ROYAL NORWEGIAN
MINISTRY OF AGRICULTURE AND FOOD

EFTA Surveillance Authority
35 Rue Belliard
BE 1040 Brussels
BELGIUM

Your ref	Our ref	Date
CNo 80965 80992 80883 81053 81332 79919 79920	14/1030-	30 August 2019

Further request for information concerning non-commercial movement of pet animals into Norway

We refer to Your letter on the issue dated 2 April 2019 and e-mails 10 April 2019 and 29 May 2019 granting extension of the deadline to respond until 1 September 2019.

Before giving our observations on the content of the above-mentioned letter, we would like to reiterate that we do not regard stray dogs to be pet animals. Furthermore, we regard stray dogs to be wild animals due to their animal health status.

We would like to draw attention to the intention of Regulation (EU) No 576/2013 concerning the non-commercial movement of pet animals. The regulation, as we understand it, came in place to assure the freedom of movement of the pet animals owned by the citizens of EU to facilitate for the free movement of people within the EU, and not to regulate the movement of new animals into a member state. Considering the difference in animal health of a kept pet animal and that of a newly acquired dog of unknown/dubious origin, it is hard to see that the Regulation was aimed at free movement of the latter.

This understanding is in line with the definition of "pet animal" in Regulation (EU) No 576/2013 Article 3 b) as an animal "accompanying its owner or an authorized person during non-commercial movement". We also refer to the preamble paragraph (4).

The definition does not specify for how large part of the movement/journey the animal must accompany its owner. However, based on the objective of preventing risks to public or animal health, it is reasonable to say that the animal must have been under the owners care

Postal address	Office address	Telephone	Department	Reference
Postboks 8007 Dep 0030 Oslo postmottak@lmd.dep.no	Teatergata 9 www.lmd.dep.no	+47 22 24 90 90 Org. nr. 972 417 874	Department of Food Policy	Kjersti Nilsen Barkbu +47 22 24 91 57

for a certain duration, and that stray dogs picked up during a non-commercial travel falls outside of the definition.

The term “pet” refers to how the animal is kept; that it lives in a household, prevented from roaming, kept under controlled condition, fed regularly, is given health care, vaccinations, anti-parasitic treatment etc. As such, a pet represents a lower risk for spreading diseases than an animal without human supervision.

There is no statutory definition of the term “stray dog”. In our interpretation, we have used the OIEs definition[1] with some adjustments connected to health issues. A wild animal, or a stray dog, that is taken care of, will not in our view have the same health status as a pet animal until it has been kept for a minimum period in a household.

EU has in preamble 19[2] of the Animal Health Law (AHL), defined stray animals as wild animals and as such classified dogs with such background as different from dogs in general.

There is no harmonized legislation on stray dogs within the EEA, neither for control, nor for the movement between the Member States. Hence the administrative practices for the movement of stray dogs into Norway has sufficient legal basis in national law.

For more detailed information on stray dogs, reference is made to our reply letter dated 30 August 2019, document number 16/1151, about the complaint against Norway concerning administrative practices restricting import into Norway of stray dogs.

(i) *Further changes in administrative practices*

Please clarify if NFSA based the 2018 administrative practices on a different interpretation of Regulation (EU) No 576/2013 by the European Commission, ESA, EU Member States and/or the courts pursuant to NFSA’s statement in the response letter quoted above. If so, please provide evidence and details of that different interpretation.

The Norwegian Food Safety Authority (NFSA) did not base the 2018 administrative practices on a different interpretation of Regulation (EU) No 576/2013. The tightening-up of the administrative practices in 2018 was regarding the movement of stray dogs, not the non-commercial movement of pet animals into Norway.

We have not changed our practice regarding the non-commercial movement of pet animals into Norway. We consider that our implementation of Regulation (EU) No 576/2013 is in accordance with the obligations given in the EEA-Agreement.

[1] Stray dog means any dog not under direct control by a person or not prevented from roaming. There are three types of stray dog: - free-roaming owned dog not under direct control or restriction at a particular time; - free-roaming do with no owner; - feral dog: domestic dog that has reverted to the wild state and is no longer directly dependent upon humans for successful reproduction.

[2] “For the purposes of this Regulation, the term ‘wild animals’ covers all animals that are not kept by humans, including stray and feral animals, even if they are of species that are normally domesticated.”

(ii) *Disclosing to owners of/persons responsible for pet animals not compliant with the conditions for non-commercial movement of such animals into Norway the option of returning the pet animal to its country of dispatch*

a) *In light of the above, please:*

- *reconfirm for the avoidance of doubt that the NFSA consults with the owner of/person responsible for the pet animal in all cases in deciding which of the three options described in Article 35(a), (b) or (c) it will take and that the guidelines will be amended to reflect this; or*

- *if the NFSA consults with the owner of/person responsible for the pet animal only if it deems this necessary, please explain how the NFSA decides whether consultation is necessary in a given case.*

We do consult the owner in most cases. As explained in our last meeting there is not always three options available for the pet animal. When there is only one option left for the pet animal due to the nature of the infringement, we are of the opinion that there is not a need to consult with the owner of/person responsible for the pet animal. This is in accordance with Article 35 point 1[3].

b) *What action has been taken by the NFSA concerning non-commercial movement of pet animals into Norway which do not meet the 2018 administrative practices but which are compliant with Regulation (EU) No 576/2013? Have such animals been put down? On what legal basis have such actions been taken?*

We would like to reiterate that the 2018 administrative practices concerned stray dogs, not the non-commercial movement of pet animals into Norway. Furthermore, we regard stray dogs to be wild animals, due to their animal health status, and thus not pet animals.

We have not changed our practice regarding the non-commercial movement of pet animals into Norway. We consider that our implementation of Regulation (EU) No 576/2013 is in accordance with the obligations given in the EEA-Agreement.

Referring to the question "Have such animals been put down?" we assume You mean stray dogs or former stray dogs. We are not aware of any stray dog that has been put down since the tightening of the administrative practices in 2018.

---

[3] *Article 35*

Actions in case of non-compliance revealed during the checks provided for in Articles 33 and 34

1. Where the checks provided for in Articles 33 and 34 reveal that a pet animal does not comply with the conditions laid down in Chapters II or III, the competent authority shall decide, after consultation with the official veterinarian and, where necessary, with the owner or the authorised person, to:

(iii) The circumstances in which pet animals are required to undergo a rabies antibody titration test ('titration test')

In light of the above, please provide the following information:

(a) *Were owners of/persons responsible for pet animals not required under Regulation (EU) No 576/2013 to undergo a titration test as a condition for non- commercial movement into Norway informed that participation in the 2017 surveillance programme was voluntary and that they therefore had the option to refuse a titration test?*

If so, please provide any documentary evidence of this (for example, consent form to be signed by owners of/persons responsible for relevant dogs).

The surveillance program in 2017[4] was voluntary for the owners, and the NFSA covered the costs. The owners of the stray dogs were informed, and encouraged to contact a veterinary clinic for the blood-sampling. For your information, we do not have such a surveillance program any more.

(b) *The NFSA maintains that the legal basis for titration testing in the case of pet animals:*

- *not required under Regulation (EU) No 576/2013 to undergo a titration test as a condition for non-commercial movement into Norway; but*
- *which are the subject of documentary discrepancies, which have disease symptoms and/or where the importer has previously imported animals without a protective titre*

is the requirement of 'protective immunity' under Annex III, point 2(e) of Regulation (EU) No 576/2013.

Please explain why, if there exists a legal basis for titration testing under the 'protective immunity' requirement which (as part of the requirement for a valid anti-rabies vaccination) applies to non-commercial movement of pet animals into Norway from all countries, Regulation (EU) No 576/2013 includes an express legal basis for titration testing under Article 10(1)(c) which is limited to non-commercial movement of pet animals from non-listed third countries?

NFSA has seen it as its responsibility and fulfillment of our obligations according to the EEA-agreement to do sampling of animals travelling across borders, when we have reason to suspect non-compliance with Regulation (EU) No 576/2013. The rationale being that a rabies vaccination according to the regulation is not considered valid until a protective immunity is established, as stated in Annex III, point 2 (e) of Regulation (EU) No 576/2013.

[4] https://www.vetinst.no/overvaking/smittsomme-sykdommer-i-hunder-importert-til-norge

(c) *In the absence of discrepancies in the identification document (for example, no identification document, no vaccination declaration or an obviously fraudulent vaccination declaration), how do the documentary or identity checks permitted under Article 33(1) of Regulation (EU) No 576/2013 enable the NFSA to establish in practice that a pet animal has either not received an anti-rabies vaccination or has received a vaccination that does not comply with the validity requirements set out in Annex III?9*

We are not able to reveal non-compliance (if the documents seem to be compliant) without performing checks, for instance blood-sampling and analysis. However, we would like to point out that this is not routine practice, but when we have reason to suspect non-compliance with Regulation (EU) No 576/2013.

In other import legislation, and as a natural part of executing the mission to provide both animal and health safety, there is a legal basis related to “reasoned suspicion”. This reasoned suspicion is based on a number of observations, and, more important; sampling and analysis - often on a random basis - to find out if there is compliance.

Conducting checks are useful and essential tools to enable the NFSA (and other Competent Authorities in the EEA) to execute its mission.

(d) *Does the NFSA view titration testing as a legal method of confirming non- compliance with vaccination requirements where a documentary or identity check of a pet animal not required under Regulation (EU) No 576/2013 to undergo a titration test as a condition for non-commercial movement into Norway raises a suspicion of non-compliance (for example, documentary discrepancies, disease symptoms or where the importer is known to have previously imported animals without a protective titre)?*

We do not completely comprehend the question above. We have not changed our practice regarding the non-commercial movement of pet animals into Norway. Furthermore, we consider that our implementation of Regulation (EU) No 576/2013 is in accordance with the obligations given in the EEA-Agreement.

However, if we find documentary discrepancies, disease symptoms or where the importer is known to have previously imported animals without a protective titre, we regard the titration testing as a legal method of confirming compliance or non-compliance with the rabies vaccination requirements.

(e) *Given that Article 35 of Regulation (EU) No 576/2013 permits the NFSA to take the actions listed in that Article only where checks have established non- compliance with Regulation (EU) No 576/2013, does the NFSA distinguish, in terms of the actions it may legally take, between the situation where:*

- *a pet animal has not been vaccinated or has received a vaccination not meeting the validity requirements in Annex III and is therefore non- compliant with Regulation (EU) No 576/2013; and*
- *a pet animal has received a vaccination meeting the validity requirements in Annex III and is compliant with Regulation (EU) No 576/2013 but is nevertheless diseased and/or has a level of neutralizing antibody to rabies virus in serum lower than 0,5 IU/ml (for example, due to the pet animal having a compromised immune system)?*

If the NFSA does recognize such a distinction, what actions does it believe if may legally take in each of the above situations? In the latter situation, on what legal basis does the NFSA rely in taking any actions?

Firstly, we agree that a pet animal that has not been vaccinated or has received a vaccination not meeting the validity requirements in Annex III, is non- compliant with Regulation (EU) No 576/2013.

We are also concerned that imported dogs with insufficient antibody levels may imply that they have not been vaccinated, even though they have documentation of vaccination upon arrival. A recent study from Finland[5] showed that many of the imported dogs in their study, had insufficient antibody levels required to fulfil the validity demands of the vaccination for international travel. Furthermore, the study implies that these dogs perhaps had not been vaccinated, even though they had documentation of vaccination upon arrival.

To the latter situation, if the pet animal is diseased and/or has a level of an antibody titer lower than 0,5 IU/ml, we would consider that the animal has not reached a sufficient level of antibodies towards rabies virus to develop a protective immunity. Lack of antibody response may leave the animal susceptible to rabies virus and thus being at risk of developing rabies.

According to Regulation (EU) No 576/2013 Annex III point 2 litra e), the rabies vaccination is not considered valid until a protective immunity is established. Furthermore, according to the OIE Terrestrial Animal Health Code Chapter 8.14[6] the level of antibodies towards rabies virus in serum should be 0,5 IU/ml or higher in order to be considered as a protective immunity. This is also in accordance with WHO recommendations[7].

If the rabies vaccination is not fulfilling the given requirements in Regulation (EU) No 576/2013, we take action in accordance with Article 35 of the same regulation.

[5] https://actavetscand.biomedcentral.com/articles/10.1186/s13028-019-0450-8
[6] https://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_rabies.htm
[7]https://apps.who.int/iris/bitstream/handle/10665/85346/9789240690943_eng.pdf;jsessionid=1BB24861CCC7A2E1F3E95690E03E3204?sequence=1

f) *Does the NFSA consider that non-commercial movement into Norway of pet animals not required under Regulation (EU) No 576/2013 to undergo a titration test as a condition for non-commercial movement but which have a level of neutralising antibody to rabies virus in serum lower than 0,5 IU/ml (but which are otherwise compliant with Regulation (EU) No 576/2013) is illegal/non- compliant with Regulation 576/2013? If so, on what legal basis? What action is taken by the NFSA regarding such pet animals? On what legal basis?*

Based on the fact, that rabies vaccination according to the regulation is not considered valid until a protective immunity is established, Norway is of the opinion that these pet animals are not compliant with Regulation (EU) No 576/2013. The rationale is elaborated in the answer above.

If the rabies vaccination is not fulfilling the given requirements in Regulation (EU) No 576/2013, we take action in accordance with Article 35 of the same regulation.

Yours sincerely

Eva H. Ellingsen Grendstad
Deputy Director General

Kjersti Nilsen Barkbu
Senior Adviser

This document is signed electronically and has therefore no handwritten signature