

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

TITLE III

CUSTOMS DEBT AND GUARANTEES

CHAPTER I

Incurrence of a customs debt

Section 1

Provisions common to customs debts incurred on import and export

Subsection 1

Rules for calculation of the amount of import or export duty

Article 72

Calculation of the amount of import duty on processed products resulting from inward processing (Article 86(3) of the Code)

1 In order to determine the amount of import duty to be charged on processed products in accordance with Article 86(3) of the Code, the quantity of the goods placed under the inward processing procedure considered to be present in the processed products for which a customs debt is incurred shall be determined in accordance with paragraphs 2 to 6.

2 The quantitative scale method laid down in paragraphs 3 and 4 shall be applied in the following cases:

- a where only one kind of processed products is derived from the processing operations;
- b where different kinds of processed products are derived from the processing operations and all constituents or components of the goods placed under the procedure are found in each of those processed products.

3 In the case referred to in paragraph 2(a), the quantity of the goods placed under the inward processing procedure considered to be present in the processed products for which a customs debt is incurred shall be determined by applying the percentage which the processed products for which a customs debt is incurred constitute of the total quantity of the processed products resulting from the processing operation, to the total quantity of the goods placed under the inward processing procedure.

4 In the case referred to in paragraph 2(b), the quantity of the goods placed under the inward processing procedure considered to be present in the processed products for which a customs debt is incurred shall be determined by applying, to the total quantity of the goods

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placed under the inward processing procedure, a percentage calculated by multiplying the following factors:

- a the percentage which the processed products for which a customs debt is incurred constitute of the total quantity of the processed products of the same kind resulting from the processing operation;
- b the percentage which the total quantity of the processed products of the same kind, irrespective of whether a customs debt is incurred, constitutes of the total quantity of all processed products resulting from the processing operation.

5 Quantities of goods placed under the procedure which are destroyed and lost during the processing operation, in particular by evaporation, desiccation, sublimation or leakage, shall not be taken into account in the application of the quantitative scale method.

6 In cases other than those referred to in paragraph 2, the value scale method shall apply in accordance with the second, third and fourth subparagraphs.

The quantity of the goods placed under the inward processing procedure considered to be present in processed products for which a customs debt is incurred shall be determined by applying, to the total quantity of the goods placed under the inward processing procedure, a percentage calculated by multiplying the following factors:

- a the percentage which the processed products for which a customs debt is incurred constitute of the total value of the processed products of the same kind resulting from the processing operation;
- b the percentage which the total value of the processed products of the same kind, irrespective of whether a customs debt is incurred, constitute of the total value of all processed products resulting from the processing operation.

For the purposes of applying the value scale method, the value of the processed products shall be established on the basis of current ex-works prices in the customs territory of the Union or, where such ex-works prices cannot be determined, the current selling prices in the customs territory of the Union for identical or similar products. Prices between parties which appear to be associated or to have a compensatory arrangement with each other may not be used for the determination of the value of the processed products unless it is determined that the prices are unaffected by the relationship.

Where the value of the processed products cannot be determined pursuant to the third subparagraph, it shall be determined by any reasonable method.

Article 73

Application of the provisions on end-use procedure to processed products resulting from inward processing(Article 86(3) of the Code)

1 For the purposes of the application of Article 86(3) of the Code, when determining the amount of import duty corresponding to the customs debt on processed products resulting from the inward processing procedure, the goods placed under that procedure shall benefit from a duty exemption or a reduced rate of duty on account of their specific use, which would have been applied to those goods if they had been placed under the end-use procedure in accordance with Article 254 of the Code.

2 Paragraph 1 shall apply where the following conditions are fulfilled:

- a an authorisation to place the goods under the end-use procedure could have been issued, and

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- b the conditions for the duty exemption or the reduced rate of duty on account of specific use of those goods would have been fulfilled at the time of acceptance of the customs declaration for placing goods under the inward processing procedure.

Article 74

Application of the preferential tariff treatment to goods placed under inward processing(Article 86(3) of the Code)

For the purposes of the application of Article 86(3) of the Code, where, at the time of the acceptance of the customs declaration for placing goods under the inward processing procedure the imported goods fulfil the conditions to qualify for preferential tariff treatment within tariff quotas or ceilings, those goods shall be eligible for any preferential tariff treatment provided for in respect of identical goods at the time of acceptance of the declaration of release for free circulation.

Article 75

Specific import duty on processed products resulting from outward processing or replacement products(Article 86(5) of the Code)

Where a specific import duty is to be applied in relation to processed products resulting from the outward processing procedure or replacement products, the amount of the import duty shall be calculated on the basis of the customs value of the processed products at the time of acceptance of the customs declaration for release for free circulation minus the statistical value of the corresponding temporary export goods at the time when they were placed under outward processing, multiplied by the amount of import duty applicable to the processed products or replacement products, divided by the customs value of the processed products or replacement products.

[^{F1}Article 76

Derogation for the calculation of the amount of import duty on processed products resulting from inward processing(Article 86(3) and 86(4) of the Code)

1 Article 86(3) of the Code shall apply without a request from the declarant where all of the following conditions are fulfilled:

- a the processed products resulting from the inward processing procedure are imported directly or indirectly by the relevant holder of the authorisation within a period of one year after their re-export;
- b the goods would, at the time of the acceptance of the customs declaration for placing the goods under the inward processing procedure, have been subject to an agricultural or commercial policy measure, a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions had they been declared for release for free circulation;
- c no examination of the economic conditions was required in accordance with Article 166.

2 Article 86(3) of the Code shall also apply without a request from the declarant where the processed products were obtained from goods placed under inward processing which would, at the time of the acceptance of the first customs declaration for placing the goods under the

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inward processing procedure, have been subject to a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions if they were declared for release for free circulation and the case is not covered by Article 167(1) (h), (i), (m) or (p) of this Regulation.

3 Paragraphs 1 and 2 shall not apply where the goods placed under inward processing would not be subject anymore to a provisional or definitive anti-dumping duty, a countervailing duty, a safeguard measure or an additional duty resulting from a suspension of concessions at the time when a customs debt is incurred for the processed products.

4 Paragraph 2 shall not apply to goods declared for inward processing no later than 16 July 2021 if those goods are covered by an authorisation which was granted before 16 July 2020.]

Textual Amendments

- F1** Substituted by [Commission Delegated Regulation \(EU\) 2020/877 of 3 April 2020 amending and correcting Delegated Regulation \(EU\) 2015/2446 supplementing Regulation \(EU\) No 952/2013, and amending Delegated Regulation \(EU\) 2016/341 supplementing Regulation \(EU\) No 952/2013, laying down the Union Customs Code.](#)

Subsection 2

Time-limit for establishing the place where the customs debt is incurred

Article 77

Time-limit for establishing the place where the customs debt is incurred under Union transit(Article 87(2) of the Code)

For goods placed under the Union transit procedure, the time-limit referred to in Article 87(2) of the Code shall be either of the following:

- (a) seven months from the latest date on which the goods should have been presented at the customs office of destination, unless before the expiry of that time limit a request to transfer the recovery of the customs debt was sent to the authority responsible for the place where, according to the evidence obtained by the customs authority of the Member State of departure, the events from which the customs debt arises occurred, in which case that time-limit is extended by a maximum of one month;
- (b) one month from the expiry of the time-limit for the reply by the holder of the procedure to a request for the information needed to discharge the procedure, where the customs authority of the Member State of departure has not been notified of the arrival of the goods and the holder of the procedure has provided insufficient or no information.

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Article 78

Time-limit for establishing the place where the customs debt is incurred under transit in accordance with the TIR Convention(Article 87(2) of the Code)

For goods placed under transit in accordance with the Customs Convention on the international transport of goods under cover of TIR carnets, including any subsequent amendments (TIR Convention), the time-limit referred to in Article 87(2) of the Code shall be seven months from the latest date on which the goods should have been presented at the customs office of destination or exit.

Article 79

Time-limit for establishing the place where the customs debt is incurred under transit in accordance with the ATA Convention or the Istanbul Convention(Article 87(2) of the Code)

For goods placed under transit in accordance with the Customs Convention on the ATA Carnet for the Temporary Admission of Goods done at Brussels on 6 December 1961, including any subsequent amendments (ATA Convention) or with the Convention on Temporary Admission, including any subsequent amendments (Istanbul Convention) the time-limit referred to in Article 87(2) of the Code shall be seven months from the date on which the goods should have been presented at the customs office of destination.

Article 80

Time-limit for establishing the place where the customs debt is incurred in cases other than transit(Article 87(2) of the Code)

For goods placed under a special procedure other than transit or for goods which are in temporary storage, the time-limit referred to in Article 87(2) of the Code shall be seven months from the expiry of any of the following periods:

- (a) the prescribed period for discharge of the special procedure;
- (b) the prescribed period for ending the customs supervision of end-use goods;
- (c) the prescribed period for ending the temporary storage;
- (d) the prescribed period for ending the movement of goods placed under the warehousing procedure between different places in the customs territory of the Union where the procedure was not discharged.

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CHAPTER 2

Guarantee for a potential or existing customs debt

Section 1

General provisions

Article 81

Cases where no guarantee shall be required for goods placed under the temporary admission procedure(Article 89(8)(c) of the Code)

The placing of goods under the temporary admission procedure shall not be subject to the provision of a guarantee in the following cases:

- (a) where the customs declaration may be made orally or by any other act as referred to in Article 141;
- (b) in the case of materials used in international traffic by airlines, shipping or railway companies or providers of postal services provided that those materials are distinctively marked;
- (c) in the case of packings imported empty, provided that they carry indelible non-removable markings;
- (d) where the previous holder of the authorisation for temporary admission has declared the goods for the temporary admission procedure in accordance with Article 136 or Article 139 and those goods are subsequently placed under temporary admission for the same purpose.

Article 82

Guarantee in the form of an undertaking by a guarantor(Article 94, 22(4) and 6(3)(a) of the Code)

1 Where the guarantee is provided in the form of an undertaking by a guarantor and may be used in more than one Member State, the guarantor shall indicate an address for service or appoint an agent in each Member State in which the guarantee may be used.

2 The revocation of the approval of the guarantor or of the undertaking of the guarantor shall take effect on the 16th day following the date on which the decision on the revocation is received or is deemed to have been received by the guarantor.

3 The cancellation of the undertaking by the guarantor shall take effect on the 16th day following the date on which the cancellation is notified by the guarantor to the customs office where the guarantee was provided.

4 Where a guarantee covering a single operation (individual guarantee) is provided in the form of vouchers, it may be made using means other than electronic data processing techniques.

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[^{F25} The common data requirements for a guarantor's undertaking to provide an individual guarantee, an individual guarantee in the form of vouchers or a comprehensive guarantee are set out in Annexes 32-01, 32-02 and 32-03 respectively.]

Textual Amendments

- F2** Inserted by [Commission Delegated Regulation \(EU\) 2018/1063 of 16 May 2018 amending and correcting Delegated Regulation \(EU\) 2015/2446 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.](#)

Article 83

Forms of guarantee other than a cash deposit or an undertaking given by a guarantor(Article 92(1)(c) of the Code)

1 The forms of guarantee other than a cash deposit or an undertaking given by a guarantor shall be the following:

- a the creation of a mortgage, a charge on land, an antichresis or other right deemed equivalent to a right pertaining to immovable property;
- b the cession of a claim, the pledging, with or without surrendering possession, of goods, securities or claims or a savings bank book or entry in the national debt register;
- c the assumption of joint contractual liability for the full amount of the debt by a third party approved for that purpose by the customs authorities or the lodging of a bill of exchange the payment of which is guaranteed by such third party;
- d a cash deposit or means of payment deemed equivalent thereto other than in euro or the currency of the Member State in which the guarantee is required;
- e participation, subject to payment of a contribution, in a general guarantee scheme administered by the customs authorities.

2 The forms of guarantee referred to in paragraph 1 shall not be accepted for the placing of goods under the Union transit procedure.

[^{F33} The customs authorities shall accept the forms of guarantee referred to in paragraph 1 in so far as those forms of guarantee are accepted under national law.]

Textual Amendments

- F3** Substituted by [Commission Delegated Regulation \(EU\) 2018/1063 of 16 May 2018 amending and correcting Delegated Regulation \(EU\) 2015/2446 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.](#)

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Section 2

Comprehensive guarantee and guarantee waiver

Article 84

Reduction of the level of the comprehensive guarantee and guarantee waiver(Article 95(2) of the Code)

1 An authorisation to use a comprehensive guarantee with an amount reduced to 50 % of the reference amount shall be granted where the applicant demonstrates that he fulfils the following conditions:

- a the applicant maintains an accounting system which is consistent with the generally accepted accounting principles applied in the Member State where the accounts are held, allows audit-based customs control and maintains a historical record of data that provides an audit trail from the moment the data enters the file;
b the applicant has an administrative organisation which corresponds to the type and size of business and which is suitable for the management of the flow of goods, and has internal controls capable of preventing, detecting and correcting errors and of preventing and detecting illegal or irregular transactions;
c the applicant is not subject to bankruptcy proceedings;
d during the last three years preceding the submission of the application, the applicant has fulfilled his financial obligations regarding payments of customs duties and all other duties, taxes or charges which are collected on or in connection with the import or export of goods;
e the applicant demonstrates on the basis of the records and information available for the last three years preceding the submission of the application that he has sufficient financial standing to meet his obligations and fulfil his commitments having regard to the type and volume of the business activity, including having no negative net assets, unless where they can be covered[F4.]

[F5(f)] F5

2 An authorisation to use a comprehensive guarantee with an amount reduced to 30 % of the reference amount shall be granted where the applicant demonstrates that he fulfils the following conditions:

- a the applicant maintains an accounting system which is consistent with the generally accepted accounting principles applied in the Member State where the accounts are held, allows audit-based customs control and maintains a historical record of data that provides an audit trail from the moment the data enters the file;
b the applicant has an administrative organisation which corresponds to the type and size of business and which is suitable for the management of the flow of goods, and has internal controls capable of preventing, detecting and correcting errors and of preventing and detecting illegal or irregular transactions;
c the applicant ensures that relevant employees are instructed to inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties;
d the applicant is not subject to bankruptcy proceedings;
e during the last three years preceding the submission of the application, the applicant has fulfilled his financial obligations regarding payments of customs duties and all other duties, taxes or charges which are collected on or in connection with the import or export of goods;

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- f the applicant demonstrates on the basis of the records and information available for the last three years preceding the submission of the application that he has sufficient financial standing to meet his obligations and fulfil his commitments having regard to the type and volume of the business activity, including having no negative net assets, unless where they can be covered^[F4.]

[F5(g)] F5

3 A guarantee waiver shall be granted where the applicant demonstrates that he fulfils the following requirements:

- a the applicant maintains an accounting system which is consistent with the generally accepted accounting principles applied in the Member State where the accounts are held, allows audit-based customs control and maintains a historical record of data that provides an audit trail from the moment the data enters the file;
- b the applicant allows the customs authority physical access to its accounting systems and, where applicable, to its commercial and transport records;
- c the applicant has a logistical system which identifies goods as Union or non-Union goods and indicates, where appropriate, their location;
- d the applicant has an administrative organisation which corresponds to the type and size of business and which is suitable for the management of the flow of goods, and has internal controls capable of preventing, detecting and correcting errors and of preventing and detecting illegal or irregular transactions;
- e where applicable, the applicant has satisfactory procedures in place for the handling of licences and authorisations granted in accordance with commercial policy measures or relating to trade in agricultural products;
- f the applicant has satisfactory procedures in place for the archiving of its records and information and for protection against the loss of information;
- g the applicant ensures that relevant employees are instructed to inform the customs authorities whenever compliance difficulties are discovered and establishes procedures for informing the customs authorities of such difficulties;
- h the applicant has appropriate security measures in place to protect the applicant's computer system from unauthorised intrusion and to secure the applicant's documentation;
- i the applicant is not subject to bankruptcy proceedings;
- j during the last three years preceding the submission of the application, the applicant has fulfilled his financial obligations regarding payments of customs duties and all other duties, taxes or charges which are collected on or in connection with the import or export of goods;
- k the applicant demonstrates on the basis of the records and information available for the last three years preceding the submission of the application that he has sufficient financial standing to meet his obligations and fulfil his commitments having regard to the type and volume of the business activity, including having no negative net assets, unless where they can be covered^[F4.]

[F5(l)] F5

[F63a] When verifying if the applicant has sufficient financial standing for the purpose of granting of an authorisation to use a comprehensive guarantee with a reduced amount or a guarantee waiver as required by paragraphs 1(e), 2(f) and 3(k), the customs authorities shall take into account the ability of the applicant to fulfil his obligations of paying his customs debts and other charges which may be incurred, not covered by that guarantee.

If justified, the customs authorities may take into account the risk of incurrence of those customs debts and of other charges having regard to the type and volume of the

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customs related business activities of the applicant and to the type of goods for which the guarantee is required.

3b When the condition on sufficient financial standing has already been assessed as a modality for the application of the criterion referred to in Article 39(c) of the Code, the customs authorities shall verify only if the financial standing of the applicant justifies the granting of an authorisation to use a comprehensive guarantee with a reduced amount or a guarantee waiver.]

[^{F4} Where the applicant has been established for less than three years, the fulfilment of the conditions laid down in points (d) and (e) of paragraph 1, in points (e) and (f) of paragraph 2 and in points (j) and (k) of paragraph 3 shall be checked on the basis of available records and information.]

Textual Amendments

- F4** Substituted by [Commission Delegated Regulation \(EU\) 2018/1118 of 7 June 2018 amending Delegated Regulation \(EU\) 2015/2446 as regards the conditions for a reduction of the level of the comprehensive guarantee and the guarantee waiver.](#)
- F5** Deleted by [Commission Delegated Regulation \(EU\) 2018/1118 of 7 June 2018 amending Delegated Regulation \(EU\) 2015/2446 as regards the conditions for a reduction of the level of the comprehensive guarantee and the guarantee waiver.](#)
- F6** Inserted by [Commission Delegated Regulation \(EU\) 2018/1118 of 7 June 2018 amending Delegated Regulation \(EU\) 2015/2446 as regards the conditions for a reduction of the level of the comprehensive guarantee and the guarantee waiver.](#)

Section 3

Provisions for the Union transit procedure and the procedure under the Istanbul and the ATA Convention

Article 85

Release of the guarantor's obligations under the Union transit procedure (Articles 6(2), 6(3)(a) and 98 of the Code)

1 Where the Union transit procedure has not been discharged, the customs authorities of the Member State of departure shall, within nine months from the prescribed time limit for presentation of the goods at the customs office of destination, notify the guarantor that the procedure has not been discharged.

2 Where the Union transit procedure has not been discharged, the customs authorities, determined in accordance with Article 87 of the Code, shall, within three years from the date of acceptance of the transit declaration, notify the guarantor that he is or might be required to pay the debt for which he is liable in respect of the Union transit operation in question.

3 The guarantor shall be released from his obligations if either of the notifications provided for in paragraphs 1 and 2 have not been issued to him before the expiry of the time limit.

4 Where either of the notifications has been issued, the guarantor shall be informed of the recovery of the debt or the discharge of the procedure.

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5 The common data requirements for the notification as referred to in paragraph 1 are set out in Annex 32-04.

The common data requirements for the notification as referred to in paragraph 2 are set out in Annex 32-05.

6 In accordance with Article 6(3)(a) of the Code, the notification as referred to in paragraphs 1 and 2 may be sent by means other than electronic data-processing techniques.

Article 86

Claim for payment against a guaranteeing association for goods covered by ATA carnet and notification of the non-discharge of CPD carnets to a guaranteeing association under the procedure of the ATA Convention or Istanbul Convention (Articles 6(2), 6(3)(a) and 98 of the Code)

1 In case of non-compliance with one of the obligations under ATA carnet or CPD carnet customs authorities shall regularise the temporary admission papers (claim for payment against a guaranteeing association or notification of the non-discharge, respectively) in accordance with Articles 9, 10 and 11 of Annex A to the Istanbul Convention or where applicable, in accordance with Articles 7, 8 and 9 of the ATA Convention.

2 The amount of import duty and taxes arising from the claim for payment against a guaranteeing association shall be calculated by means of a model taxation form.

3 The common data requirements for the claim for payment against a guaranteeing association referred to in paragraph 1 are set out in Annex 33-01.

4 The common data requirements for the notification of the non-discharge of CPD carnets referred to in paragraph 1 are set out in Annex 33-02.

5 In accordance with Article 6(3)(a) of the Code, the claim for payment against a guaranteeing association and the notification of the non-discharge of CPD carnets may be sent to the relevant guaranteeing association by means other than by electronic data-processing techniques.

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CHAPTER 3

Recovery and payment of duty and repayment and remission of the amount of import and export duty

Section 1

Determination of the amount of import or export duty, notification of the customs debt and entry in the accounts

Subsection 1

Notification of the customs debt and claim for payment from guaranteeing association

Articles 87

Means of notification of the customs debt(Article 6(3)(a) of the Code)

The notification of the customs debt in accordance with Article 102 of the Code may be made by means other than by electronic data-processing techniques.

Article 88

Exemption from notification of the customs debt(Article 102(1)(d) of the Code)

1 The customs authorities may refrain from notifying a customs debt incurred through non-compliance under Article 79 or 82 of the Code where the amount of import or export duty concerned is less than EUR 10.

2 Where the customs debt was initially notified with an amount of import or export duty which was less than the amount of import or export duty payable, the customs authorities may refrain from notifying the customs debt for the difference between those amounts provided that it is less than EUR 10.

3 The limitation of EUR 10 referred to in paragraphs 1 and 2 shall apply to each recovery action.

Section 2

Payment of the amount of import or export duty

Article 89

Suspension of the time-limit for payment in case of application for remission(Article 108(3)(a) of the Code)

1 The customs authorities shall suspend the time-limit for payment of the amount of import or export duty corresponding to a customs debt until they have taken a decision on the application for remission, provided that the conditions are fulfilled:

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- a where an application for remission pursuant to Article 118, 119 or 120 of the Code has been presented, the conditions laid down in the relevant Article are likely to be met;
- b where an application for remission pursuant to Article 117 of the Code has been presented, the conditions laid down in Article 117 and Article 45(2) of the Code are likely to be met.

2 Where the goods subject to an application for remission are no longer under customs supervision at the time of the application, a guarantee shall be provided.

3 By way of derogation from paragraph 2, the customs authorities shall not require a guarantee if it is established that providing a guarantee would be likely to cause the debtor serious economic or social difficulties.

Article 90

Suspension of the time-limit for payment in the case of goods that are to be confiscated, destroyed or abandoned to the State(Article 108(3)(b) of the Code)

The customs authorities shall suspend the time-limit for payment of the amount of import or export duty corresponding to a customs debt where the goods are still under customs supervision and they are to be confiscated, destroyed or abandoned to the State and the customs authorities consider that the conditions for confiscation, destruction or abandonment are likely to be met, until the final decision on their confiscation, destruction or abandonment is taken.

Article 91

Suspension of the time-limit for payment in the case of customs debts incurred through non-compliance(Article 108(3)(c) of the Code)

1 The customs authorities shall suspend the time-limit for payment, by the person referred to in Article 79(3)(a) of the Code, of the amount of import or export duty corresponding to a customs debt where a customs debt has been incurred through non-compliance as referred to in Article 79 of the Code, provided that the following conditions are fulfilled:

- a at least one other debtor has been identified in accordance with Article 79(3)(b) or (c) of the Code;
- b the amount of import or export duty concerned has been notified to the debtor referred to in point (a) in accordance with Article 102 of the Code;
- c the person referred to in Article 79(3)(a) of the Code is not considered a debtor in accordance with Article 79(3)(b) or (c) of the Code and no deception or obvious negligence may be attributed to that person;

2 The suspension shall be conditional on the person for whose benefit it is granted issuing a guarantee for the amount of the import or export duty at stake, except in either of the following situations:

- a a guarantee covering the whole amount of import or export duty at stake already exists and the guarantor has not been released from his obligations;
- b it is established, on the basis of a documented assessment, that the requirement of a guarantee would be likely to cause the debtor serious economic or social difficulties.

3 The duration of the suspension shall be limited to one year. However, this period may be extended by the customs authorities for justified reasons.

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Section 3

Repayment and remission

Subsection 1

General provisions and procedure

Article 92

Application for repayment or remission(Articles 6(3)(a), 22(1) and 103 of the Code)

1 By way of derogation from the third subparagraph of Article 22(1) of the Code, the application for repayment or remission of import or export duties referred to in Article 116 of the Code shall be submitted to the competent customs authority of the Member State where the customs debt was notified.

2 The application referred to in paragraph 1 may be made by means other than electronic data-processing techniques, in accordance with the provisions in the Member State concerned.

Article 93

Supplementary information where goods are situated in another Member State(Articles 6(2) and 6(3)(a) of the Code)

The common data requirements for the request of supplementary information where goods are situated in another Member State are set out in Annex 33-06.

The request for supplementary information referred to in the first subparagraph may be made by means other than electronic data-processing techniques.

Article 94

Means of notification of the decision on repayment or remission(Article 6(3)(a) of the Code)

The decision on repayment or remission of import or export duty may be notified to the person concerned by means other than electronic data-processing techniques.

Article 95

Common data requirements related to formalities where goods are located in another Member State(Article 6(2) of the Code)

The common data requirements for the reply to the request for information concerning the completion of formalities where the application for repayment or remission relates to goods which are located in a Member State other than that in which the customs debt was notified are set out in Annex 33-07.

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Article 96

Means for sending information on the completion of formalities where goods are located in another Member State(Article 6(3)(a) of the Code)

The reply referred to in Article 95 may be sent by means other than electronic data-processing techniques.

[^{F3}Article 97

Extension of the time-limit for taking a decision on repayment or remission(Article 22(3) of the Code)

1 Where the first subparagraph of Article 116(3) of the Code or point (b) of the second subparagraph of Article 116(3) of the Code applies, the time-limit for taking the decision on repayment or remission shall be suspended until such time as the Member State concerned has received the notification of the Commission's decision or the notification by the Commission of the return of the file for the reasons provided in Article 98(6) of this Regulation.

2 Where point (b) of the second subparagraph of Article 116(3) of the Code applies, the time-limit for taking the decision on repayment or remission shall be suspended until such time as the Member State concerned has received the notification of the Commission's decision on the case involving comparable issues of fact and of law.

3 Where the decision on repayment or remission may be affected by the outcome of one of the following pending administrative procedure or court proceeding, the time-limit for taking the decision on repayment or remission may, with the agreement of the applicant, be extended as follows:

- a If a case involving identical or comparable issues of fact and of law is pending before the Court of Justice of the European Union in accordance with Article 267 of the Treaty on the Functioning of the European Union, the time-limit for taking the decision on repayment or remission may be extended for a period ending not later than 30 days after the date of delivery of the judgment of the Court of Justice;
- b If the decision on repayment or remission depends on the outcome of a request for subsequent verification of the proof of preferential origin made in accordance with Articles 109, 110 or 125 of Implementing Regulation (EU) 2015/2447 or made in accordance with the preferential agreement concerned, the time-limit for taking the decision on repayment or remission may be extended for the duration of the verification as mentioned in Articles 109, 110 or 125 of Implementing Regulation (EU) 2015/2447 or by the preferential agreement concerned, and in any case not more than 15 months from the date on which the request was sent; and
- c If the decision on repayment or remission depends on the outcome of a consultation procedure aimed to ensure, at Union level, the correct and uniform tariff classification or determination of origin of the goods concerned, made in accordance with Article 23(2) of Implementing Regulation (EU) 2015/2447, the time-limit for taking the decision on repayment or remission may be extended for a period ending not later than 30 days after the notification by the Commission of the withdrawal of the suspension of the taking of BTI and BOI decisions, as provided for in Article 23(3) of that Implementing Regulation.]

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/2446, TITLE III. (See end of Document for details)

Textual Amendments

- F3** Substituted by [Commission Delegated Regulation \(EU\) 2018/1063 of 16 May 2018 amending and correcting Delegated Regulation \(EU\) 2015/2446 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.](#)

Subsection 2

Decisions to be taken by the Commission

Article 98

Transmission of the file to the Commission for a decision(Article 116(3) of the Code)

1 The Member State shall notify the person concerned of their intention to transmit the file to the Commission before the transmission and give to the person concerned 30 days to sign a statement certifying that he has read the file and stating that he has nothing to add or listing all the additional information that he considers should be included. Where the person concerned does not provide that statement within those 30 days, the person concerned shall be deemed to have read the file and to have nothing to add.

2 Where a Member State transmits a file to the Commission for decision in the cases referred to Article 116(3) of the Code, the file shall include at least the following:

- a a summary of the case;
- b detailed information establishing that the conditions referred to in Article 119 or Article 120 of the Code, are fulfilled;
- c the statement referred to in paragraph 1 or a statement by the Member State certifying that the person concerned is deemed to have read the file and to have nothing to add.

3 The Commission shall acknowledge receipt of the file to the Member State concerned as soon as it has received it.

4 The Commission shall make available to all Member States a copy of the summary of the case referred to in paragraph 2(a) within 15 days from the date on which it received the file.

5 Where the information transmitted by the Member State is not sufficient for the Commission to take a decision, the Commission may request additional information from the Member State.

6 The Commission shall return the file to the Member State and the case shall be deemed never to have been submitted to the Commission in any of the following cases:

- a the file is obviously incomplete since it contains nothing that would justify its consideration by the Commission;
- b under the second subparagraph of Article 116(3) of the Code, the case should not have been submitted to the Commission;
- c the Member State has transmitted to the Commission new information of a nature to alter substantially the presentation of the facts or the legal assessment of the case while the Commission is still considering the file.

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/2446, TITLE III. (See end of Document for details)

Article 99

Right for the person concerned to be heard(Article 116(3) of the Code)

1 Where the Commission intends to take an unfavourable decision in the cases referred to Article 116(3) of the Code, it shall communicate its objections to the person concerned in writing, together with a reference to all the documents and information on which it bases those objections. The Commission shall inform the person concerned of his right to have access to the file.

2 The Commission shall inform the Member State concerned of its intention and the sending of the communication as referred to in paragraph 1.

3 The person concerned shall be given the opportunity to express his point of view in writing to the Commission within a period of 30 days from the date on which he has received the communication referred to in paragraph 1.

Article 100

Time-limits(Article 116(3) of the Code)

1 The Commission shall decide whether or not repayment or remission is justified within nine months from the date on which it has received the file referred to in Article 98(1).

2 Where the Commission has found it necessary to request additional information from the Member State as laid down in Article 98(5), the period referred to in paragraph 1 shall be extended by the same period of time as the period between the date on which the Commission sent the request for additional information and the date on which it received that information. The Commission shall notify the person concerned of the extension.

3 Where the Commission conducts investigations in order to take a decision, the period referred to in paragraph 1 shall be extended by the time necessary to complete the investigations. Such an extension shall not exceed nine months. The Commission shall notify the Member State and the person concerned of the dates on which investigations are initiated and closed.

4 Where the Commission intends to take an unfavourable decision as referred to in Article 99(1), the period referred to in paragraph 1 shall be extended by 30 days.

Article 101

Notification of the decision(Article 116(3) of the Code)

1 The Commission shall notify the Member State concerned of its decision as soon as possible and in any event within 30 days of the expiry of the period specified in Article 100(1).

2 The customs authority competent to take the decision shall issue a decision on the basis of the Commission's decision notified in accordance with paragraph 1.

The Member State to which the customs authority competent to take the decision belongs shall inform the Commission accordingly by sending to it a copy of the decision concerned.

Status: Point in time view as at 31/12/2020.

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/2446, TITLE III. (See end of Document for details)

3 Where the decision in the cases referred to Article 116(3) of the Code is favourable to the person concerned, the Commission may specify the conditions under which the customs authorities are to repay or remit duty in cases involving comparable issues of fact and of law.

Article 102

Consequences of a failure to take or notify a decision(Article 116(3) of the Code)

If the Commission does not take a decision within the time-limit provided for in Article 100, or does not notify a decision to the Member State in question within the time-limit provided for in 101(1), the customs authority competent to take the decision shall take a decision favourable to the person concerned.

CHAPTER 4

Extinguishment of a customs debt

Article 103

Failures which have no significant effect on the correct operation of a customs procedure(Article 124(1)(h)(i) of the Code)

The following situations shall be considered a failure with no significant effect on the correct operation of the customs procedure:

- (a) exceeding a time-limit by a period of time which is not longer than the extension of the time-limit that would have been granted had that extension been applied for;
- (b) where a customs debt has been incurred for goods placed under a special procedure or in temporary storage pursuant to Article 79(1)(a) or (c) of the Code and those goods were subsequently released for free circulation;
- (c) where the customs supervision has been subsequently restored for goods which are not formally a part of a transit procedure, but which previously were in a temporary storage or were placed under a special procedure together with goods formally placed under that transit procedure;
- (d) in the case of goods placed under a special procedure other than transit and free zones or in the case of goods which are in temporary storage, where an error has been committed concerning the information in the customs declaration discharging the procedure or ending the temporary storage provided that error has no impact on the discharge of the procedure or the end of the temporary storage;
- (e) where a customs debt has been incurred pursuant to Article 79(1)(a) or (b) of the Code, provided that the person concerned informs the competent customs authorities about the non-compliance before either the customs debt has been notified or the customs authorities have informed that person that they intend to perform a control.

Status:

Point in time view as at 31/12/2020.

Changes to legislation:

There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/2446, TITLE III.