

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 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.

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*Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/2446, CHAPTER 2. (See end of Document for details)*

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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.

[<sup>F15</sup> 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

- F1** 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.

[<sup>F23</sup> 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

- F2** 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](#)

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European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

*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<sup>[F3]</sup>.

[<sup>F4</sup>(f)] <sup>F4</sup> .....

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;

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- 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;
- 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<sup>[F3]</sup>.

[<sup>F4</sup>(g)] <sup>F4</sup> .....

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<sup>[F3]</sup>.

[<sup>F4</sup>(l)] <sup>F4</sup> .....

[<sup>F5</sup>3a] 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

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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 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.]

[<sup>F34</sup> 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

- F3** 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.](#)
- F4** 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.](#)
- F5** 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.

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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.

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.

**Changes to legislation:**

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