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THE COUNCIL**

**on the implementation of Article 5 of Regulation (EU) No 576/2013 on the
non-commercial movement of pet animals**

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Table of contents

1.	PURPOSE OF THE DOCUMENT	2
2.	LEGAL BACKGROUND.....	2
2.1.	Introduction	2
2.2.	Main provisions of Article 5 of Regulation (EU) No 576/2013.....	3
2.2.1.	Part A species	3
2.2.2.	Part B species	3
2.3.	Legal obligation to submit a report to the European Parliament and the Council	4
3.	CONSULTATIONS WITH INTERESTED PARTIES.....	4
3.1.	Introduction	4
3.2.	Outcome of the consultations.....	4
3.2.1.	Part A species	5
3.2.2.	Part B species	5
4.	CONCLUSIONS.....	6
4.1.	Part A species	6
4.2.	Part B species	6
4.3.	General conclusion.....	6

1. PURPOSE OF THE DOCUMENT

This document fulfils the Commission's obligation to present to the European Parliament and to the Council a report on the implementation of Article 5 of Regulation (EU) No 576/2013¹ (hereinafter 'the Pet Regulation').

It draws mainly on the outcome of a consultation held with competent authorities in certain European Union (EU) Member States and one European Free Trade Association (EFTA) country, Norway, on their experience with the implementation of this Article.

2. LEGAL BACKGROUND

2.1. Introduction

The Pet Regulation lays down the animal health requirements applicable to the non-commercial movement into Member States of pet animals that are accompanying and under the responsibility of their owner. It is applicable since 29 December 2014.

The Regulation establishes a list of animal species to which harmonised animal health requirements should apply when animals of those species are kept as pet animals and moved for non-commercial purposes. This list takes account of their susceptibility to — or role in — the epidemiology of rabies.

Dogs, cats and ferrets are animals of species susceptible to rabies and are listed in Part A of Annex I to the Regulation (hereinafter 'Part A species'). The Regulation lays down animal health rules for the non-commercial movement of animals of those species.

Animals kept as pet animals that are of species not affected by rabies (or of no epidemiological significance with regard to rabies) are listed in Part B of Annex I (hereinafter 'Part B species'). The Regulation provides that, pending the adoption of Union rules as referred to in Articles 9 and 14, national rules apply to the non-commercial movement into Member States of animals of Part B species.

Experience has shown that intra-Union trade in and imports into the Union from third countries of pet animals of Part A species can be fraudulently disguised as non-commercial movement. The co-legislators of the Pet Regulation sought to prevent these fraudulent practices because they might pose animal health risks. They therefore decided to set a maximum number of pet animals of Part A species that may accompany their owner or an authorised person when their owner or an authorised

¹ Regulation (EU) No 576/2013 of the European Parliament and of the Council of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 (OJ L 178, 28.6.2013, p. 1).

person moves into a Member State from another Member State or from a territory or third country. This rule can be found in Article 5 of the Regulation, and there are exceptions under certain specified conditions.

2.2. Main provisions of Article 5 of Regulation (EU) No 576/2013

2.2.1. Part A species

Paragraphs 1 to 4 of Article 5 of the Pet Regulation provide that the maximum number of pet animals of Part A species which may accompany their owner or an authorised person during a single non-commercial movement into a Member State from another Member State or from a territory or third country shall not exceed five. However, Paragraph 2 of this Article provides for a derogation, which allows this number to exceed five if certain conditions regarding the age of the animals, the documentary evidence to be presented and the purpose of the movement are fulfilled. Compliance checks to verify those conditions must be carried out in accordance with Articles 33 and 34 of the Regulation.

Where the specified conditions are not fulfilled and the number of pet animals of Part A species exceeds the established maximum, the animals must comply with the relevant animal health requirements laid down in Directive 92/65/EEC² and be subject to the veterinary checks provided for in Directive 90/425/EEC³ or Directive 91/496/EEC⁴, as appropriate.

Because the co-legislators set the rule on the maximum number of pet animals of Part A species in the Pet Regulation, any change of this rule can only be considered if the Commission submits a proposal to the European Parliament and the Council to amend the relevant paragraphs of Article 5 in accordance with the ordinary legislative procedure.

2.2.2. Part B species

For species other than dogs, cats and ferrets, paragraph 5 of Article 5 of the Pet Regulation empowers the Commission to adopt delegated acts laying down rules setting the maximum number of pet animals that may accompany their owner or an authorised person during a single non-commercial movement.

² Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC (OJ L 268, 14.9.1992, p. 54).

³ Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ L 224, 18.8.1990, p. 29).

⁴ Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries (OJ L 268, 24.9.1991, p. 56).

To date, the Commission has not used this empowering provision. If it does not use it, Articles 9 and 14 of the Regulation allow national rules to apply. However, these two Articles require national rules to be applied proportionately to the risk to public or animal health associated with the non-commercial movement of pet animals of the species in question. They also require these national rules not to be stricter than those applied to intra-Union trade in or imports into the Union from third countries of those animals in accordance with Directive 92/65/EEC or Directive 2006/88/EC⁵.

2.3. Legal obligation to submit a report to the European Parliament and the Council

Paragraph 6 of Article 5 of the Pet Regulation requires the Commission to report to the European Parliament and to the Council on the implementation of Article 5. The report must be drawn up not later than 29 June 2018. On the basis of the report, the Commission may propose amendments to the Regulation where necessary.

3. CONSULTATIONS WITH INTERESTED PARTIES

3.1. Introduction

To prepare its report, on 27 September 2017 the Commission invited the chief veterinary officers of the EU Member States and of three EFTA Member States (Norway, Switzerland and Iceland) to give it information on their experience in implementing Article 5 of the Pet Regulation. It sent a reminder of this invitation to the chief veterinary officers on 8 December 2017.

Because the Commission has not registered any complaints or other citizen or stakeholder correspondence in relation to the implementation of Article 5, it did not consider a public consultation to be necessary for the purposes of this report.

Since the entry into force of the Regulation, the Health and Food Audits and Analysis Directorate in the Commission's Directorate-General for Health and Food Safety has not performed any audits in Member States to evaluate the effectiveness of the controls in place for the non-commercial movement of pet animals that would detect any shortcomings in the implementation of Article 5. This is because the Directorate has had other priorities.

3.2. Outcome of the consultations

The competent authorities of 20 EU Member States and of Norway responded to the consultation invitation and sent their contributions to the Commission.

⁵ Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (OJ L 328, 24.11.2006, p. 14).

3.2.1. *Part A species*

Most of the responding competent authorities recorded few reports or enquiries on movements into a Member State of more than five pet animals of Part A species from another Member State or from a territory or third country. In general, the rule on the maximum number of pet animals of Part A species permitted in a single non-commercial movement is well-known to the public and properly applied. Overall, the responding competent authorities therefore support the maintenance of the maximum number as it is set in paragraph 1 of Article 5. However, the competent authorities of two countries consider that this rule encourages the fraudulent disguise of trade as non-commercial movement. They are therefore in favour of revoking the rule or lowering the maximum number of pet animals permitted in a single non-commercial movement.

Most of the responding competent authorities are in favour of the derogation provided for in paragraph 2 of Article 5 and support keeping it in its current wording. Only two competent authorities expressed reservations with regard to implementation and are therefore in favour of revoking or further restricting this derogation. They suggest introducing a limit to the number of pet animals permitted in the framework of the derogation or restricting the purpose of the movement to certain events. They both support keeping the minimum age of six months. The main reason they give is the difficulty of verifying the written evidence presented by pet owners and of ascertaining the purpose of the movement.

3.2.2. *Part B species*

Most of the responding competent authorities did not comment on Part B species or formulate positions on whether the Commission should exercise its power to adopt delegated acts setting a maximum number of pet animals of Part B species permitted in a single non-commercial movement.

Few responding competent authorities expressed the need to adopt EU rules setting the maximum number of pet animals of certain Part B species permitted in a single non-commercial movement. Those that did so did not provide any justification.

Very few responding competent authorities have experienced problems with pet animals of Part B species. For this reason, very few recommended setting a maximum number of pet animals of Part B species permitted in a single non-commercial movement. Some of the responding competent authorities said that, in the absence of EU rules, they have national rules in place. These national rules set the maximum number of pet animals of all or certain Part B species (such as birds and rabbits for which Directive 92/65/EEC lays down animal health requirements) when they are traded in the Union or imported from third countries.

4. CONCLUSIONS

4.1. Part A species

The Commission notes that most of the responding competent authorities support keeping the maximum number of pet animals of Part A species permitted in a single non-commercial movement as set in paragraph 1 of Article 5 of the Pet Regulation. They consider the rule as appropriate to prevent the disguise of intra-Union trade in or imports into the Union of animals of those species as non-commercial movements.

The Commission also notes that the few competent authorities that are in favour of revoking or restricting the rule believe that it encourages illegal practices. Their view is that the rule is interpreted by certain operators as qualifying any movement of up to five pet animals of Part A species as non-commercial. Considering those arguments, the Commission believes that there is a need to remind the public and authorised veterinarians of the definitions of ‘non-commercial movement’ and ‘pet animal’ in points (a) and (b) in Article 3 of the Pet Regulation. In particular, the Commission believes it crucial to clarify that if the movement of the animal is not caused by the movement of its owner, it cannot in general be regarded as non-commercial. This is the case regardless of the number of pet animals concerned by the movement.

4.2. Part B species

The Commission notes that a minority of responding competent authorities have expressed the wish that the Commission should exercise its power to adopt delegated acts setting the maximum number of pet animals of Part B species permitted in a single non-commercial movement. However, in the absence of sufficient justification for such an act, the Commission is not currently in a position to start the preparatory work to adopt a delegated act to this effect.

The Commission also notes that the implementation of national rules has helped better control the movement of pet animals of Part B species. However, it has some concerns about the nature of those rules in terms of proportionality and strictness, and whether they are in accordance with Articles 9 and 14 of the Pet Regulation. Indeed when rules are laid down in Directive 92/65/EEC for the intra-Union trade in or import into the Union of certain Part B species such as birds and rabbits, those rules do not include a permitted maximum number.

4.3. General conclusion

The contributions of the competent authorities of EU Member States and Norway to the consultation have not provided solid evidence that the maximum number of pet animals of Part A species (and the possibility of derogating from it) as set in Article 5 of the Pet Regulation, as well as the absence of EU rules setting the

maximum number of pet animals of Part B species, constitute an undue burden for the non-commercial movement of pet animals. Nor do the contributions provide evidence that these rules encourage the disguise of intra-Union trade in and imports into the Union of animals of certain species as non-commercial movements.

Therefore, there is a need to gather more experience in the practical application of Article 5 of the Pet Regulation over a longer period of time before the Commission could envisage proposing changes to the current rules for pet animals of Part A species or the adoption of EU rules for pet animals of Part B species.

In addition, it should be noted that Article 246 of Regulation (EU) 2016/429⁶ lays down rules on the maximum number of pet animals permitted in a single non-commercial movement. These rules are similar to those laid down in Article 5 of the Pet Regulation. Regulation (EU) 2016/429 repeals the Pet Regulation with effect from 21 April 2021. However, in accordance with Article 277 of Regulation (EU) 2016/429, the Pet Regulation ‘shall continue to apply until 21 April 2026 in respect of non-commercial movements of pet animals, in place of Part VI of this Regulation’.

Therefore, it is not realistic for the Commission to submit to the European Parliament and the Council a proposal for an amendment of paragraphs 1 to 4 of Article 5 of the Regulation on pet animals of Part A species to be adopted under the ordinary legislative procedure before 21 April 2021 and applicable until 21 April 2026. Any amendment in this area should also cover the relevant provisions of Regulation (EU) 2016/429, including the transitional arrangements.

On the possible adoption of rules setting the maximum number of pet animals of Part B species, the Commission’s delegated power to adopt such rules pursuant to paragraph 5 of Article 5 of the Pet Regulation will expire on 21 April 2021. Any maximum number of pet animals of those species adopted pursuant to Article 246(3) of Regulation (EU) 2016/429 would only be applicable from 21 April 2026. Taking into account the consultation with EU Member States and Norway, and the need to prioritise the preparatory work for the adoption of the key delegated acts listed in Article 274 of Regulation (EU) 2016/429, the Commission does not intend to exercise its delegated power under paragraph 5 of Article 5 of the Pet Regulation.

Nonetheless, the Commission will continue to monitor the situation and encourage Member States to take action for the proper implementation and enforcement of the applicable legislation that it considers essential to counter fraudulent practices. It has also taken several initiatives to help Member States raise awareness among the official services, and facilitate the exchange of information and intelligence among

⁶ Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health (‘Animal Health Law’) (OJ L 84, 31.3.2016, p. 1).

national authorities. These include training Member State officials in the framework of the Better Training for Safer Food initiative⁷, regular exchanges of views at the meetings of the Standing Committee on Plants, Animals, Food and Feed, and setting up a ‘national pet contact points’ network.

⁷ https://ec.europa.eu/food/safety/btsf_en