

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 III

CUSTOMS DEBT AND GUARANTEES

CHAPTER 2

Guarantee for a potential or existing customs debt

Article 89

General provisions

1 This Chapter shall apply to guarantees both for customs debts which have been incurred and for those which may be incurred, unless otherwise specified.

2 Where the customs authorities require a guarantee for a potential or existing customs debt to be provided, that guarantee shall cover the amount of import or export duty and the other charges due in connection with the import or export of the goods where:

- a the guarantee is used for the placing of goods under the Union transit procedure; or
- b the guarantee may be used in more than one Member State.

A guarantee which may not be used outside the Member State where it is required shall be valid only in that Member State and shall cover at least the amount of import or export duty.

3 Where the customs authorities require a guarantee to be provided, it shall be required from the debtor or the person who may become the debtor. They may also permit the guarantee to be provided by a person other than the person from whom it is required.

4 Without prejudice to Article 97, the customs authorities shall require only one guarantee to be provided in respect of specific goods or a specific declaration.

The guarantee provided for a specific declaration shall apply to the amount of import or export duty corresponding to the customs debt and other charges in respect of all goods covered by or released against that declaration, whether or not that declaration is correct.

If the guarantee has not been released, it may also be used, within the limits of the secured amount, for the recovery of amounts of import or export duty and other charges payable following post-release control of those goods.

5 Upon application by the person referred to in paragraph 3 of this Article, the customs authorities may, in accordance with Article 95(1), (2) and (3), authorise the provision of a comprehensive guarantee to cover the amount of import or export duty corresponding to the customs debt in respect of two or more operations, declarations or customs procedures.

6 The customs authorities shall monitor the guarantee.

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Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) No 952/2013 of the European Parliament and of the Council, CHAPTER 2. (See end of Document for details)

7 No guarantee shall be required from States, regional and local government authorities or other bodies governed by public law, in respect of the activities in which they engage as public authorities.

8 No guarantee shall be required in any of the following situations:

- a goods carried on the Rhine, the Rhine waterways, the Danube or the Danube waterways;
- b goods carried by a fixed transport installation;
- c in specific cases where goods are placed under the temporary admission procedure;
- d goods placed under the Union transit procedure using the simplification referred to in point (e) of Article 233(4) and carried by sea or air between Union ports or between Union airports.

9 The customs authorities may waive the requirement for provision of a guarantee where the amount of import or export duty to be secured does not exceed the statistical value threshold for declarations laid down in Article 3(4) of Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries⁽¹⁾.

Article 90

Compulsory guarantee

1 Where it is compulsory for a guarantee to be provided, the customs authorities shall fix the amount of such guarantee at a level equal to the precise amount of import or export duty corresponding to the customs debt and of other charges where that amount can be established with certainty at the time when the guarantee is required.

Where it is not possible to establish the precise amount, the guarantee shall be fixed at the maximum amount, as estimated by the customs authorities, of import or export duty corresponding to the customs debt and of other charges which have been or may be incurred.

2 Without prejudice to Article 95 where a comprehensive guarantee is provided for the amount of import or export duty corresponding to customs debts and other charges which vary in amount over time, the amount of such guarantee shall be set at a level enabling the amount of import or export duty corresponding to customs debts and other charges to be covered at all times.

Article 91

Optional guarantee

Where the provision of a guarantee is optional, such guarantee shall in any case be required by the customs authorities if they consider that the amount of import or export duty corresponding to a customs debt and other charges are not certain to be paid within the prescribed period. Its amount shall be fixed by those authorities so as not to exceed the level referred to in Article 90.

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Article 92

Provision of a guarantee

- 1 A guarantee may be provided in one of the following forms:
 - a by a cash deposit or by any other means of payment recognised by the customs authorities as being equivalent to a cash deposit, made in euro or in the currency of the Member State in which the guarantee is required;
 - b by an undertaking given by a guarantor;
 - c by another form of guarantee which provides equivalent assurance that the amount of import or export duty corresponding to the customs debt and other charges will be paid.
- 2 A guarantee in the form of a cash deposit or any other equivalent means of payment shall be given in accordance with the provisions in force in the Member State in which the guarantee is required.

Where a guarantee is given by making a cash deposit or any other equivalent means of payment, no interest thereon shall be payable by the customs authorities.

Article 93

Choice of guarantee

The person required to provide a guarantee may choose between the forms of guarantee laid down in Article 92(1).

However, the customs authorities may refuse to accept the form of guarantee chosen where it is incompatible with the proper functioning of the customs procedure concerned.

The customs authorities may require that the form of guarantee chosen be maintained for a specific period.

Article 94

Guarantor

- 1 The guarantor referred to in point (b) of Article 92(1) shall be a third person established in the customs territory of the Union. The guarantor shall be approved by the customs authorities requiring the guarantee, unless the guarantor is a credit institution, financial institution or insurance company accredited in the Union in accordance with Union provisions in force.
- 2 The guarantor shall undertake in writing to pay the secured amount of import or export duty corresponding to a customs debt and other charges.
- 3 The customs authorities may refuse to approve the guarantor or the type of guarantee proposed where either does not appear certain to ensure payment within the prescribed period of the amount of import or export duty corresponding to the customs debt and of other charges.

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Article 95

Comprehensive guarantee

1 The authorisation referred to in Article 89(5) shall be granted only to persons who satisfy all of the following conditions:

- a they are established in the customs territory of the Union;
- b they fulfil the criteria laid down in point (a) of Article 39;
- c they are regular users of the customs procedures involved or operators of temporary storage facilities or they fulfil the criteria laid down in point (d) of Article 39.

2 Where a comprehensive guarantee is to be provided for customs debts and other charges which may be incurred, an economic operator may be authorised to use a comprehensive guarantee with a reduced amount or to have a guarantee waiver, provided that he or she fulfils the criteria laid down in points (b) and (c) of Article 39.

3 Where a comprehensive guarantee is to be provided for customs debts and other charges which have been incurred, an authorised economic operator for customs simplification shall, upon application, be authorised to use a comprehensive guarantee with a reduced amount.

4 The comprehensive guarantee with a reduced amount referred to in paragraph 3 shall be equivalent to the provision of a guarantee.

Article 96

Temporary prohibitions relating to the use of comprehensive guarantees

1 In the context of special procedures or temporary storage, the Commission may decide to temporarily prohibit recourse to any of the following:

- a the comprehensive guarantee for a reduced amount or a guarantee waiver referred to in Article 95(2);
- b the comprehensive guarantee referred to in Article 95, in respect of goods which have been identified as being subject to large-scale fraud.

2 Where point (a) or point (b) of paragraph 1 of this Article applies, recourse to the comprehensive guarantee for a reduced amount or a guarantee waiver or recourse to the comprehensive guarantee referred to in Article 95 may be authorised where the person concerned fulfils either of the following conditions:

- a that person can show that no customs debt has arisen in respect of the goods in question in the course of operations which that person has undertaken in the two years preceding the decision referred to in paragraph 1;
- b where customs debts have arisen in the two years preceding the decision referred to in paragraph 1, the person concerned can show that those debts were fully paid by the debtor or debtors or the guarantor within the prescribed time-limit.

To obtain authorisation to use a temporarily prohibited comprehensive guarantee, the person concerned must also fulfil the criteria laid down in points (b) and (c) of Article 39.

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Article 97

Additional or replacement guarantee

Where the customs authorities establish that the guarantee provided does not ensure, or is no longer certain or sufficient to ensure, payment within the prescribed period of the amount of import or export duty corresponding to the customs debt and other charges, they shall require any of the persons referred to in Article 89(3) either to provide an additional guarantee or to replace the original guarantee with a new guarantee, according to his choice.

Article 98

Release of the guarantee

1 The customs authorities shall release the guarantee immediately when the customs debt or liability for other charges is extinguished or can no longer arise.

2 Where the customs debt or liability for other charges has been extinguished in part, or may arise only in respect of part of the amount which has been secured, a corresponding part of the guarantee shall be released accordingly at the request of the person concerned, unless the amount involved does not justify such action.

Article 99

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 (c) of Article 89(8), where no guarantee is required for goods placed under the temporary admission procedure;
- (b) the form of the guarantee, referred to in point (c) of Article 92(1), and the rules concerning the guarantor referred to in Article 94;
- (c) the conditions for the granting of an authorisation to use a comprehensive guarantee with a reduced amount or to have a guarantee waiver referred to in Article 95(2);
- (d) time-limits for the release of a guarantee.

Article 100

Conferral of implementing powers

- 1 The Commission shall specify, by means of implementing acts, the procedural rules:
 - a for determining the amount of the guarantee, including the reduced amount referred to in Article 95(2) and (3);
 - b regarding the provision and the monitoring of the guarantee referred to in Article 89, the revocation and cancellation of the undertaking given by the guarantor referred to in Article 94, and the release of the guarantee referred to in Article 98;

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c regarding the temporary prohibitions referred to in Article 96.

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

2 The Commission shall adopt the measures referred to in Article 96 by means of implementing acts.

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 enhance the protection of the financial interests of the Union and of its Member States, 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.

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(1) [OJ L 152, 16.6.2009, p. 23](#)

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