

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 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⁽¹⁾, 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.

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