

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 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.

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## 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:

- 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.

#### **Modifications etc. (not altering text)**

**C1** [Art. 89](#) modified (1.8.2021) by [The Value Added Tax Regulations 1995 \(S.I. 1995/2518\)](#), **reg. 133AI** (as inserted by [S.I. 2021/715](#), regs. 1, **43**)

#### 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:

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- 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.

**Modifications etc. (not altering text)**

- C2 [Art. 91\(2\)](#) modified (1.8.2021) by [The Value Added Tax Regulations 1995 \(S.I. 1995/2518\)](#), [reg. 133AI](#) (as inserted by [S.I. 2021/715](#), [regs. 1, 43](#))

*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.

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### 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.

### 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.

### <sup>[F1]</sup>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

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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.]

#### Textual Amendments

- F1** 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.

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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.

#### *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).

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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.

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.

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