Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code

COMMISSION DELEGATED REGULATION (EU) 2015/2446

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supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 290

Having regard to Regulation (EU) No 952/2013 of the European Parliament and the Council of 9 October 2013 laying down the Union Customs Code[(1)], and in particular Articles 2, 7, 10, 24, 31, 36, 40, 62, 65, 75, 88, 99, 106, 115, 122, 126, 131, 142, 151, 156, 160, 164, 168, 175, 180, 183, 186, 196, 206, 212, 216, 221, 224, 231, 235, 253, 265 thereof,

Whereas:

(1) Regulation (EU) No 952/2013 (Code), in its consistency with the Treaty on the Functioning of the European Union (TFEU), delegates on the Commission the power to supplement certain non-essential elements of the Code, in accordance with Article 290 TFEU. The Commission is therefore called to exercise new powers in the post-Lisbon Treaty context, in order to allow for a clear and proper application of the Code.

(2) During its preparatory work, the Commission has carried out appropriate consultations, including at expert level and with the relevant stakeholders, who actively contributed to the drafting of this Regulation.

(3) The Code promotes the use of information and communication technologies, as laid down in Decision No 70/2008/EC of the European Parliament and of the Council[(2)], which is a key element in ensuring trade facilitation and, at the same time, the effectiveness of customs controls, thus reducing costs for business and risk for society. Therefore, all exchanges of information between customs authorities and between economic operators and customs authorities and the storage of such information using electronic data-processing techniques require specifications on the information systems dealing with the storage and processing of customs information and the need to provide for the scope and purpose of the electronic systems to be put in place in agreement with the Commission and the Member States. More specific information needs also to be provided for the specific systems related to customs formalities or procedures, or in the case of systems where the EU harmonised interface is defined as a component of the system offering a direct and EU harmonised access to trade, in the form of a service integrated in the electronic customs system.

(4) The procedures based on electronic systems laid down in Commission Regulation (EEC) No 2454/93[(3)] and already applied for the areas of import, export and transit have proven to be efficient. Therefore, continuity in the application of those rules should be ensured.

(5) To facilitate the use of electronic data-processing techniques and to harmonise their use, common data requirements should be laid down for each of the areas for which those data-processing techniques are to be applied. The common data requirements should be in line with Union and national data protection provisions in force.

(6) In order to ensure a level playing field between postal operators and other operators, a uniform framework for the customs clearance of items of correspondence and postal consignments should be adopted in order to allow for the use of electronic systems. With a view to providing trade facilitation while preventing fraud and protecting the rights of consumers, appropriate and feasible rules for declaring postal items to customs should be laid down that take into due consideration the obligation of postal operators to provide universal postal service in accordance with the acts of the Universal Postal Union.

(7) In order to achieve additional flexibility for economic operators and customs authorities, it should be possible to allow for the use of means other than electronic data-processing techniques in situations where also the risk of fraud is limited. Those situations should in particular cover the notification of the customs debt, exchange of the information establishing the conditions for the relief of import duty; notification by the same means by the customs authorities where the declarant has lodged a declaration using means other than electronic data-processing techniques; presentation of the Master Reference Number (MRN) for transit in ways other than on a transit accompanying document, the possibility to lodge retrospectively an export declaration and to present the goods at the customs office of exit as well as evidence that the goods have left the custom territory of the Union or the exchange and storage of information relating to an application and a decision relating to binding origin information.

(8) In situations where the use of electronic data-processing techniques would mean excessive efforts for the economic operators, for the sake of the alleviation of those efforts, the use of other means should be allowed, in particular for the proof of the customs status of Union goods for commercial consignments of limited value or the use of oral declaration for export also for commercial goods provided that their value does not exceed the statistical threshold. The same applies to a traveller other than an economic operator for situations where he makes a request for a proof of the customs status of Union goods or for fishing vessels up to a certain length. Moreover, due to obligations emanating from international agreements which foresee that procedures are carried on paper it would be contrary to those agreements to impose an obligation to use electronic data-processing techniques.

(9) For the purpose to have a unique identification of economic operators it should be clarified that each economic operator is to register only once with a clearly defined data set. The registration of economic operators not established in the European Union as well as of persons other than economic operators allows for the proper functioning

of electronic systems that require an EORI number as an unequivocal reference to the economic operator. Data should not be stored for longer than needed and therefore rules for the invalidation of an EORI number should be foreseen.

(10) The period for exercising the right to be heard by a person applying for a decision relating to the application of the customs legislation (applicant) should be sufficient to allow the applicant to prepare and submit his point of view to the customs authorities. That period, should, nevertheless, be reduced in cases where the decision pertains to the results of the control of goods not properly declared to customs.

(11) In order to strike a balance between the effectiveness of the customs authorities' tasks and the respect of the right to be heard, it is necessary to provide for certain exemptions from the right to be heard.

(12) In order to enable the customs authorities to take decisions which will have a Union-wide validity in the most efficient way, uniform and clear conditions for both the customs administrations and the applicant should be established. Those conditions should relate in particular to the acceptance of an application for a decision, not only with regard to new applications, but also taking into account any previous decision annulled or revoked, as this acceptance should encompass only applications that provide customs authorities with the necessary elements to analyse the request.

(13) In cases where the customs authorities ask for additional information which is necessary for them to reach their decision, it is appropriate to provide for an extension of the time-limit for taking that decision, in order to assure an adequate examination of all the information provided by the applicant.

(14) In certain cases a decision should take effect from a date which is different from the date on which the applicant receives it or is deemed to have received it, namely when the applicant has requested a different date of effect or the effect of the decision is conditional to the completion of certain formalities by the applicant. Those cases should be thoroughly identified, for the sake of clarity and legal certainty.

(15) For the same reasons, the cases where a customs authority has the obligation to re-assess and, where appropriate, suspend a decision should also be thoroughly identified.

(16) With a view to ensuring the necessary flexibility and in order to facilitate audit-based controls, a supplementary criterion should be established for those cases where the competent customs authority cannot be determined according to the third subparagraph of Article 22(1) of the Code.

(17) For the sake of trade facilitation, it is desirable to determine that applications for decisions relating to binding information may also be submitted in the Member State where the information is to be used.

(18) In order to avoid the issuing of incorrect or non-uniform decisions relating to binding information, it is appropriate to determine that specific time-limits should apply for issuing such decisions in cases where the normal time-limit cannot be met.

(19) While the simplifications for an Authorised Economic Operator (AEO) should be determined as part of the specific provisions on customs simplifications for reasons

of convenience, facilitations for AEO have to be assessed against the security and safety risks associated with a particular process. Since the risks are addressed where an economic operator authorised for security and safety as referred to in Article 38(2)(b) of the Code (AEOS) lodges a customs declaration or a re-export declaration for goods taken out of the customs territory of the Union, risk analysis for security and safety purposes should be carried out on the basis of such declaration and no additional particulars related to security and safety should be required. With a view to the criteria for granting the status, the AEO should enjoy a favourable treatment in the context of controls unless the controls are jeopardised or required according to a specific threat level or by other Union legislation.

(20) By Decision 94/800/EC[(4)] the Council approved the Agreement on Rules of Origin (WTO-GATT 1994), annexed to the final act signed in Marrakesh on 15 April 1994. The Agreement on Rules of Origin states that specific rules for origin determination of some product sectors should first of all be based on the country where the production process has led to a change in tariff classification. Only where that criterion does not allow to determine the country of last substantial transformation can other criteria be used, such as a value added criterion or the determination of a specific processing operation. Considering that the Union is party to that Agreement it is appropriate to lay down provisions in the Union customs legislation reflecting those principles laid down in that Agreement for the determination of the country where goods underwent their last substantial transformation.

(21) In order to prevent manipulation of the origin of imported goods with the purpose of avoiding the application of commercial policy measures, the last substantial processing or working should in some cases be deemed not to be economically justified.

(22) Rules of origin applicable in connection with the definition of the concept of 'originating products' and with cumulation within the framework of the Union's Generalised System of Preferences (GSP) and of the preferential tariff measures adopted unilaterally by the Union for certain countries or territories should be established in order to ensure that the preferences concerned are only granted to products genuinely originating in GSP beneficiary countries and in these countries or territories, respectively and thus benefit their intended recipients.

(23) In view of avoiding disproportionate administrative costs while ensuring protection of the financial interests of the Union, it is necessary, in the context of simplification and facilitation, to ensure that the authorisation granted to determine specific amounts relating to the customs value on the basis of specific criteria is subject to appropriate conditions.

(24) It is necessary to establish calculation methods in order to determine the amount of import duty to be charged on processed products obtained under inward processing, as well as for cases where a customs debt is incurred for processed products resulting from the outward processing procedure and where specific import duty is involved.

(25) No guarantee should be required for goods placed under the temporary admission procedure where this is not economically justified.

(26) The types of security most used for ensuring payment of a customs debt are a cash deposit or its equivalent or the provision of an undertaking given by a guarantor; however, economic operators should have the possibility to provide to the customs authorities other types of guarantee as long as those types provide equivalent assurance that the amount of import or export duty corresponding to the customs debt and other charges will be paid. It is therefore necessary to determine those other types of guarantee and specific rules regarding their use.

(27) In order to ensure a proper protection of the financial interests of the Union and of the Member States and a level playing field between economic operators, economic operators should only benefit from a reduction of the level of the comprehensive guarantee or from a guarantee waiver if they fulfil certain conditions demonstrating their reliability

(28) In order to ensure legal certainty it is necessary to supplement the rules of the Code on the release of the guarantee where goods are placed under the Union transit procedure and where a CPD carnet or an ATA carnet is used.

(29) The notification of the customs debt is not justified under certain circumstances where the amount concerned is less than EUR 10. The customs authorities should therefore be exempted from notification for the customs debt in those cases.

(30) In order to avoid recovery proceedings where remission of import or export duty is likely to be granted, there is a need to provide for a suspension of the time-limit for payment of the amount of duty until the decision has been taken. In order to protect the financial interests of the Union and the Member States a guarantee should be required to benefit from such suspension except where this would cause serious economic or social difficulties. The same should apply where the customs debt is incurred through non-compliance, provided that no deception or obvious negligence can be attributed to the person concerned.

(31) In order to ensure uniform conditions for the implementation of the Code and to offer clarification as to the detailed rules on the basis of which the UCC provisions are to be put into practice, including the specifications and the procedures to be fulfilled, requirements and clarifications should be included on the conditions for application for repayment or remission, the notification of a decision on repayment or remission, the formalities and the time-limit to take a decision on repayment or remission. General provisions should be applicable when decisions are to be taken by the Member States' customs authorities, whereas it is appropriate to lay down a specific procedure for those cases where a decision is to be taken by the Commission.. This Regulation regulates the procedure concerning the decision of repayment or remission to be taken by the Commission, notably on the transmission of the file to the Commission, the notification of the decision and the application of the right to be heard, taking into account the Union interest in ensuring that the customs provisions are respected and the interests of economic operators acting in good faith.

(32) Where the extinguishment of the customs debt occurs due to situations of failures with no significant effect on the correct operation of the customs procedure concerned, those

situations should include in particular cases of non-compliance with certain obligations provided that the non-compliance can be remedied afterwards.

(33) The experience gained with the electronic system relating to entry summary declarations and the requirements for customs stemming from the EU Action Plan on Air Cargo Security[5] have highlighted the need for improving the data quality of such declarations, notably by requiring the real supply-chain parties to motivate the transaction and movements of goods. Since contractual arrangements prevent the carrier from providing all of the required particulars, those cases and the persons holding and required to provide that data should be determined.

(34) In order to allow for further improving the effectiveness of security and safety-related risk analysis for air transport and, in the case of containerised cargo, for maritime transport, required data should be submitted before loading the aircraft or the vessel, while in the other cases of transport of goods risk analysis can effectively also be carried out where the data is submitted before the arrival of goods in the customs territory of the Union. For the same reason, it is justified to replace the general waiver from the obligation to lodge an entry summary declaration for goods moved under the acts of the Universal Postal Union by a waiver for items of correspondence and to remove the waiver based on the value of the goods as the value cannot be a criterion for assessing the security and safety risk.

(35) In order to ensure a smooth flow in the movement of goods, it is appropriate to apply certain customs formalities and controls to trade in Union goods between parts of the customs territory of the Union to which the provisions of Council Directive 2006/112/EC[6] or of Council Directive 2008/118/EC[7] apply and the rest of the customs territory of the Union, or to trade between parts of that territory where those provisions do not apply.

(36) The presentation of the goods on arrival in the customs territory of the Union and the temporary storage of goods should as a general rule take place in the premises of the competent customs office or in temporary storage facilities operated exclusively by the holder of an authorisation granted by the customs authorities. However, in order to achieve additional flexibility for economic operators and customs authorities, it is appropriate to provide for the possibility to approve, a place other than the competent customs office for the purposes of the presentation of goods or a place other than a temporary storage facility for the temporary storage of the goods.

(37) In order to increase clarity for the economic operators in respect of the customs treatment of goods entering the customs territory of the Union, rules should be defined for situations where the presumption of the customs status of Union goods does not apply. Furthermore, rules should be laid down for situations where goods keep their customs status as Union goods when they have temporarily left the customs territory of the Union and re-enter so that both traders and the customs administrations can handle those goods efficiently at re-entry. Conditions for the granting of facilitation in the establishment of the proof of the customs status of Union goods should be determined with a view to alleviating the administrative burden for the economic operators.

(38) In order to facilitate the correct application of the benefit of relief from import duty, it is appropriate to determine the cases where goods are considered to be returned in the state in which they were exported and the specific cases of returned goods which have benefited from measures laid down under the common agricultural policy and also benefit from relief from import duty.

(39) In the case where a simplified declaration for placing goods under a customs procedure is regularly used, appropriate conditions and criteria, similar to the ones applying to AEOs, should be fulfilled by the authorisation holder, in order to ensure the adequate use of simplified declarations. The conditions and criteria should be proportionate to the benefits of the regular use of simplified declarations. Moreover, harmonised rules should be established with regard to the time-limits for lodging a supplementary declaration and any supporting documents which are missing at the time where the simplified declaration is lodged.

(40) In order to seek a balance between facilitation and control, appropriate conditions, distinct from the ones applicable for special procedures, should be laid down for the use of the simplified declaration and entry in the declarant's records as simplifications for placing goods under a customs procedure.

(41) Due to the requirements as regards the supervision of the exit of goods, entry in the declarant’s records for export or re-export should be possible only where the customs authorities can deal without a customs declaration on the basis of a transaction and limited to specific cases.

(42) Where an amount of import duty is potentially not payable as a result of a request for the granting of a tariff quota, the release of the goods should not be conditional upon the lodging of a guarantee where there is no reason to suppose that the tariff quota will be very shortly exhausted.

(43) In order to achieve additional flexibility for economic operators and customs authorities, authorized banana weighers should be allowed to draw up banana weighing certificate that will be used as supporting documents for the verification of the customs declaration for release for free circulation..

(44) In certain situations it is appropriate that a customs debt does not incur and import duty is not payable by the holder of the authorisation. Therefore, it should be possible to extend the time-limit for the discharge of a special procedure in such cases.

(45) In the interest of having the right balance between minimising the administrative burden for both the customs administrations and the economic operators and ensuring the correct application of the transit procedures and preventing misuse, transit simplifications should be made available to reliable economic operators and on the basis of harmonised criteria to the widest possible extent. Therefore, the requirements for access to those simplifications should be aligned with the conditions and criteria applying to the economic operators who wish to be granted the status of AEO.

(46) In order to prevent possible fraudulent actions in cases of certain transit movements linked with export, rules for specific cases should be determined where goods having the customs status of Union goods are placed under the external transit procedure.

(47) The Union is a contracting party to the Convention on temporary admission[8], including any subsequent amendments thereof (Istanbul Convention). Therefore, the requirements of specific use under temporary admission which allow the temporary use of non-Union goods in the customs territory of the Union with total or partial relief from import duty, which are laid down in this Regulation, have to be in line with that Convention.

(48) Customs procedures concerning customs warehousing, free zones, end-use, inward processing and outward processing should be simplified and rationalised in order to make the use of special procedures more attractive for trade. Therefore, the various inward processing procedures under the drawback system and the suspension system and the processing under customs control should be merged into a single procedure of inward processing.

(49) Legal certainty and equal treatment between economic operators require the indication of the cases in which an examination of the economic conditions for inward and outward processing is required.

(50) In order for traders to benefit from increased flexibility regarding the use of equivalent goods, it should be possible to use equivalent goods under the outward processing procedure.

(51) In order to reduce administrative costs, a longer period of validity of authorisations for specific use and processing than the one applied under Regulation (EEC) No 2454/93 should be laid down.

(52) A bill of discharge should not only be required for inward processing but also for end-use in order to facilitate the recovery of any amount of import duty and hence, to safeguard the financial interests of the Union.

(53) It is appropriate to determine clearly the cases in which movement of goods which have been placed under a special procedure other than transit is allowed, so that it is not necessary to use the external Union transit procedure which would require two additional customs declarations.

(54) In order to ensure the most effective and the least disruptive risk analysis, the pre-departure declaration should be lodged within time-limits taking account of the particular situation of the mode of transport concerned. For maritime transport, in the case of containerised cargo, required data should be submitted already within a time-limit before loading the vessel, while in the other cases of transport of goods risk analysis can effectively also be carried out where the data is submitted within a time-limit subject to the departure of goods from the customs territory of the Union. The obligation to lodge a pre-departure declaration should be waived where the type of goods, their transport modalities or their specific situation allow for the assessment that

no security and safety risk related data need to be required without prejudice to the obligations related to export or re-export declarations.

(55) In order to achieve additional flexibility for the customs authorities when dealing with certain irregularities in the framework of the export procedure, it should be possible to invalidate the customs declaration on customs initiative.

(56) In order to safeguard the legitimate interests of economic operators and ensure the continued validity of decisions taken and authorisations granted by customs authorities on the basis of the provisions of the Code and or on the basis of Council Regulation (EEC) No 2913/92[9] and Regulation (EEC) No 2454/93, it is necessary to establish transitional provisions in order to allow for the adaptation of those decisions and authorisations to the new legal rules.

(57) In order to afford Member States sufficient time to adjust customs seals and seals of a special type used to ensure the identification of goods under a transit procedure to the new requirements laid down in this Regulation, it is appropriate to provide for a transitional period during which Member States may continue using seals satisfying the technical specifications laid down in Regulation (EEC) No 2454/93.

(58) The general rules supplementing the Code are closely interlinked, they cannot be separated due to the interrelatedness of their subject matter while they contain horizontal rules that apply across several customs procedures. Therefore, it is appropriate to group them together in a single Regulation in order to ensure legal coherence,

(59) The provisions of this Regulation should apply as from 1 May 2016 in order to enable the full application of the Code,

HAS ADOPTED THIS REGULATION:

(**1**) OJ L 269, 10.10.2013, p. 1.

(**2**) Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade (OJ L 23, 26.1.2008, p. 21).

(**3**) Commission Regulation (EEC) No 2454/93 of 2 July 1993, laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

(**4**) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).

(**5**) Council document 16271/1/10 Rev. 1.

(**6**) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

(**7**) Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

(**8**) OJ L 130, 27 May 1993, p. 1.

(**9**) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 91).

Status:
Point in time view as at 31/01/2020.

Changes to legislation:
There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/2446, Introductory Text.