

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast)

TITLE I

**GENERAL PROVISIONS**

CHAPTER 2

***Rights and obligations of persons with regard to the customs legislation***

*Section 1*

***Provision of information***

*Article 6*

**Means for the exchange and storage of information and common data requirements**

1 All exchanges of information, such as declarations, applications or decisions, between customs authorities and between economic operators and customs authorities, and the storage of such information, as required under the customs legislation, shall be made using electronic data-processing techniques.

2 Common data requirements shall be drawn up for the purpose of the exchange and storage of information referred to in paragraph 1.

3 Means for the exchange and storage of information, other than the electronic data-processing techniques referred to in paragraph 1, may be used as follows:

- a on a permanent basis where duly justified by the type of traffic or where the use of electronic data-processing techniques is not appropriate for the customs formalities concerned;
- b on a temporary basis, in the event of a temporary failure of the computerised system of the customs authorities or of the economic operators.

4 By way of derogation from paragraph 1, the Commission may adopt in exceptional cases decisions allowing one or several Member States to use means for the exchange and storage of information other than electronic data-processing techniques.

Such a decision on a derogation shall be justified by the specific situation of the Member State requesting it and the derogation shall be granted for a specific period of time. The derogation shall be reviewed periodically and may be extended for further specific periods of time upon further application by the Member State to which it is addressed. It shall be revoked where no longer justified.

The derogation shall not affect the exchange of information between the Member State to which it is addressed and other Member States nor the exchange and storage of information in other Member States for the purpose of the application of the customs legislation.

## Article 7

### Delegation of power

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine the following:

- (a) the common data requirements referred to in Article 6(2), taking into account the need to accomplish the customs formalities laid down in the customs legislation and the nature and purpose of the exchange and storage of information referred to in Article 6(1);
- (b) the specific cases where means for the exchange and storage of information, other than electronic data-processing techniques, may be used in accordance with point (a) of Article 6(3);
- (c) the type of information and the particulars that are to be contained in the records referred to in Articles 148(4) and 214(1).

## Article 8

### Conferral of implementing powers

- 1 The Commission shall specify, by means of implementing acts:
  - a where necessary, the format and code of the common data requirements referred to in Article 6(2);
  - b the procedural rules on the exchange and storage of information which can be made by means other than the electronic data-processing techniques referred to in Article 6(3).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

- 2 The Commission shall adopt the decisions on derogations referred to in Article 6(4) by means of implementing acts.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 285(2).

## Article 9

### Registration

- 1 Economic operators established in the customs territory of the Union shall register with the customs authorities responsible for the place where they are established.
- 2 In specific cases, economic operators which are not established in the customs territory of the Union shall register with the customs authorities responsible for the place where they first lodge a declaration or apply for a decision.
- 3 Persons other than economic operators shall not be required to register with the customs authorities unless otherwise provided.

Where persons referred to in the first subparagraph are required to register, the following shall apply:

- a where they are established in the customs territory of the Union, they shall register with the customs authorities responsible for the place where they are established;
  - b where they are not established in the customs territory of the Union, they shall register with the customs authorities responsible for the place where they first lodge a declaration or apply for a decision.
- 4 In specific cases, the customs authorities shall invalidate the registration.

#### *Article 10*

### **Delegation of power**

The Commission shall be empowered to adopt delegated acts in accordance with Article 284, in order to determine:

- (a) the cases referred to in Article 9(2), where economic operators which are not established in the customs territory of the Union are required to register with the customs authorities;
- (b) the cases referred to in the first subparagraph of Article 9(3), where persons other than economic operators are required to register with the customs authorities;
- (c) the cases referred to in Article 9(4) where the customs authorities invalidate a registration.

#### *Article 11*

### **Conferral of implementing powers**

The Commission shall specify, by means of implementing acts, the customs authority responsible for the registration referred to in Article 9.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

#### *Article 12*

### **Communication of information and data protection**

1 All information acquired by the customs authorities in the course of performing their duty which is by its nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. Except as provided for in Article 47(2), such information shall not be disclosed by the competent authorities without the express permission of the person or authority that provided it.

Such information may, however, be disclosed without permission where the customs authorities are obliged or authorised to do so pursuant to the provisions in force, particularly in respect of data protection, or in connection with legal proceedings.

2 Confidential information referred to in paragraph 1 may be communicated to the customs authorities and other competent authorities of countries or territories outside the

customs territory of the Union for the purpose of customs cooperation with those countries or territories in the framework of an international agreement or Union legislation in the area of the common commercial policy.

3 Any disclosure or communication of information as referred to in paragraphs 1 and 2 shall ensure an adequate level of data protection in full compliance with data protection provisions in force.

#### *Article 13*

### **Exchange of additional information between customs authorities and economic operators**

1 Customs authorities and economic operators may exchange any information not specifically required under the customs legislation, in particular for the purpose of mutual cooperation in the identification and counteraction of risk. That exchange may take place under a written agreement and may include access to the computer systems of economic operators by the customs authorities.

2 Any information provided by one party to the other in the course of the cooperation referred to in paragraph 1 shall be confidential unless both parties agree otherwise.

#### *Article 14*

### **Provision of information by the customs authorities**

1 Any person may request information concerning the application of the customs legislation from the customs authorities. Such a request may be refused where it does not relate to an activity pertaining to international trade in goods that is actually envisaged.

2 Customs authorities shall maintain a regular dialogue with economic operators and other authorities involved in international trade in goods. They shall promote transparency by making the customs legislation, general administrative rulings and application forms freely available, wherever practical without charge, and through the Internet.

#### *Article 15*

### **Provision of information to the customs authorities**

1 Any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall, at the request of the customs authorities and within any time-limit specified, provide those authorities with all the requisite documents and information, in an appropriate form, and all the assistance necessary for the completion of those formalities or controls.

2 The lodging of a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification by a person to the customs authorities, or the submission of an application for an authorisation or any other decision, shall render the person concerned responsible for all of the following:

- a the accuracy and completeness of the information given in the declaration, notification or application;

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- b the authenticity, accuracy and validity of any document supporting the declaration, notification or application;
- c where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorised operations.

The first subparagraph shall also apply to the provision of any information in any other form required by, or given to, the customs authorities.

Where the declaration or notification is lodged, the application is submitted, or information is provided, by a customs representative of the person concerned, as referred to in Article 18, that customs representative shall also be bound by the obligations set out in the first subparagraph of this paragraph.

#### *Article 16*

### **Electronic systems**

1 Member States shall cooperate with the Commission to develop, maintain and employ electronic systems for the exchange of information between customs authorities and with the Commission and for the storage of such information, in accordance with the Code.

2 Member States to which a derogation has been granted in accordance with Article 6(4) shall not be required to develop, maintain and employ within the scope of that derogation the electronic systems referred to in paragraph 1 of this Article.

#### *Article 17*

### **Conferral of implementing powers**

The Commission shall specify, by means of implementing acts, the technical arrangements for developing, maintaining and employing the electronic systems referred to in Article 16(1).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

#### *Section 2*

### **Customs representation**

#### *Article 18*

### **Customs representative**

1 Any person may appoint a customs representative.

Such representation may be either direct, in which case the customs representative shall act in the name of and on behalf of another person, or indirect, in which case the customs representative shall act in his or her own name but on behalf of another person.

2 A customs representative shall be established within the customs territory of the Union.

Except where otherwise provided, that requirement shall be waived where the customs representative acts on behalf of persons who are not required to be established within the customs territory of the Union.

3 Member States may determine, in accordance with Union law, the conditions under which a customs representative may provide services in the Member State where he or she is established. However, without prejudice to the application of less stringent criteria by the Member State concerned, a customs representative who complies with the criteria laid down in points (a) to (d) of Article 39 shall be entitled to provide such services in a Member State other than the one where he or she is established.

4 Member States may apply the conditions determined in accordance with the first sentence of paragraph 3 to customs representatives not established within the customs territory of the Union.

#### *Article 19*

### **Empowerment**

1 When dealing with the customs authorities, a customs representative shall state that he or she is acting on behalf of the person represented and shall specify whether the representation is direct or indirect.

Persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf.

2 The customs authorities may require persons stating that they are acting as a customs representative to provide evidence of their empowerment by the person represented.

In specific cases, the customs authorities shall not require such evidence to be provided.

3 The customs authorities shall not require a person acting as a customs representative, carrying out acts and formalities on a regular basis, to produce on every occasion evidence of empowerment, provided that such person is in a position to produce such evidence on request by the customs authorities.

#### *Article 20*

### **Delegation of power**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine:

- (a) the cases where the waiver referred to in the second subparagraph of Article 18(2) does not apply;
- (b) the cases where the evidence of empowerment referred to in the first subparagraph of Article 19(2) is not required by the customs authorities.

## *Article 21*

### **Conferral of implementing powers**

The Commission shall specify, by means of implementing acts, the procedural rules on the conferral and proving of the entitlement referred to in Article 18(3).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

## *Section 3*

### ***Decisions relating to the application of the customs legislation***

## *Article 22*

### **Decisions taken upon application**

1 Where a person applies for a decision relating to the application of the customs legislation, that person shall supply all the information required by the competent customs authorities in order to enable them to take that decision.

A decision may also be applied for by, and taken with regard to, several persons, in accordance with the conditions laid down in the customs legislation.

Except where otherwise provided, the competent customs authority shall be that of the place where the applicant's main accounts for customs purposes are held or accessible, and where at least part of the activities to be covered by the decision are to be carried out.

2 Customs authorities shall, without delay and at the latest within 30 days of receipt of the application for a decision, verify whether the conditions for the acceptance of that application are fulfilled.

Where the customs authorities establish that the application contains all the information required in order for them to be able to take the decision, they shall communicate its acceptance to the applicant within the period specified in the first subparagraph.

3 The competent customs authority shall take a decision as referred to in paragraph 1, and shall notify the applicant without delay, and at the latest within 120 days of the date of acceptance of the application, except where otherwise provided

Where the customs authorities are unable to comply with the time-limit for taking a decision, they shall inform the applicant of that fact before the expiry of that time-limit, stating the reasons and indicating the further period of time which they consider necessary in order to take a decision. Except where otherwise provided, that further period of time shall not exceed 30 days.

Without prejudice to the second subparagraph, the customs authorities may extend the time-limit for taking a decision, as laid down in the customs legislation, where the applicant requests an extension to carry out adjustments in order to ensure the fulfilment of the conditions and criteria. Those adjustments and the further period of time necessary

to carry them out shall be communicated to the customs authorities, which shall decide on the extension.

4 Except where otherwise specified in the decision or in the customs legislation, the decision shall take effect from the date on which the applicant receives it, or is deemed to have received it. Except in the cases provided for in Article 45(2), decisions adopted shall be enforceable by the customs authorities from that date.

5 Except where otherwise provided in the customs legislation, the decision shall be valid without limitation of time.

6 Before taking a decision which would adversely affect the applicant, the customs authorities shall communicate the grounds on which they intend to base their decision to the applicant, who shall be given the opportunity to express his or her point of view within a period prescribed from the date on which he or she receives that communication or is deemed to have received it. Following the expiry of that period, the applicant shall be notified, in the appropriate form, of the decision.

The first subparagraph shall not apply in any of the following cases:

- a where it concerns a decision referred to in Article 33(1);
- b in the event of refusal of the benefit of a tariff quota where the specified tariff quota volume is reached, as referred to in the first subparagraph of Article 56(4);
- c where the nature or the level of a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers so requires;
- d where the decision aims at securing the implementation of another decision for which the first subparagraph has been applied, without prejudice to the law of the Member State concerned;
- e where it would prejudice investigations initiated for the purpose of combating fraud;
- f in other specific cases.

7 A decision which adversely affects the applicant shall set out the grounds on which it is based and shall refer to the right of appeal provided for in Article 44.

### *Article 23*

#### **Management of decisions taken upon application**

1 The holder of the decision shall comply with the obligations resulting from that decision.

2 The holder of the decision shall inform the customs authorities without delay of any factor arising after the decision was taken, which may influence its continuation or content.

3 Without prejudice to provisions laid down in other fields which specify the cases in which decisions are invalid or become null and void, the customs authorities which took a decision may at any time annul, amend or revoke it where it does not conform to the customs legislation.

4 In specific cases the customs authorities shall carry out the following:

- a re-assess a decision;
- b suspend a decision which is not to be annulled, revoked or amended.



5 The customs authorities shall monitor the conditions and criteria to be fulfilled by the holder of a decision. They shall also monitor compliance with the obligations resulting from that decision. Where the holder of the decision has been established for less than three years, the customs authorities shall closely monitor it during the first year after the decision is taken.

#### *Article 24*

#### **Delegation of power**

The Commission shall be empowered to adopt delegated acts in accordance with Article 284, in order to determine:

- (a) the exceptions to the third subparagraph of Article 22(1);
- (b) the conditions for the acceptance of an application, referred to in Article 22(2);
- (c) the time-limit to take a specific decision, including the possible extension of that time-limit, in accordance with Article 22(3);
- (d) the cases, referred to in Article 22(4), where the decision takes effect from a date which is different from the date on which the applicant receives it or is deemed to have received it;
- (e) the cases, referred to in Article 22(5), where the decision is not valid without limitation of time;
- (f) the duration of the period referred to in the first subparagraph of Article 22(6);
- (g) the specific cases, referred to in point (f) of the second subparagraph of Article 22(6), where the applicant is given no opportunity to express his or her point of view;
- (h) the cases and the rules for re-assessing and suspending decisions in accordance with Article 23(4);

#### *Article 25*

#### **Conferral of implementing powers**

The Commission shall specify, by means of implementing acts, the procedural rules for:

- (a) the submission and the acceptance of the application for a decision, referred to in Article 22(1) and (2);
- (b) taking the decision referred to in Article 22, including, where appropriate, the consultation of the Member States concerned;
- (c) monitoring a decision, in accordance with Article 23(5).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

### Article 26

#### **Union-wide validity of decisions**

Except where the effect of a decision is limited to one or several Member States, decisions relating to the application of the customs legislation shall be valid throughout the customs territory of the Union.

### Article 27

#### **Annulment of favourable decisions**

1 The customs authorities shall annul a decision favourable to the holder of the decision if all the following conditions are fulfilled:

- a the decision was taken on the basis of incorrect or incomplete information;
- b the holder of the decision knew or ought reasonably to have known that the information was incorrect or incomplete;
- c if the information had been correct and complete, the decision would have been different.

2 The holder of the decision shall be notified of its annulment.

3 Annulment shall take effect from the date on which the initial decision took effect, unless otherwise specified in the decision in accordance with the customs legislation.

### Article 28

#### **Revocation and amendment of favourable decisions**

1 A favourable decision shall be revoked or amended where, in cases other than those referred to in Article 27:

- a one or more of the conditions for taking that decision were not or are no longer fulfilled;  
or
- b upon application by the holder of the decision.

2 Except where otherwise provided, a favourable decision addressed to several persons may be revoked only in respect of a person who fails to fulfil an obligation imposed under that decision.

3 The holder of the decision shall be notified of its revocation or amendment.

4 Article 22(4) shall apply to the revocation or amendment of the decision.

However, in exceptional cases where the legitimate interests of the holder of the decision so require, the customs authorities may defer the date on which revocation or amendment takes effect up to one year. That date shall be indicated in the revoking or amending decision.

#### *Article 29*

### **Decisions taken without prior application**

Except when a customs authority acts as a judicial authority, Article 22(4), (5), (6) and (7), Article 23(3) and Articles 26, 27 and 28 shall also apply to decisions taken by the customs authorities without prior application by the person concerned.

#### *Article 30*

### **Limitations applicable to decisions on goods placed under a customs procedure or in temporary storage**

Except where the person concerned so requests, the revocation, amendment or suspension of a favourable decision shall not affect goods which, at the moment where the revocation, amendment or suspension takes effect, have already been placed and are still under a customs procedure or in temporary storage by virtue of the revoked, amended or suspended decision.

#### *Article 31*

### **Delegation of power**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine:

- (a) the cases, referred to in Article 28(2), where a favourable decision addressed to several persons may be revoked also in respect of persons other than the person who fails to fulfil an obligation imposed under that decision;
- (b) the exceptional cases, in which the customs authorities may defer the date on which revocation or amendment takes effect in accordance with the second subparagraph of Article 28(4).

#### *Article 32*

### **Conferral of implementing powers**

The Commission shall specify, by means of implementing acts, the procedural rules for annulling, revoking or amending favourable decisions.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

### Article 33

#### **Decisions relating to binding information**

1 The customs authorities shall, upon application, take decisions relating to binding tariff information (BTI decisions), or decisions relating to binding origin information (BOI decisions).

Such an application shall not be accepted in any of the following circumstances:

- a where the application is made, or has already been made, at the same or another customs office, by or on behalf of the holder of a decision in respect of the same goods and, for BOI decisions, under the same circumstances determining the acquisition of origin;
- b where the application does not relate to any intended use of the BTI or BOI decision or any intended use of a customs procedure.

2 BTI or BOI decisions shall be binding, only in respect of the tariff classification or determination of the origin of goods:

- a on the customs authorities, as against the holder of the decision, only in respect of goods for which customs formalities are completed after the date on which the decision takes effect;
- b on the holder of the decision, as against the customs authorities, only with effect from the date on which he or she receives, or is deemed to have received, notification of the decision.

3 BTI or BOI decisions shall be valid for a period of three years from the date on which the decision takes effect.

4 For the application of a BTI or BOI decision in the context of a particular customs procedure, the holder of the decision shall be able to prove that:

- a in the case of a BTI decision, the goods declared correspond in every respect to those described in the decision;
- b in the case of a BOI decision, the goods in question and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the decision.

### Article 34

#### **Management of decisions relating to binding information**

1 A BTI decision shall cease to be valid before the end of the period referred to in Article 33(3) where it no longer conforms to the law, as a result of either of the following:

- a the adoption of an amendment to the nomenclatures referred to in points (a) and (b) of Article 56(2);
- b the adoption of measures referred to in Article 57(4);

with effect from the date of application of such amendment or measures.

2 A BOI decision shall cease to be valid before the end of the period referred to in Article 33(3) in any of the following cases:

- a where a regulation is adopted or an agreement is concluded by, and becomes applicable in, the Union, and the BOI decision no longer conforms to the law thereby laid down, with effect from the date of application of that regulation or agreement;

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- b where it is no longer compatible with the Agreement on Rules of Origin established in the World Trade Organisation (WTO) or with the explanatory notes or an origin opinion adopted for the interpretation of that Agreement, with effect from the date of their publication in the *Official Journal of the European Union*.
- 3 BTI or BOI decisions shall not cease to be valid with retroactive effect.
- 4 By way of derogation from Article 23(3) and Article 27, BTI and BOI decisions shall be annulled where they are based on inaccurate or incomplete information from the applicants.
- 5 BTI and BOI decisions shall be revoked in accordance with Article 23(3) and Article 28. However, such decisions shall not be revoked upon application by the holder of the decision.
- 6 BTI and BOI decisions may not be amended.
- 7 The customs authorities shall revoke BTI decisions:
- a where they are no longer compatible with the interpretation of any of the nomenclatures referred to in points (a) and (b) of Article 56(2) resulting from any of the following:
- (i) explanatory notes referred to in the second indent of point (a) of Article 9(1) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff<sup>(1)</sup>, with effect from the date of their publication in the *Official Journal of the European Union*;
- (ii) a judgment of the Court of Justice of the European Union, with effect from the date of publication of the operative part of the judgment in the *Official Journal of the European Union*;
- (iii) classification decisions, classification opinions or amendments of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System, adopted by the Organization set-up by the Convention establishing a Customs Co-operation Council, done at Brussels on 15 December 1950, with effect from the date of publication of the Commission Communication in the 'C' series of the *Official Journal of the European Union*;
- or
- b in other specific cases.
- 8 BOI decisions shall be revoked:
- a where they are no longer compatible with a judgment of the Court of Justice of the European Union, with effect from the date of publication of the operative part of the judgment in the *Official Journal of the European Union*; or
- b in other specific cases.
- 9 Where point (b) of paragraph 1 or paragraphs 2, 7 or 8 apply, a BTI or BOI decision may still be used in respect of binding contracts which were based upon that decision and were concluded before it ceased to be valid or was revoked. That extended use shall not apply where a BOI decision is taken for goods to be exported.

The extended use referred to in the first subparagraph shall not exceed six months from the date on which the BTI or BOI decision ceases to be valid or is revoked. However, a measure referred to in Article 57(4) or in Article 67 may exclude that extended use or lay down a shorter period of time. In the case of products for which an import or export certificate is submitted when customs formalities are carried out, the period of six months shall be replaced by the period of validity of the certificate.

In order to benefit from the extended use of a BTI or BOI decision, the holder of that decision shall lodge an application to the customs authority that took the decision within 30 days of the date on which it ceases to be valid or is revoked, indicating the quantities for which a period of extended use is requested and the Member State or Member States in which goods will be cleared under the period of extended use. That customs authority shall take a decision on the extended use and notify the holder, without delay, and at the latest within 30 days of the date on which it receives all the information required in order to enable it to take that decision.

- 10 The Commission shall notify the customs authorities where:
- a the taking of BTI and BOI decisions, for goods whose correct and uniform tariff classification or determination of origin is not ensured, is suspended; or
  - b the suspension referred to in point (a) is withdrawn.

11 The Commission may adopt decisions requesting Member States to revoke BTI or BOI decisions, to ensure a correct and uniform tariff classification or determination of the origin of goods.

#### *Article 35*

#### **Decisions relating to binding information with regard to other factors**

In specific cases, the customs authorities shall, upon application, take decisions relating to binding information with regard to other factors referred to in Title II, on the basis of which import or export duty and other measures in respect of trade in goods are applied.

#### *Article 36*

#### **Delegation of power**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine:

- (a) the specific cases referred to in point (b) of Article 34(7) and point (b) of Article 34(8), where BTI and BOI decisions are to be revoked;
- (b) the cases referred to in Article 35, where decisions relating to binding information are taken with regard to other factors on the basis of which import or export duty and other measures in respect of trade in goods are applied.

#### *Article 37*

#### **Conferral of implementing powers**

- 1 The Commission shall adopt, by means of implementing acts, the procedural rules for:
- a using a BTI or BOI decision after it ceases to be valid or is revoked, in accordance with Article 34(9);
  - b the Commission to notify the customs authorities in accordance with points (a) and (b) of Article 34(10);
  - c using decisions referred to in Article 35 and determined in accordance with point (b) of Article 36 after they cease to be valid;

- d suspending decisions referred to in Article 35 and determined in accordance with point (b) of Article 36 and notifying the suspension or the withdrawal of the suspension to the customs authorities.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

2 The Commission shall adopt, by means of implementing acts, the decisions requesting Member States to revoke:

- a decisions referred to in Article 34(11);
- b decisions referred to in Article 35 and determined in accordance with point (b) of Article 36.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 285(2).

Where the opinion of the committee referred to in Article 285(1) is to be obtained by written procedure, Article 285(6) shall apply.

#### *Section 4*

### ***Authorised economic operator***

#### *Article 38*

### **Application and authorisation**

1 An economic operator who is established in the customs territory of the Union and who meets the criteria set out in Article 39 may apply for the status of authorised economic operator.

The customs authorities shall, following consultation with other competent authorities if necessary, grant that status, which shall be subject to monitoring.

2 The status of authorised economic operator shall consist in the following types of authorisations:

- a that of an authorised economic operator for customs simplifications, which shall enable the holder to benefit from certain simplifications in accordance with the customs legislation; or
- b that of an authorised economic operator for security and safety that shall entitle the holder to facilitations relating to security and safety.

3 Both types of authorisations referred to in paragraph 2 may be held at the same time.

4 The status of authorised economic operator shall, subject to Articles 39, 40 and 41, be recognised by the customs authorities in all Member States.

5 Customs authorities shall, on the basis of the recognition of the status of authorised economic operator for customs simplifications and provided that the requirements related to a specific type of simplification provided for in the customs legislation are fulfilled, authorise the operator to benefit from that simplification. Customs authorities shall not re-examine those criteria which have already been examined when granting the status of authorised economic operator.

6 The authorised economic operator referred to in paragraph 2 shall enjoy more favourable treatment than other economic operators in respect of customs controls according to the type of authorisation granted, including fewer physical and document-based controls.

7 The customs authorities shall grant benefits resulting from the status of authorised economic operator to persons established in countries or territories outside the customs territory of the Union, who fulfil conditions and comply with obligations defined by the relevant legislation of those countries or territories, insofar as those conditions and obligations are recognised by the Union as equivalent to those imposed to authorised economic operators established in the customs territory of the Union. Such a granting of benefits shall be based on the principle of reciprocity unless otherwise decided by the Union, and shall be supported by an international agreement or Union legislation in the area of the common commercial policy.

#### *Article 39*

### **Granting of status**

The criteria for the granting of the status of authorised economic operator shall be the following:

- (a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;
- (b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;
- (c) financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned;
- (d) with regard to the authorisation referred to in point (a) of Article 38(2), practical standards of competence or professional qualifications directly related to the activity carried out; and
- (e) with regard to the authorisation referred to in point (b) of Article 38(2), appropriate security and safety standards, which shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of his or her business partners.

#### *Article 40*

### **Delegation of power**

The Commission shall be empowered to adopt delegated acts, in accordance with Article 284, in order to determine the following:

- (a) the simplifications referred to in point (a) of Article 38(2);
- (b) the facilitations referred to in point (b) of Article 38(2);
- (c) the more favourable treatment referred to in Article 38(6).



## *Article 41*

### **Conferral of implementing powers**

The Commission shall adopt, by means of implementing acts, the modalities for the application of the criteria referred to in Article 39.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

## *Section 5*

### ***Penalties***

## *Article 42*

### **Application of penalties**

1 Each Member State shall provide for penalties for failure to comply with the customs legislation. Such penalties shall be effective, proportionate and dissuasive.

2 Where administrative penalties are applied, they may take, inter alia, one or both of the following forms:

- a a pecuniary charge by the customs authorities, including, where appropriate, a settlement applied in place of and in lieu of a criminal penalty;
- b the revocation, suspension or amendment of any authorisation held by the person concerned.

3 Member States shall notify the Commission, within 180 days from the date of application of this Article, as determined in accordance with Article 288(2), of the national provisions in force, as envisaged in paragraph 1 of this Article, and shall notify it without delay of any subsequent amendment affecting those provisions.

## *Section 6*

### ***Appeals***

## *Article 43*

### **Decisions taken by a judicial authority**

Articles 44 and 45 shall not apply to appeals lodged with a view to the annulment, revocation or amendment of a decision relating to the application of the customs legislation taken by a judicial authority, or by customs authorities acting as judicial authorities.

#### *Article 44*

### **Right of appeal**

1 Any person shall have the right to appeal against any decision taken by the customs authorities relating to the application of the customs legislation which concerns him or her directly and individually.

Any person who has applied to the customs authorities for a decision and has not obtained a decision on that application within the time-limits referred to in Article 22(3) shall also be entitled to exercise the right of appeal.

2 The right of appeal may be exercised in at least two steps:

- a initially, before the customs authorities or a judicial authority or other body designated for that purpose by the Member States;
- b subsequently, before a higher independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States.

3 The appeal shall be lodged in the Member State where the decision was taken or was applied for.

4 Member States shall ensure that the appeals procedure enables the prompt confirmation or correction of decisions taken by the customs authorities.

#### *Article 45*

### **Suspension of implementation**

1 The submission of an appeal shall not cause implementation of the disputed decision to be suspended.

2 The customs authorities shall, however, suspend implementation of such a decision in whole or in part where they have good reason to believe that the disputed decision is inconsistent with the customs legislation or that irreparable damage is to be feared for the person concerned.

3 In the cases referred to in paragraph 2, where the disputed decision has the effect of causing import or export duty to be payable, suspension of implementation of that decision shall be conditional upon the provision of a guarantee, unless it is established, on the basis of a documented assessment, that such a guarantee would be likely to cause the debtor serious economic or social difficulties.

#### *Section 7*

### **Control of goods**

#### *Article 46*

### **Risk management and customs controls**

1 The customs authorities may carry out any customs controls they deem necessary.

Customs controls may in particular consist of examining goods, taking samples, verifying the accuracy and completeness of the information given in a declaration or notification and the existence, authenticity, accuracy and validity of documents, examining the accounts of economic operators and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official enquiries and other similar acts.

2 Customs controls, other than random checks, shall primarily be based on risk analysis using electronic data-processing techniques, with the purpose of identifying and evaluating the risks and developing the necessary counter-measures, on the basis of criteria developed at national, Union and, where available, international level.

3 Customs controls shall be performed within a common risk management framework, based upon the exchange of risk information and risk analysis results between customs administrations and establishing common risk criteria and standards, control measures and priority control areas.

Controls based upon such information and criteria shall be carried out without prejudice to other controls carried out in accordance with paragraph 1 or with other provisions in force.

4 Customs authorities shall undertake risk management to differentiate between the levels of risk associated with goods subject to customs control or supervision and to determine whether the goods will be subject to specific customs controls, and if so, where.

The risk management shall include activities such as collecting data and information, analysing and assessing risk, prescribing and taking action and regularly monitoring and reviewing that process and its outcomes, based on international, Union and national sources and strategies.

5 Customs authorities shall exchange risk information and risk analysis results where:

- a the risks are assessed by a customs authority as being significant and requiring customs control and the results of the control establish that the event triggering the risks has occurred; or
- b the control results do not establish that the event triggering the risks has occurred, but the customs authority concerned considers the threat to present a high risk elsewhere in the Union.

6 For the establishment of the common risk criteria and standards, the control measures and the priority control areas referred to in paragraph 3, account shall be taken of all of the following:

- a the proportionality to the risk;
- b the urgency of the necessary application of the controls;
- c the probable impact on trade flow, on individual Member States and on control resources.

7 The common risk criteria and standards referred to in paragraph 3 shall include all of the following:

- a a description of the risks;
- b the factors or indicators of risk to be used to select goods or economic operators for customs control;
- c the nature of customs controls to be undertaken by the customs authorities;
- d the duration of the application of the customs controls referred to in point (c).

8 Priority control areas shall cover particular customs procedures, types of goods, traffic routes, modes of transport or economic operators which are subject to increased levels of risk analysis and customs controls during a certain period, without prejudice to other controls usually carried out by the customs authorities.

#### *Article 47*

### **Cooperation between authorities**

1 Where, in respect of the same goods, controls other than customs controls are to be performed by competent authorities other than the customs authorities, customs authorities shall, in close cooperation with those other authorities, endeavour to have those controls performed, wherever possible, at the same time and place as customs controls (one-stop-shop), with customs authorities having the coordinating role in achieving this.

2 In the framework of the controls referred to in this Section, customs and other competent authorities may, where necessary for the purposes of minimising risk and combating fraud, exchange with each other and with the Commission data received in the context of the entry, exit, transit, movement, storage and end-use of goods, including postal traffic, moved between the customs territory of the Union and countries or territories outside the customs territory of the Union, the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure, and the results of any control. Customs authorities and the Commission may also exchange such data with each other for the purpose of ensuring a uniform application of the customs legislation.

#### *Article 48*

### **Post-release control**

For the purpose of customs controls, the customs authorities may verify the accuracy and completeness of the information given in a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification, and the existence, authenticity, accuracy and validity of any supporting document and may examine the accounts of the declarant and other records relating to the operations in respect of the goods in question or to prior or subsequent commercial operations involving those goods after having released them. Those authorities may also examine such goods and/or take samples where it is still possible for them to do so.

Such controls may be carried out at the premises of the holder of the goods or of the holder's representative, of any other person directly or indirectly involved in those operations in a business capacity or of any other person in possession of those documents and data for business purposes.

#### *Article 49*

### **Intra-Union flights and sea crossings**

1 Customs controls or formalities shall be carried out in respect of the cabin and hold baggage of persons either taking an intra-Union flight, or making an intra-Union sea crossing, only where the customs legislation provides for such controls or formalities.

2 Paragraph 1 shall apply without prejudice to either of the following:

- a security and safety checks;
- b checks linked to prohibitions or restrictions.

#### *Article 50*

### **Conferral of implementing powers**

1 The Commission shall adopt, by means of implementing acts, measures to ensure uniform application of the customs controls, including the exchange of risk information and risk analysis results, the common risk criteria and standards, the control measures and the priority control areas referred to in Article 46(3).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

On imperative grounds of urgency relating to such measures, duly justified by the need to rapidly update the common risk management framework and adapt the exchange of risk information and analysis, common risk criteria and standards, control measures and priority control areas to the evolution of risks, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 285(5).

Where the opinion of the committee referred to in Article 285(1) is to be obtained by written procedure, Article 285(6) shall apply.

2 The Commission shall determine, by means of implementing acts, the ports or airports where, in accordance with Article 49, customs controls and formalities are applied to the following:

- a the cabin and hold baggage of persons:
  - (i) taking a flight in an aircraft which comes from a non-Union airport and which, after a stopover at a Union airport, continues to another Union airport;
  - (ii) taking a flight in an aircraft which stops over at a Union airport before continuing to a non-Union airport;
  - (iii) using a maritime service provided by the same vessel and comprising successive legs departing from, calling at or terminating in a non-Union port;
  - (iv) on board pleasure craft and tourist or business aircraft;
- b cabin and hold baggage:
  - (i) arriving at a Union airport on board an aircraft coming from a non-Union airport and transferred at that Union airport to another aircraft proceeding on an intra-Union flight;
  - (ii) loaded at a Union airport onto an aircraft proceeding on an intra-Union flight for transfer at another Union airport to an aircraft whose destination is a non-Union airport.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 285(4).

## Section 8

### ***Keeping of documents and other information, and charges and costs***

#### Article 51

##### **Keeping of documents and other information**

1 The person concerned shall, for the purposes of customs controls, keep the documents and information referred to in Article 15(1) for at least three years, by any means accessible by and acceptable to the customs authorities.

In the case of goods released for free circulation in circumstances other than those referred to in the third subparagraph, or goods declared for export, that period shall run from the end of the year in which the customs declarations for release for free circulation or export are accepted.

In the case of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use, that period shall run from the end of the year in which they cease to be subject to customs supervision.

In the case of goods placed under another customs procedure or of goods in temporary storage, that period shall run from the end of the year in which the customs procedure concerned has been discharged or temporary storage has ended.

2 Without prejudice to Article 103(4), where a customs control in respect of a customs debt shows that the relevant entry in the accounts has to be corrected and the person concerned has been notified of this, the documents and information shall be kept for three years beyond the time-limit provided for in paragraph 1 of this Article.

Where an appeal has been lodged or where court proceedings have begun, the documents and information shall be kept for the period provided for in paragraph 1 or until the appeals procedure or court proceedings are terminated, whichever is the later.

#### Article 52

##### **Charges and costs**

1 Customs authorities shall not impose charges for the performance of customs controls or any other application of the customs legislation during the official opening hours of their competent customs offices.

2 Customs authorities may impose charges or recover costs where specific services are rendered, in particular the following:

- a attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;
- b analyses or expert reports on goods and postal fees for the return of goods to an applicant, particularly in respect of decisions taken pursuant to Article 33 or the provision of information in accordance with Article 14(1);
- c the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved;
- d exceptional control measures, where these are necessary due to the nature of the goods or to a potential risk.



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**Status:** This is the original version (as it was originally adopted).

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(1) [OJ L 256, 7.9.1987, p. 1.](#)