

Council Regulation (EEC) No 2913/92 of 12 October 1992
establishing the Community Customs Code (repealed)

TITLE I

GENERAL PROVISIONS

CHAPTER 2

**SUNDRY GENERAL PROVISIONS RELATING IN PARTICULAR TO THE RIGHTS
AND OBLIGATIONS OF PERSONS WITH REGARD TO CUSTOMS RULES**

Section 1

Right of representation

Article 5

1 Under the conditions set out in Article 64 (2) and subject to the provisions adopted within the framework of Article 243 (2) (b), any person may appoint a representative in his dealings with the customs authorities to perform the acts and formalities laid down by customs rules.

2 Such representation may be:

- direct, in which case the representative shall act in the name of and on behalf of another person, or
- indirect, in which case the representatives shall act in his own name but on behalf of another person.

A Member State may restrict the right to make customs declarations:

- by direct representation, or
- by indirect representation,

so that the representative must be a customs agent carrying on his business in that country's territory.

3 Save in the cases referred to in Article 64 (2) (b) and (3), a representative must be established within the Community.

4 A representative must state that he is acting on behalf of the person represented, specify whether the representation is direct or indirect and be empowered to act as a representative.

A person who fails to state that he is acting in the name of or on behalf of another person or who states that he is acting in the name of or on behalf of another person without being empowered to do so shall be deemed to be acting in his own name and on his own behalf.

5 The customs authorities may require any person stating that he is acting in the name of or on behalf of another person to produce evidence of his powers to act as a representative.

*Status: Point in time view as at 11/05/2005.**Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 2913/92 (repealed), CHAPTER 2. (See end of Document for details)*[^{F1}Section 1A**Authorised economic operators***Article 5a*

1 Customs authorities, if necessary following consultation with other competent authorities, shall grant, subject to the criteria provided for in paragraph 2, the status of 'authorised economic operator' to any economic operator established in the customs territory of the Community.

An authorised economic operator shall benefit from facilitations with regard to customs controls relating to security and safety and/or from simplifications provided for under the customs rules.

The status of authorised economic operator shall, subject to the rules and conditions laid down in paragraph 2, be recognised by the customs authorities in all Member States, without prejudice to customs controls. Customs authorities shall, on the basis of the recognition of the status of authorised economic operator and provided that the requirements relating to a specific type of simplification provided for in Community customs legislation are fulfilled, authorise the operator to benefit from that simplification.

- 2 The criteria for granting the status of authorised economic operator shall include:
- an appropriate record of compliance with customs requirements,
 - a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls,
 - where appropriate, proven financial solvency, and
 - where applicable, appropriate security and safety standards.

The committee procedure shall be used to determine the rules:

- for granting the status of authorised economic operator,
- for granting authorisations for the use of simplifications,
- for establishing which customs authority is competent to grant such status and authorisations,
- for the type and extent of facilitations that may be granted in respect of customs controls relating to security and safety, taking into account the rules for common risk management,
- for consultation with, and provision of information to, other customs authorities;

and the conditions under which:

- an authorisation may be limited to one or more Member States,
- the status of authorised economic operator may be suspended or withdrawn, and
- the requirement of being established in the Community may be waived for specific categories of authorised economic operator, taking into account, in particular, international agreements.]

Textual Amendments

- F1** Inserted by [Regulation \(EC\) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code.](#)

Status: Point in time view as at 11/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 2913/92 (repealed), CHAPTER 2. (See end of Document for details)

Section 2

Decisions relating to the application of customs rules

Article 6

1 Where a person requests that the customs authorities take a decision relating to the application of customs rules that person shall supply all the information and documents required by those authorities in order to take a decision.

2 Such decision shall be taken and notified to the applicant at the earliest opportunity.

Where a request for a decision is made in writing, the decision shall be made within a period laid down in accordance with the existing provisions, starting on the date on which the said request is received by the customs authorities. Such a decision must be notified in writing to the applicant.

However, that period may be exceeded where the customs authorities are unable to comply with it. In that case, those authorities shall so inform the applicant before the expiry of the abovementioned period, stating the grounds which justify exceeding it and indicating the further period of time which they consider necessary in order to give a ruling on the request.

3 Decisions adopted by the customs authorities in writing which either reject requests or are detrimental to the persons to whom they are addressed shall set out the grounds on which they are based. They shall refer to the right of appeal provided for in Article 243.

4 Provision may be made for the first sentence of paragraph 3 to apply likewise to other decisions.

Article 7

Save in the cases provided for in the second subparagraph of Article 244, decisions adopted shall be immediately enforceable by customs authorities.

Article 8

1 A decision favourable to the person concerned shall be annulled if it was issued on the basis of incorrect or incomplete information and:

- the applicant knew or should reasonably have known that the information was incorrect or incomplete, and
- such decision could not have been taken on the basis of correct or complete information.

2 The persons to whom the decision was addressed shall be notified of its annulment.

3 Annulment shall take effect from the date on which the annulled decision was taken.

Article 9

1 A decision favourable to the person concerned, shall be revoked or amended where, in cases other than those referred to in Article 8, one or more of the conditions laid down for its issue were not or are no longer fulfilled.

2 A decision favourable to the person concerned may be revoked where the person to whom it is addressed fails to fulfil an obligation imposed on him under that decision.

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Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EEC) No 2913/92 (repealed), CHAPTER 2. (See end of Document for details)*

3 The person to whom the decision is addressed shall be notified of its revocation or amendment.

4 The revocation or amendment of the decision shall take effect from the date of notification. However, in exceptional cases where the legitimate interests of the person to whom the decision is addressed so require, the customs authorities may defer the date when revocation or amendment takes effect.

Article 10

Articles 8 and 9 shall be without prejudice to national rules which stipulate that decisions are invalid or become null and void for reasons unconnected with customs legislation.

Section 3

Information

Article 11

1 Any person may request information concerning the application of customs legislation from the customs authorities.

Such a request may be refused where it does not relate to an import or export operation actually envisaged.

2 The information shall be supplied to the applicant free of charge. However, where special costs are incurred by the customs authorities, in particular as a result of analyses or expert reports on goods, or the return of the goods to the applicant, he may be charged the relevant amount.

[^{F2} Article 12

1 The customs authorities shall issue binding tariff information or binding origin information on written request, acting in accordance with the committee procedure.

2 Binding tariff information or binding origin information shall be binding on the customs authorities as against the holder of the information only in respect of the tariff classification or determination of the origin of goods.

Binding tariff information or binding origin information shall be binding on the customs authorities only in respect of goods on which customs formalities are completed after the date on which the information was supplied by them.

In matters of origin, the formalities in question shall be those relating to the application of Articles 22 and 27.

3 The holder of such information must be able to prove that:

- for tariff purposes: the goods declared correspond in every respect to those described in the information,
- for origin purposes: the goods concerned and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the information.

4 Binding information shall be valid for a period of six years in the case of tariffs and three years in the case of origin from the date of issue. By way of derogation from Article 8, it shall be annulled where it is based on inaccurate or incomplete information from the applicant.

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 2913/92 (repealed), CHAPTER 2. (See end of Document for details)

- 5 Binding information shall cease to be valid:
- a in the case of tariff information:
- (i) where a regulation is adopted and the information no longer conforms to the law laid down thereby;
 - (ii) where it is no longer compatible with the interpretation of one of the nomenclatures referred to in Article 20 (6):
 - at Community level, by reason of amendments to the explanatory notes to the combined nomenclature or by a judgment of the Court of Justice of the European Communities,
 - at international level, by reason of a classification opinion or an amendment of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System, adopted by the World Customs Organization established in 1952 under the name ‘the Customs Cooperation Council’;
 - (iii) where it is revoked or amended in accordance with Article 9, provided that the revocation or amendment is notified to the holder.

The date on which binding information ceases to be valid for the cases cited in (i) and (ii) shall be the date of publication of the said measures or, in the case of international measures, the date of the Commission communication in the ‘C’ series of the *Official Journal of the European Communities*;

- b in the case of origin information:
- (i) where a regulation is adopted or an agreement is concluded by the Community and the information no longer conforms to the law thereby laid down;
 - (ii) where it is no longer compatible with:
 - at Community level, the explanatory notes and opinions adopted for the purposes of interpreting the rules or with a judgment of the Court of Justice of the European Communities,
 - at international level, the Agreement on Rules of Origin established in the World Trade Organization (WTO) or with the explanatory notes or an origin opinion adopted for the interpretation of that Agreement;
 - (iii) where it is revoked or amended in accordance with Article 9, provided that the holder has been informed in advance.

The date on which binding information ceases to be valid for the cases referred to in (i) and (ii) shall be the date indicated when the abovementioned measures are published or, in the case of international measures, the date shown in the Commission communication in the ‘C’ series of the *Official Journal of the European Communities*.

6 The holder of binding information which ceases to be valid [^{XI} pursuant to paragraph 5 (a) (ii) or (iii) or (b) (ii) or (iii)] may still use that information for a period of six months from the date of publication or notification, provided that he concluded binding contracts for the purchase or sale of the goods in question, on the basis of the binding information, before that measure was adopted. However, in the case of products for which an import, export or advance-fixing certificate is submitted when customs formalities are carried out, the period of six months is replaced by the period of validity of the certificate.

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In the case of paragraph 5 (a) (i) and b (i), the Regulation or agreement may lay down a period within which the first subparagraph shall apply.

7 The classification or determination of origin in binding information may be applied, on the conditions laid down in paragraph 6, solely for the purpose of:

- determining import or export duties,
- calculating export refunds and any other amounts granted for imports or exports as part of the common agricultural policy,
- using import, export or advance-fixing certificates which are submitted when formalities are carried out for acceptance of the customs declaration concerning the goods in question, provided that such certificates were issued on the basis of the information concerned.

In addition, in exceptional cases where the smooth operation of the arrangements laid down under the common agricultural policy may be jeopardized, it may be decided to derogate from paragraph 6, in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾ and in the corresponding Articles in other regulations on the common organization of markets.']

Editorial Information

X1 Inserted by [Corrigendum, OJ No L 179, 8. 7. 1997, p. 11 \(82/97\)](#).

Textual Amendments

F2 Inserted by [Regulation \(EC\) No 82/97 of the European Parliament and of the Council of 19 December 1996](#).

Section 4

Other provisions

[^{F3}Article 13

1 Customs authorities may, in accordance with the conditions laid down by the provisions in force, carry out all the controls they deem necessary to ensure that customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status are correctly applied. Customs controls for the purpose of the correct application of Community legislation may be carried out in a third country where an international agreement provides for this.

2 Customs controls, other than spot-checks, shall be based on risk analysis using automated data processing techniques, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national, Community and, where available, international level.

The committee procedure shall be used for determining a common risk management framework, and for establishing common criteria and priority control areas.

Member States, in cooperation with the Commission, shall establish a computer system for the implementation of risk management.

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Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 2913/92 (repealed), CHAPTER 2. (See end of Document for details)

3 Where controls are performed by authorities other than the customs authorities, such controls shall be performed in close coordination with the customs authorities, wherever possible at the same time and place.

4 In the context of the controls provided for in this Article, customs and other competent authorities, such as veterinary and police authorities, may communicate data received, in connection with the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status, between each other and to the customs authorities of the Member States and to the Commission where this is required for the purposes of minimising risk.

Communication of confidential data to the customs authorities and other bodies (e.g. security agencies) of third countries shall be allowed only in the framework of an international agreement and provided that the data protection provisions in force, in particular Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽²⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽³⁾ are respected.]

Textual Amendments

- F3** Substituted by [Regulation \(EC\) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code.](#)

Article 14

For the purposes of applying customs legislation, any person directly or indirectly involved in the operations concerned for the purposes of trade in goods shall provide the customs authorities with all the requisite documents and information, irrespective of the medium used, and all the requisite assistance at their request and by any time limit prescribed.

^{F3}Article 15

All information which is by nature confidential or which is provided on a confidential basis shall be covered by the duty of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged to do so pursuant to the provisions in force, particularly in connection with legal proceedings. Any disclosure or communication of information shall fully comply with prevailing data protection provisions, in particular Directive 95/46/EC and Regulation (EC) No 45/2001.]

Textual Amendments

- F3** Substituted by [Regulation \(EC\) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code.](#)

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Article 16

The persons concerned shall keep the documents referred to in Article 14 for the purposes of [^{F3}customs controls], for the period laid down in the provisions in force and for at least three calendar years, irrespective of the medium used. That period shall run from the end of the year in which:

- (a) in the case of goods released for free circulation in circumstances other than those referred to in (b) or goods declared for export, from the end of the year in which the declarations for release for free circulation or export are accepted;
- (b) in the case of goods released for free circulation at a reduced or zero rate of import duty on account of their end-use, from the end of the year in which they cease to be subject to customs supervision;
- (c) in the case of goods placed under another customs procedure, from the end of the year in which the customs procedure concerned is completed;
- (d) in the case of goods placed in a free zone or free warehouse, from the end of the year on which they leave the undertaking concerned.

Without prejudice to the provisions of Article 221 (3), second sentence, where a check carried out by the customs authorities in respect of a customs debt shows that the relevant entry in the accounts has to be corrected, the documents shall be kept beyond the time limit provided for in the first paragraph for a period sufficient to permit the correction to be made and checked.

Textual Amendments

- F3** Substituted by [Regulation \(EC\) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation \(EEC\) No 2913/92 establishing the Community Customs Code.](#)

Article 17

Where a period, date or time limit is laid down pursuant to customs legislation for the purpose of applying legislation, such period shall not be extended and such date or time limit shall not be deferred unless specific provision is made in the legislation concerned.

[^{F2}Article 18

1 The value of the ecu in national currencies to be applied for the purposes of determining the tariff classification of goods and import duties shall be fixed once a month. The rates to be used for this conversion shall be those published in the *Official Journal of the European Communities* on the penultimate working day of the month. Those rates shall apply throughout the following month.

However, where the rate applicable at the start of the month differs by more than 5 % from that published on the penultimate working day before the 15th of that same month, the latter rate shall apply from the 15th until the end of the month in question.

2 The value of the ecu in national currencies to be applied within the framework of customs legislation in cases other than those referred to in paragraph 1 shall be fixed once a year. The rates to be used for this conversion shall be those published in the *Official Journal of the European Communities* on the first working day of October, with effect from 1 January of the following year. If no rate is available for a particular national currency, the rate applicable

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to that currency shall be that obtaining on the last day for which a rate was published in the *Official Journal of the European Communities*.

3 The customs authorities may round up or down the sum resulting from the conversion into their national currency of an amount expressed in ecus for purposes other than determining the tariff classification of goods or import or export duties.

The rounded-off amount may not differ from the original amount by more than 5 %.

The customs authorities may retain unchanged the national-currency value of an amount expressed in ecus if, at the time of the annual adjustment provided for in paragraph 2, the conversion of that amount, prior to the abovementioned rounding-off, results in a variation of less than 5 % in the national-currency value or a reduction in that value.]

Textual Amendments

F2 Inserted by [Regulation \(EC\) No 82/97 of the European Parliament and of the Council of 19 December 1996](#).

Article 19

The procedure of the Committee shall be used to determine in which cases and under which conditions the application of customs legislation may be simplified.

Status: Point in time view as at 11/05/2005.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EEC) No 2913/92 (repealed), CHAPTER 2. (See end of Document for details)

- (1) [^{F2}OJ No 172, 30. 9. 1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 3290/94 (OJ No L 349, 31. 12. 1994, p. 105).]
- (2) [^{F3}OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).
- (3) OJ L 8, 12.1.2001, p. 1.]

Textual Amendments

- F2** Inserted by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996.
- F3** Substituted by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

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