

COMMISSION DELEGATED REGULATION (EU) 2022/931**of 23 March 2022****supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by laying down rules for the performance of official controls as regards contaminants in food****(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 19(2), point (a), thereof,

Whereas:

- (1) Regulation (EU) 2017/625 lays down rules for the performance of official controls and other official activities by the competent authorities of the Member States for verifying compliance with Union legislation on food and food safety. Article 109 of that Regulation provides for an obligation for Member States to ensure that official controls are performed by the competent authorities on the basis of a multi-annual national control plan ('MANCP'). Regulation (EU) 2017/625 furthermore specifies the general content of the MANCP, requires Member States to provide in their MANCP official controls on contaminants in food and, in this regard, empowers the Commission to lay down specific requirements for the performance of official controls, including, where appropriate, the range of samples and the stage of production, processing and distribution where the samples are to be taken.
- (2) Regulation (EU) 2017/625 repealed Council Directive 96/23/EC ⁽²⁾, which provided measures to monitor certain substances, including contaminants, in live animals and products of animal origin and specifically set requirements for Member States' monitoring plans for the detection of residues or substances within its scope. However, Regulation (EU) 2017/625 does not incorporate all the measures provided for in that Directive or in the acts adopted by the Commission on its basis. This Regulation together with Commission Implementing Regulation (EU) 2022/932 ⁽³⁾ aims therefore at ensuring continuity of the rules of Directive 96/23/EC concerning the content of the MANCP and its preparation, as well as the range of samples and the stage of production, processing and distribution where the samples are to be taken as regards contaminants in food, within the framework of Regulation (EU) 2017/625.
- (3) However, in line with Article 19 of Regulation (EU) 2017/625, which refers in a comprehensive manner to contaminants in food, it is appropriate that this Regulation applies also to official controls necessary to detect the presence of all contaminants falling within the scope of Council Regulation (EEC) No 315/93 ⁽⁴⁾. Therefore, this Regulation should apply to the official controls necessary to detect the presence in food of contaminants for which maximum levels or other regulatory levels requiring or triggering action by the competent authorities are established by Union legislation.

⁽¹⁾ OJ L 95, 7.4.2017, p. 1.

⁽²⁾ Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC (OJ L 125, 23.5.1996, p. 10).

⁽³⁾ Commission Implementing Regulation (EU) 2022/932 of 9 June 2022 on uniform practical arrangements for the performance of official controls as regards contaminants in food, on specific additional content of multi-annual national control plans and specific additional arrangements for their preparation (see page 13 of this Official Journal).

⁽⁴⁾ Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food (OJ L 37, 13.2.1993, p. 1).

- (4) The presence of mercury in food can be considered to occur due to environmental contamination since pesticides containing mercury have now been prohibited in the Union for more than thirty years. Official controls as regards maximum levels of mercury compounds as set out in Regulation (EC) No 396/2005 of the European Parliament and of the Council ⁽⁵⁾, Commission Directive 2006/125/EC ⁽⁶⁾, Commission Delegated Regulation (EU) 2016/127 ⁽⁷⁾ and Commission Delegated Regulation (EU) 2016/128 ⁽⁸⁾ should therefore also be covered by this Regulation instead of the specific rules on controls for residues of pesticides.
- (5) In order to ensure that official controls are efficiently targeted in all Member States, it is appropriate to set out rules on the combinations of contaminants or contaminant groups and commodity groups to be sampled by Member States and the sampling strategy, including criteria to use for defining the content of their plans and the performance of the related official controls.
- (6) It is therefore appropriate to supplement Article 19(1) of Regulation (EU) 2017/625 by laying down rules for the performance of the official controls as regards contaminants in food.
- (7) Article 150(1) of the Regulation (EU) 2017/625 lays down a transitional period obliging Member States to perform official controls in accordance with Directive 96/23/EC until 14 December 2022. Article 19(1) of Regulation (EU) 2017/625 provides that official controls to verify compliance with the rules on food and food safety as well as feed and feed safety shall include official controls on relevant substances including substances to be used in food contact materials, contaminants, non-authorised, prohibited and undesirable substances whose use or presence on crops or animals or to produce or process food or feed may result in residues of those substances in food or feed. However, since the last monitoring plans adopted by Member States under Directive 96/23/EC will apply to the year 2022, and thus beyond 14 December 2022, it is appropriate that this Regulation applies from 1 January 2023,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the definition of ‘contaminant’ in Article 1(1), second subparagraph of Council Regulation (EEC) No 315/93 applies.

Article 2

Member States shall control the presence of contaminants in food in accordance with Annex I.

Member States shall adopt a sampling strategy in accordance with the criteria set out in Annex II.

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*.

It shall apply from 1 January 2023.

⁽⁵⁾ Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1).

⁽⁶⁾ Commission Directive 2006/125/EC of 5 December 2006 on processed cereal-based foods and baby foods for infants and young children (OJ L 339, 6.12.2006, p. 16).

⁽⁷⁾ Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding (OJ L 25, 2.2.2016, p. 1).

⁽⁸⁾ Commission Delegated Regulation (EU) 2016/128 of 25 September 2015 supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for food for special medical purposes (OJ L 25, 2.2.2016, p. 30).

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

Done at Brussels, 23 March 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Rules for the selection of specific combination of contaminants or contaminant groups and commodity groups

- (1) Member States shall control the following combinations of contaminants or contaminant groups in the following commodity groups:

Commodity groups	Halogenated persistent organic pollutants	Metals	Mycotoxins	Other contaminants
Unprocessed bovine, ovine and caprine meat (including edible offal)	x	x		x
Unprocessed porcine meat (including edible offal)	x	x		x
Unprocessed equine meat (including edible offal)		x		x
Unprocessed poultry meat (including edible offal)	x	x		x
Unprocessed meat from other farmed terrestrial animals * (including edible offal)		x		
Raw bovine, ovine and caprine milk	x	x	x	x
Fresh hen eggs and other eggs	x	x		x
Honey		x		x
Unprocessed fishery products ** (excluding crustaceans)	x	x		x
Crustaceans and bivalve molluscs	x	x		x
Animal and marine fats and oils	x	x		x
Processed products of animal origin ***	x	x		x

* Other farmed terrestrial animals as defined in entry 1017000 of Annex I, Part A, to Regulation (EC) No 396/2005.

** Fishery products as defined in 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).

*** Processed products as defined in Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1).

- (2) Member States shall consider all combinations of contaminants or contaminant groups and commodity groups of food of non-animal origin for which maximum levels or other regulatory levels are set under Union legislation.
- (3) Each Member State shall consider the following criteria for selecting specific combinations of contaminants or contaminant groups and commodity groups to be controlled:
- frequency of the detection of non-compliance in the Member State's samples, in other Member States' samples or in third countries' samples, especially when reported under the Rapid Alert System for Food and Feed or the Administrative Assistance and Cooperation System;
 - availability of suitable laboratory methods and analytical standards;

- (c) possible risk for consumers or certain population groups arising from consumption of contaminants present in food, taking into account the relevant information available from the European Food Safety Authority, or in absence of such information, other sources of information such as scientific publications or national risk assessments;
 - (d) consumption data (dietary exposure patterns);
 - (e) as regards food falling within the scope of the control plan for food of animal origin entering the Union as described in Article 5 of Regulation (EU) 2022/932, the following criteria shall also be considered, where available:
 - (i) the outcome of Commission controls in third countries;
 - (ii) any information casting doubt on the reliability of guarantees on the compliance of imported food with Union rules;
 - (iii) information on increased vigilance.
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ANNEX II

Criteria for sampling strategy

- (1) For each food business operator to be controlled, the Member State shall consider the following criteria for the selection of the type of food to be controlled:
 - (a) history of non-compliance;
 - (b) shortcomings in the application of Hazard Analysis and Critical Control Point and related auto controls;
 - (c) shortcomings in record keeping addressing requirements as defined in Section III, Part A, of Annex I to Regulation (EC) No 852/2004;
 - (d) representative sampling regardless of the size of the food business operator;
 - (e) emerging situations (changes in consumption patterns, natural disasters or economic problems that cause changes in food trade chains etc.).
 - (2) Each Member State shall consider the following criteria for the selection of slaughterhouses, cutting plants, establishments for the milk production, establishments for the production and placing on the market of fishery products and aquaculture products, establishments for honey and egg and egg packing centres:
 - (a) the criteria listed under point (3) of Annex I and under point (1) of this Annex;
 - (b) the respective establishments' share of the Member State's total production volume of the slaughterhouses, cutting plants, establishments for milk production, establishments for production and placing on the market of fishery products and aquaculture products, establishments for honey and egg and egg packing centres;
 - (c) relevant origins of the slaughtered animals, milk, aquaculture products, honey and eggs.
 - (3) When taking the samples, efforts shall be made to avoid multiple sampling from one food business operator, unless the operator has been identified on the basis of the criteria included in point (1) or an appropriate justification has been provided in the control plan. The compliance with the planned frequency of checks shall be ensured.
 - (4) As regards food within the scope of the control plan for food placed on the Union market as set out in Article 4 of Regulation (EU) 2022/932, sampling shall be performed on food placed on the market and on food intended for placing on the market (primary stage, free-range, slaughterhouses, during food processing, storage or sale, etc.).
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