Regulation (EU) 2017/625,²⁷ in particular its Article 75.

²³ The act previously referred at Point 115 of Part 1.2 of Chapter I of Annex I to the EEA Agreement, *Commission Regulation (EC) No 136/2004 of 22 January 2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries*.

²⁴ The act previously referred at Point 117 of Part 1.2 of Chapter I of Annex I to the EEA Agreement, *Commission Regulation (EC) No 282/2004 of 18 February 2004 introducing a document for the declaration of, and veterinary checks on, animals from third countries entering the Community*.

²⁵ The Act referred to at Point 11bs of Part 1.1 of Chapter I of Annex I to the EEA Agreement, *Commission Implementing Regulation (EU) 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*, which entered into force in the EEA on 7 March 2020.

²⁶ See recital (4) in the preamble to Implementing Regulation (EU) 2019/2130.

²⁷ The Act referred to at Point 11b of Part 1.1 of Chapter I of Annex I of the EEA Agreement, *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*, which entered into force in the EEA on 7 March 2020.

The 2017 Mission Report also cited provisions of Directive 97/78/EC²⁸. That Directive has since been repealed by Regulation (EU) 2017/625. The provisions of Directive 97/78/EC cited in the Recommendations should therefore be construed as references to the corresponding provisions of Regulation (EU) 2017/625 which have replaced them and which are materially the same.²⁹ More specifically, Articles 3(1) and (4), 5(1) and 11(2) of Directive 97/78/EC have been replaced by, respectively, Articles 47(1), 57, 56(3)(b) and (4) and 51(1)(d) of Regulation (EU) 2017/625.

3.2 Veterinary checks on consignments in transit and/or transshipment

Article 47(1)(b) of Regulation (EU) 2017/625 (Article 47 being entitled “*Animals and goods subject to official controls at border control posts*”) provides that, in order to ascertain compliance with relevant EEA law requirements concerning imports of products of animal origin, the competent authorities shall perform official controls at the border control post of first arrival into the EEA on each relevant consignment.

Article 49(1) of Regulation (EU) 2017/625 (Article 49 being entitled “*Official controls at border control posts*”) clarifies that such official controls shall be performed “*upon arrival of the consignment at the border control post*” and shall include documentary checks, identity checks and physical checks.

Other Articles of Regulation (EU) 2017/625 lay down more detailed rules for veterinary checks at border control posts.

Transshipment

Article 51(1)(b) of Regulation (EU) 2017/625 refers to “*categories of animals and goods subject to the official controls provided for in Article 47(1) which enter the [EEA] by sea or by air transport from a third country, when those animals or goods are moved from a vessel or aircraft and are transported under customs supervision to another vessel or aircraft in the same port or airport in preparation for onward travel (‘transhipped consignments’)*”.³⁰

Article 13 of Delegated Regulation (EU) 2019/2124³¹ (entitled “*Documentary checks, identity checks and physical checks of transhipped consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products*”) provides, pursuant to Article 51(1)(b) of Regulation (EU) 2017/625,

²⁸ The Act previously referred to at Point 4 of Part 1.1 of Chapter I of Annex I to the EEA Agreement, *Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries*, as amended and as adapted to the EEA Agreement by the specific and the sectoral adaptations referred to in Annex I to that Agreement.

²⁹ See Article 146(2) of Regulation (EU) 2017/625.

³⁰ “*Transhipped consignments*” are similarly defined under Article 2(2) of Delegated Regulation (EU) 2019/2124 as “*consignments of animals or goods entering the [EEA] by sea or by air transport from a third country, when those animals or goods are moved from a vessel or aircraft and are transported under customs supervision to another vessel or aircraft in the same port or airport in preparation for onward travel.*”

³¹ The Act referred to at point 11bw of Part 1.1 of Chapter I of Annex I to the EEA Agreement, *Commission Delegated Regulation (EU) 2019/2124 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union, and amending Commission Regulations (EC) No 798/2008, (EC) No 1251/2008, (EC) No 119/2009, (EU) No 206/2010, (EU) No 605/2010, (EU) No 142/2011, (EU) No 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/E Commission Delegated Regulation (EU) 2019/2124 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union, and amending Commission Regulations (EC) No 798/2008, (EC) No 1251/2008, (EC) No 119/2009, (EU) No 206/2010, (EU) No 605/2010, (EU) No 142/2011, (EU) No 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/EC.*

that the competent authorities at the border control post of transshipment shall perform documentary checks on transhipped consignments of products of animal origin where the relevant transshipment period has expired,³² and in certain other cases documentary, identity and physical checks.³³

Article 16 of Delegated Regulation (EU) 2019/2124 (entitled “*Notification of information before the transshipment period expires*”) provides, *inter alia*, that the operator responsible for consignments intended for transshipment shall notify the competent authorities of the border control post of transshipment by completing and submitting the relevant part of the CHED in the IMSOC if the transshipment period referred to in Article 13(1) has expired or if the competent authorities of the border control post of transshipment inform the operator of their decision to perform documentary checks, identity checks and physical checks based on a suspicion of non-compliance as provided for in Article 13(3).

Transit

“*Transit*” is defined under Article 3(44) of Regulation (EU) 2017/625 as “*movement from one third country to another third country passing under customs supervision through one of the territories listed in Annex I or from one of the territories listed in Annex I to another territory listed in Annex I after passing through the territory of a third country [...]*”

Article 19 of Delegated Regulation (EU) 2019/2124 (entitled “*Conditions for the authorisation of transit of consignments of products of animal origin, germinal products, animal by-products, derived products, hay and straw and composite products*”) states that the competent authorities of the border control post of introduction into the EEA shall only authorise the transit of consignments of products of animal origin subject to compliance with certain conditions, including that the relevant consignment has been subjected to documentary and identity checks with favourable results, that it is accompanied by the CHED and that it is directly transported under customs supervision within fifteen days from the border control post to certain types of destinations only.³⁴

3.3 Customs procedures and the CHED

Article 55(1) of Regulation (EU) 2017/625 (Article 55 being entitled “*Decisions on consignments*”) requires a decision to be taken by the competent authorities on each consignment of products of animal origin following the performance of official controls, indicating whether the consignment is in compliance with the rules referred to in Article 1(2) and, where relevant, the applicable customs procedure.

Article 56(3)(b) of Regulation (EU) 2017/625 (Article 56 being entitled “*Use of the Common Health Entry Document (CHED) by the operator and by the competent authorities*”) states that:

“*The CHED shall be used by:*

[...]

(b) *the competent authorities of the border control post, in order to:*

(i) *record the outcome of the official controls performed and any decisions taken on that basis, including the decision to reject a consignment;*

³² Article 13(1) of Delegated Regulation (EU) 2019/2124

³³ Article 13(3) of Delegated Regulation (EU) 2019/2124

³⁴ See Article 19 (b), (d) and (e) of Delegated Regulation (EU) 2019/2124.

(ii) communicate the information referred to in point (i) through the IMSOC.”

Article 57 of Regulation (EU) 2017/625 (entitled “Use of the CHED by customs authorities”) states that:

“1. The placing and handling of consignments of the categories of animals and goods referred to in Article 47(1) under a customs procedure, including the entry or handling in customs warehouses or free zones, shall be subject to the presentation of the CHED by the operator responsible for the consignment to the custom authorities [...] At this stage, the CHED shall have been duly finalised in the IMSOC by the competent authorities of the border control post.

2. Customs authorities shall:(a) not allow the placing of the consignment under a customs procedure different from the one indicated by the competent authorities of the border control post;

[...]

3. Where a customs declaration is made for a consignment of the categories of animals or goods referred to in Article 47(1) and the CHED is not presented, the customs authorities shall detain the consignment and immediately notify the competent authorities of the border control post. The competent authorities shall take the necessary measures in accordance with Article 66(6).”

3.4 Cooperation between MAST and Customs

Article 75(1) of Regulation (EU) 2017/625 (Article 75 being entitled “Cooperation between authorities in relation to consignments entering the [EEA] from third countries”) states that:

“1. Competent authorities, customs authorities and other authorities of the [EEA] Member States dealing with animals and goods entering the [EEA] shall cooperate closely to ensure that the official controls on consignments of animals and goods entering the [EEA] are performed in accordance with the requirements of this Regulation.

For that purpose, competent authorities, customs authorities and other authorities shall:(a) ensure reciprocal access to information which is necessary for the organisation and conduct of their respective activities in relation to animals and goods entering the [EEA]; and

(b) ensure the timely exchange of such information, including via electronic means.”

Article 38 of Implementing Regulation (EU) 2019/1715³⁵ (entitled “Cooperation between authorities in relation to consignments entering the [EEA] from third countries”) states that:

“1. For the purpose of the cooperation provided for in Article 75(1) of Regulation (EU) 2017/625, [EEA] States’ customs authorities shall have access to data, information and documents relating to animals and goods entering the [EEA] from third countries and to decisions taken on the basis of official controls carried out in accordance with Chapter V of Title II of that Regulation, through:

(a) TRACES or their [EEA] States’ national systems; or

³⁵ The Act referred to at point 11bd of Part 1.1 of Chapter I of Annex I to the EEA Agreement, Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019 laying down rules for the functioning of the information management system for official controls and its system components (the IMSOC Regulation).

(b) the EU Single Window environment for customs based on the electronic customs systems referred to in Decision No 70/2008/EC and interconnected with TRACES.

2. Where the access referred to in paragraph 1 is not available, [EEA] States shall ensure without undue delay that their customs and competent authorities reciprocally exchange in a timely manner, the relevant data, information and documents.”

4 Relevant national law

Regulation (EU) 2017/625 is incorporated into Icelandic law by *Icelandic Regulation No. 234/2020 on the entry into force of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities of food, feed etc.*³⁶

Delegated Regulation (EU) 2019/2421 is incorporated into Icelandic law by *Icelandic Regulation No. 502/2020 on the entry into force of Commission Delegated Regulation (EU) 2019/2124 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union.*³⁷

Implementing Regulation (EU) 2019/1715 is incorporated into Icelandic law by *Icelandic Regulation No. 266/2021 on the entry into force of Commission Implementing Regulation (EU) 2019/1715 laying down rules for the functioning of the information management system for official controls and its system components (the IMSOC Regulation).*³⁸

National rules on customs clearance of goods are laid down in *Icelandic Regulation No. 1100/2006 on custody and customs clearance of goods*³⁹, as amended.

5 The Authority's assessment

The Authority finds that Iceland does not fulfil the requirements of the EEA Agreement concerning veterinary checks of consignments in transit or transshipment. The systems currently in place do not ensure that information relevant to identify consignments in transit or transshipment that are required to undergo veterinary checks is reliably collected and shared between Customs and MAST. Consequently, it cannot be ensured that all consignments in transit or transshipment are subject to veterinary checks as required by the EEA legislation. These issues were pointed out in the 2017 Mission Report⁴⁰ and were not disputed by the Icelandic authorities.

Furthermore, the Authority has highlighted these issues to the Icelandic Government and issued related recommendations in previous mission reports in 2010 and 2012.⁴¹ The corrective actions proposed and implemented by Iceland to address these issues following each of these missions have not resulted in definitive improvements.

As described in Section 2 of this letter, MAST and Customs have informed the Authority of several projects that have been initiated since the Authority's 2017 Mission to improve the cooperation between the two authorities and to ensure that the relevant information can be collected in an efficient manner. The corrective actions put forward by Iceland to address

³⁶ Entry into force 20 March 2020.

³⁷ Entry into force 28 May 2020.

³⁸ Entry into force 12 March 2021.

³⁹ Entry into force 28 December 2006.

⁴⁰ 2017 Mission Report, Recommendations No 3 and 7.

⁴¹ Final mission reports, Doc No 659945 (2012) and Doc No 571347 (2010).

Recommendations 3 and 7 in the 2017 Mission Report include the introduction of specific HS subheadings – CN codes 9815.3000 and 9815.4000 for products of animal origin with EEA and non-EEA origin, respectively – as well as the transmission of weekly lists of consignments with these CN codes from Customs to MAST.

In its October 2021 Letter, Customs notified the Authority of an Amendment to Icelandic Regulation No. 1100/2006 *on custody and customs clearance of goods* which made it compulsory for operators to include the relevant HS subheading in the customs cargo manifest.⁴² In the Authority's assessment, this change of the relevant national legislation would have made it possible for Customs to identify consignments in transit or transshipment more reliably.

Additionally, Customs had started delivering weekly reports to MAST on consignments classified with the CN codes for products of animal origin with EEA and non-EEA origin.⁴³ MAST would therefore have had reliable information on which to base the decision on whether veterinary checks of consignments in transit or transshipment are required under the EEA legislation. Accordingly, the requirement introduced by the Amendment would have been a significant step to address the recommendations from the Authority's 2017 Mission. However, the Amendment was repealed in 2022. Consequently, it is the Authority's understanding that it cannot be guaranteed that the weekly lists of consignments with the relevant CN codes submitted by Customs to MAST, referred to in Customs' October 2021 Letter, are complete.

Some improvements have been made since the 2017 Mission that allow better identification in the Customs IT system of consignments in transit or transshipment that are required to undergo veterinary checks, namely the introduction of specific fields for the HS subheadings. However, in the absence of the Amendment making the inclusion of the HS subheadings in the customs cargo manifest compulsory, the Icelandic authorities have not demonstrated that Customs will be able to identify the relevant consignments in a reliable manner and by extension be able to reliably notify MAST of such consignments.

Based on the information provided by Iceland to date, it is the Authority's understanding that Customs will need to obtain information about the nature of the goods by cross-checking against other information in the customs cargo manifest and subsequently insert the relevant HS subheadings in the IT system itself. Based on the available evidence, as set out in the present letter, it is the Authority's view that this system does not ensure that all consignments in transit or transshipment that are required to undergo veterinary checks are reliably identified. The substantive improvements made in this regard since the 2017 Mission are therefore limited.

Furthermore, Customs informed the Authority in 2021 of plans to connect the Customs IT system to TRACES, including steps taken to consult with relevant authorities such as the European Commission and counterparts in other EEA States.⁴⁴ However, the Authority has not received information to indicate that Customs now has access to TRACES. The Authority has also not seen confirmation of the completion of other projects undertaken by Customs and MAST to ensure that Customs is kept informed of the outcome of veterinary checks carried out by MAST, as recorded in the Common Health Entry Document (CHED).

Consequently, based on the available evidence, as set out in the present letter, it is the Authority's view that it cannot be ensured that Customs uses the duly completed CHED to verify that the necessary checks have been carried out by MAST, or, if checks have been carried out, which customs procedure the consignment has been cleared for (transit or transshipment). Accordingly, it cannot be ensured that consignments in transit or

⁴² Customs' October 2021 Letter, page 3.

⁴³ Customs' October 2021 Letter, page 6.

⁴⁴ Customs' October 2021 Letter, pages 1-3.

transhipment are not cleared by Customs without having undergone veterinary checks by MAST when required.

Accordingly, the ongoing absence of the reciprocal access to and timely exchange of information between Customs and MAST required by Article 75(1) of Regulation (EU) 2017/625 continues to prevent MAST from obtaining sufficient information to reliably identify consignments in transhipment and/or in transit, which are required to undergo veterinary checks pursuant to Articles 47(1)(b) and 49(1) of Regulation (EU) 2017/625 and Articles 13 and 19 of Delegated Regulation (EU) 2019/2124.

Furthermore, the ongoing absence of reciprocal and timely exchange of relevant data, information and documents between Customs and MAST prevents Customs from having access to data, information and documents relating to animals and goods entering Iceland from third countries and to decisions taken by MAST on the basis of its official controls, as required by Article 38 of Implementing Regulation (EU) 2019/1715. Moreover, Customs is prevented from using the CHED to determine whether veterinary checks have been carried out where required, and which customs procedure the consignment has been cleared for, as required by Article 57 of Regulation (EU) 2017/625. As a consequence, it cannot be ensured that no consignments in transit or transhipment are released into the EEA by Customs without undergoing the required veterinary checks.

6 Conclusion

Accordingly, taking into account the relevant EEA law as set out in Section 3 above, and on the basis of the assessment in Section 5, and as its information presently stands, the Authority must conclude that Iceland has failed to fulfil its obligations to ensure that:

1. under Article 75(1) of Regulation (EU) 2017/625 relevant competent authorities and Customs cooperate closely to ensure that official controls on consignments of products of animal origin entering the EEA are performed in accordance with the requirements of Regulation (EU) 2017/625, including by ensuring reciprocal access to information which is necessary for the organisation and conduct of Customs' and the competent authorities' respective activities in relation to products of animal origin entering the EEA and by ensuring timely exchange of such information, including via electronic means;
2. under Article 38 of Implementing Regulation (EU) 2019/1715 Customs has timely access to relevant data, information and documents relating to products of animal origin entering Iceland from third countries and to decisions taken on the basis of official controls carried out in accordance with Chapter V of Title II of Regulation (EU) 2017/625;
3. under Articles 47(1)(b) and 49(1) of Regulation (EU) 2017/625, as supplemented by Articles 13 and 19 of Delegated Regulation (EU) 2019/2124, competent authorities perform the required official controls, upon arrival at the border control post of first arrival into Iceland, on each consignment of products of animal origin in transit, and, where necessary, on each consignment being transhipped;
4. under Articles 55(1), 56(3)(b), 57(1), (2) and (3) of Regulation (EU) 2017/625, as supplemented by Articles 16 and 19 of Delegated Regulation (EU) 2019/2124, as regards the CHED:
 - (i) the competent authorities of the border control post use the CHED provided by the relevant operator to record the outcome of official controls performed on relevant consignments and decisions taken on that basis (including the applicable customs procedure) and communicate that information through IMSOC; and

(ii) Customs do not allow the placing of relevant consignments under a customs procedure different from the one indicated by the competent authorities of the border control post.

In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority requests that the Icelandic Government submits its observations on the content of this letter *within two months* of its receipt.

After the time limit has expired, the Authority will consider, in the light of any observations received from the Icelandic Government, whether to deliver a reasoned opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

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