

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1312**of 27 June 2023****establishing a derogation from Implementing Regulation (EU) 2019/2072 as regards the requirements for the introduction into the Union territory of oak logs with bark originating in the United States**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC ⁽¹⁾, and in particular Article 41(2) thereof,

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 ⁽²⁾, and in particular Article 52 thereof,

Whereas:

- (1) In order to prevent the introduction into the Union territory of *Bretziella fagacearum* (Bretz) Z.W. de Beer, Marincowitz, T.A. Duong & M.J. Wingfield, comb. nov., the pathogen causing oak wilt ('the specified pest'), logs of oak (*Quercus* L.) wood, originating in the United States ('the specified wood'), may only be introduced into the Union territory if they fulfil the special requirements of point 90 of Annex VII to Commission Implementing Regulation (EU) 2019/2072 ⁽³⁾.
- (2) The same requirements for the introduction of oak logs with bark from the United States were established in Part A, Section 1, point 3, of Annex IV to Council Directive 2000/29/EC ⁽⁴⁾, which was repealed by Regulation (EU) 2016/2031. Commission Decision 2005/359/EC ⁽⁵⁾ authorised Member States to provide for derogations from those requirements for the specified wood under specific conditions, before it expired on 31 December 2020.
- (3) The conditions set out in Decision 2005/359/EC included a fumigation of the specified wood with the substance bromomethane (also called 'methyl bromide'), the use of which is restricted under the Montreal Protocol on Substances that Deplete the Ozone Layer ⁽⁶⁾ of which the Union is a party. Therefore, it was decided not to extend the derogation laid down in that Decision.

⁽¹⁾ OJ L 317, 23.11.2016, p. 4.

⁽²⁾ OJ L 95, 7.4.2017, p. 1.

⁽³⁾ Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 (OJ L 319, 10.12.2019, p. 1).

⁽⁴⁾ Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 169, 10.7.2000, p. 1).

⁽⁵⁾ Commission Decision 2005/359/EC of 29 April 2005 providing for a derogation from certain provisions of Council Directive 2000/29/EC as regards oak (*Quercus* L.) logs with bark attached, originating in the United States of America (OJ L 114, 4.5.2005, p. 14).

⁽⁶⁾ OJ L 297, 31.10.1988, p. 21.

- (4) In March 2020, the United States submitted a dossier containing technical and scientific information about an alternative treatment consisting of a systems approach, which does not include fumigation with bromomethane.
- (5) The systems approach includes harvesting the specified wood under selective conditions and under supervision of a certified forester, transporting it in closed containers from the export log yard to the place of fumigation, and fumigating it with sulfuryl fluoride by licensed operators.
- (6) Furthermore, that systems approach also includes specific conditions for the safe unloading and processing of the specified wood after introduction into the Union, in order to ensure the highest possible level of phytosanitary protection of the Union territory from the specified pest.
- (7) With a view to ensuring an efficient performance of the official controls and a proper control of risks, it is necessary to carry out the official controls completely or partly at the place of storage instead of a border control post.
- (8) In order to ensure its appropriate supervision, the specified wood is stored in places which have been designated by the competent authority of the Member State concerned as control points in accordance with Commission Delegated Regulation (EU) 2019/2123 ⁽⁷⁾ and which dispose of appropriate wet storage facilities. In order to prevent the spread of the specified pest after unloading the specified wood from the containers at the designated control point, the specified wood is immediately either processed or placed in continuous wet storage until processing.
- (9) The United States claim that the measures described in their dossier provide for the same level of protection for the Union territory against the introduction of quarantine pests as the specific requirements of point 90 of Annex VII to Implementing Regulation (EU) 2019/2072 for the introduction of oak logs originating from the United States into the Union territory.
- (10) The dossier was evaluated by the European Food Safety Authority and discussed by experts from Member States. It was concluded ⁽⁸⁾ that, despite the indicated uncertainties about the efficacy of sulfuryl fluoride as regards the specified pest, a systems approach can be established, which can effectively eliminate the risk of introduction of the specified pest into the Union territory.
- (11) In order to ensure the timely control of the specified wood by the competent authorities, the importer should, prior to importation, notify each consignment of the specified wood sufficiently in advance to the competent authority of the Member State of the envisaged first place of storage, in the format laid down in Article 40(1), point (c), of Commission Implementing Regulation (EU) 2019/1715 ⁽⁹⁾.
- (12) Taking into account that a systems approach can be established, which can effectively eliminate the risk of introduction of the specified pest into the Union territory, the specified wood should be allowed to be introduced into the Union territory, under certain requirements. As this Regulation addresses a particular phytosanitary risk which is not yet fully assessed, its requirements are to have a temporary character, in accordance with Article 8 of Implementing Regulation (EU) 2019/2072. Therefore, this Regulation should apply until 30 September 2026.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽⁷⁾ Commission Delegated Regulation (EU) 2019/2123 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts (OJ L 321, 12.12.2019, p. 64).

⁽⁸⁾ Commodity risk assessment of oak logs with bark from the US for the oak wilt pathogen *Bretziella fagacearum* under an integrated systems approach. EFSA Journal 2020;18(12):6352. <https://doi.org/10.2903/j.efsa.2020.6352>.

⁽⁹⁾ 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) (OJ L 261, 14.10.2019, p. 37).

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out specific measures for the introduction into the Union territory of oak (*Quercus* L.) wood, which has kept its natural round surface with bark attached, originating in the United States of America.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'the specified wood' means oak (*Quercus* L.) wood, which has kept its natural round surface with bark attached, intended for the production of veneer and originating in the United States of America;
- (2) 'the specified pest' means the pathogen *Bretziella fagacearum* (Bretz) Z.W. de Beer, Marincowitz, T.A. Duong & M.J. Wingfield, comb. nov.

Article 3

Derogation from Regulation (EU) 2019/2072

By way of derogation from the requirements set out under 'Special requirements' in point 90 of Annex VII to Implementing Regulation (EU) 2019/2072, the specified wood may be introduced into the Union territory if the requirements laid down in Articles 4 and 5 of this Regulation, and the Annex thereto have been fulfilled.

Article 4

Shipment to, and introduction into, the Union territory of the specified wood

1. The specified wood may only be shipped:
 - (a) from the United States; and
 - (b) in the period between 15 October and 10 April of the next year.
2. The specified wood may only be introduced into the Union territory:
 - (a) during the year of the shipment or by 30 April of the following year, if the ship date occurs between 15 October and 31 December, or
 - (b) by 30 April of the year of the shipment, if the ship date occurs between 1 January and 10 April.

Article 5

Phytosanitary certificate

The specified wood shall be accompanied by a phytosanitary certificate indicating the following:

- (a) under the rubric 'Place of origin', the name and location of the place of harvest of the specified wood;
- (b) under the heading 'Additional declaration', the following statement: 'This consignment complies with the European Union requirements laid down in Commission Implementing Regulation (EU) 2023/1312';
- (c) the fumigation batch identification mark referred to in point 7 of the Annex;

- (d) the log number(s) corresponding to each exported log of the specified wood;
- (e) the name of the licensed fumigation operative and the name and location of the fumigation site.

Article 6

Documentary, identity and physical checks

1. Documentary checks of the specified wood shall only be carried out at a border control post or at a control point other than a border control post designated for the category of goods in the consignment in accordance with Article 7 of Delegated Regulation (EU) 2019/2123.

Physical and identity checks of the specified wood shall be carried out either at the border control posts where the documentary check took place or at a control point other than a border control post designated for the category of goods in the consignment in accordance with Delegated Regulation (EU) 2019/2123 and where appropriate wet storage facilities are available.

- 2. The official controls shall include at least the following:
 - (a) an examination of each phytosanitary certificate; and
 - (b) an identity check consisting of comparing the marking on each log and the number of logs with the information given in the respective phytosanitary certificate.
- 3. Where identity or physical checks as mentioned in paragraph 1 are not carried out at the border control post of the port of arrival of the specified wood in the Union territory, the logs of the specified wood shall remain in the shipping containers and the containers shall remain closed and under customs supervision until those checks are carried out.

Article 7

Storage

- 1. After unloading, the logs of the specified wood may only be stored at border control points or in places which have been designated as control points in accordance with Delegated Regulation (EU) 2019/2123, where appropriate wet storage facilities are available and which have been approved for that purpose by the relevant competent authority, until processing takes place.
- 2. After unloading from the containers at the places referred to in paragraph 1, the logs of the specified wood shall immediately be processed or placed in continuous wet storage until the processing.
- 3. The competent authority shall perform physical checks in order to verify that the conditions for storage are in compliance with this Article.

Article 8

Processing

- 1. The logs of the specified wood shall only be processed in places authorised for that purpose by the competent authorities, which can be:
 - (a) the first place of storage, immediately after their arrival in the Union; or
 - (b) other facilities at a later point.
- 2. Before further processing, the logs of the specified wood shall be subject to a hot water treatment, under the conditions suitable for wood intended for the production of veneer.
- 3. Any bark and other waste arising from unloading and processing of the logs of the specified wood shall immediately be destroyed by incineration *in situ*.

4. The competent authority shall perform physical checks in order to verify that the conditions for processing, and treatment of waste of the specified wood are in compliance with this Article.

5. The competent authority shall at appropriate intervals inspect any oak stands neighbouring the place of storage and processing for symptoms of the specified pest.

If any symptoms, which may have been caused by the specified pest, are found, further official testing shall be carried out in accordance with appropriate methods to confirm whether the specified pest is present.

Article 9

Notification of consignments

1. Prior to importation, the importer shall notify each consignment of the specified wood sufficiently in advance to the competent authority of the Member State of the first place of storage after arrival to the Union territory in the format laid down in Article 40(1), point (c), of Implementing Regulation (EU) 2019/1715.

2. The importer shall provide in the notification of the intended import for each consignment the following information:

- (a) quantity of logs;
- (b) port of shipment;
- (c) port or ports of unloading;
- (d) place or places of storage;
- (e) place or places where processing will be carried out.

3. Where an importer notifies the intended import of a consignment as referred to in paragraphs 1 and 2, the competent authority, prior to import, shall inform the importer of the requirements provided for in Articles 3 to 9.

Article 10

Entry into force and period of application

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 until 30 September 2026.

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

Done at Brussels, 27 June 2023.

For the Commission
The President
Ursula VON DER LEYEN

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ANNEX

Conditions with respect to fumigation and related identification of the specified wood in the United States as referred to in Article 3

The specified wood may only be introduced into the Union territory, after the competent authorities have confirmed on the phytosanitary certificate issued in accordance with Article 5 that it has complied with all of the following conditions concerning its harvest, fumigation, and identification in the United States:

- (1) The specified wood has been harvested in places of production where the specified pest is not known to occur, and the selection and harvest of the plants of the specified wood has been supervised by a forester certified by the Association of American Foresters.
- (2) All logs of the consignment have been subject to visual examination and found free from symptoms of the specified pest. After harvest and transport to an export log yard, the specified wood has been placed in shipping containers, where it has remained during the subsequent steps of transport, storage, fumigation, and shipment.
- (3) The logs have been placed in the containers, in such a way and to such a density in the container as to ensure effective gas dispersal through the logs.
- (4) For the fumigation, the containers have been piled on an impervious surface under a gasproof cover.
- (5) The logs have undergone fumigation with sulfuryl fluoride which is carried out at an average rate of 240 g/m³ of total volume in the containers, for 72 hours and at a minimum temperature of the logs of 15,6 °C. To this end, sulfuryl fluoride has been brought in the containers at a dosage of 240 g/m³ at the beginning of the treatment.

At 30 minutes and at 2, 24, 48 and 72 hours after the start of the treatment respectively, sulfuryl fluoride has been added to raise the concentration to 280 g/m³. After 72 hours, the treatment has been continued for at least 24 hours, allowing the sulfuryl fluoride to level off to a minimum of 200 g/m³ at the end of the treatment.

The fumigation resulted in an accumulated dose of sulfuryl fluoride of at least 22 500 g*h/m³.

- (6) The fumigation procedures, as described in points 3, 4 and 5, have been carried out by officially licensed fumigation operatives, using proper fumigation facilities and by qualified staff to requisite standards and taking due account of all pertinent factors, such as density and moisture of the wood, or density of the load in the container.

The list of licensed fumigation operatives and their changes has been notified to the Commission and the Commission has not objected to the fumigation operative being involved.

- (7) A fumigation batch identification mark (digits and/or letters) has been placed in a non-removable manner on the base end of each log of the pile undergoing fumigation. The fumigation batch identification mark has been reserved to the shipper. It has not been used for logs of other batches. Records of the identification marks have been kept by the licensed fumigation operatives.
 - (8) The individual fumigation procedure, including the marking referred to in point 7, has been systematically supervised at the fumigation sites, directly by officials of the official plant protection organisation concerned or by a delegated competent authority in such a way as to guarantee compliance with points 3, 4, 5, 6 and 7.
 - (9) After fumigation, the logs of the specified wood have been transported and stored in closed containers.
 - (10) Information is available ensuring the traceability in relation to the places of production referred to in point (1) and the officially licensed fumigation operatives referred to in point (6).
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