

Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code

TITLE III

CUSTOMS DEBT AND GUARANTEES

CHAPTER I

Guarantee for a potential or existing customs debt

Section 1

General provisions

Article 147

Electronic systems relating to guarantees(Article 16 of the Code)

For the exchange and storage of information pertaining to guarantees which may be used in more than one Member State, an electronic system set up for those purposes pursuant to Article 16(1) of the Code shall be used.

The first paragraph of this Article shall be applicable from the date of deployment of the UCC GUM system referred to in the Annex to Implementing Decision 2014/255/EU.

Article 148

Individual guarantee for a potential customs debt(Article 90(1) subparagraph 2 of the Code)

1 Where it is compulsory for a guarantee to be provided, a guarantee covering a single operation (individual guarantee) for a potential customs debt shall cover the amount of import or export duty corresponding to the customs debt which may be incurred, calculated on the basis of the highest rates of duty applicable to goods of the same type.

2 Where the other charges due in connection with the import or export of goods are to be covered by the individual guarantee, their calculation shall be based on the highest rates applicable to goods of the same type in the Member State where the goods concerned are placed under the customs procedure or are in temporary storage.

*Article 149***Optional guarantee(Article 91 of the Code)**

Where the customs authorities decide to require a guarantee which is optional, Articles 150 to 158 of this Regulation shall apply.

*Article 150***Guarantee in the form of cash deposit(Article 92(1)(a) of the Code)**

Where a guarantee is required for special procedures or temporary storage and is provided as an individual guarantee in the form of a cash deposit, that guarantee shall be provided to the customs authorities of the Member State where the goods are placed under the procedure or are in temporary storage.

Where a special procedure other than the end-use procedure has been discharged or the supervision of end-use goods or the temporary storage has ended correctly, the guarantee shall be repaid by the customs authority of the Member State where it was provided.

*Article 151***Guarantee in the form of an undertaking by a guarantor(Articles 92(1)(b) and 94 of the Code)**

1 The undertaking given by a guarantor shall be approved by the customs office where the guarantee is provided (customs office of guarantee) which shall notify the approval to the person required to provide the guarantee.

2 The customs office of guarantee may revoke the approval of the undertaking by a guarantor at any time. The customs office of guarantee shall notify the revocation to the guarantor and the person required to provide the guarantee.

3 A guarantor may cancel his undertaking at any time. The guarantor shall notify the cancellation to the customs office of guarantee.

4 The cancellation of the undertaking of the guarantor shall not affect goods which, at the moment where the cancellation takes effect, have already been placed and still are under a customs procedure or in temporary storage by virtue of the cancelled undertaking.

5 An individual guarantee provided in the form of an undertaking shall be given using the form set out in Annex 32-01.

6 A comprehensive guarantee provided in the form of an undertaking shall be given using the form set out in Annex 32-03.

7 Notwithstanding paragraphs 5 and 6 and Article 160, each Member State may, in accordance with national law, allow an undertaking given by a guarantor to take a form different from the ones set out in Annexes 32-01, 32-02 and 32-03 provided it has the same legal effect.

Article 152

Individual guarantee provided in the form of an undertaking by a guarantor(Articles 89 and 92(1)(b) of the Code)

1 Where an individual guarantee is provided in the form of an undertaking by a guarantor, the proof of that undertaking shall be kept by the customs office of guarantee for the period of validity of the guarantee.

2 Where an individual guarantee is provided in the form of an undertaking by a guarantor, the holder of the procedure shall not modify the access code associated with the guarantee reference number.

Article 153

Mutual assistance between customs authorities(Article 92(1)(c) of the Code)

Where a customs debt is incurred in a Member State other than the Member State which has accepted a guarantee in one of the forms referred to in Article 83(1) of Delegated Regulation (EU) 2015/2446, which may be used in more than one Member State, the Member State which has accepted the guarantee shall transfer to the Member State where the customs debt is incurred, on a request made by the latter after the expiry of the time-limit for payment, the amount of import or export duty within the limits of the accepted guarantee and of the unpaid duty.

That transfer shall be made within 1 month of reception of the request.

Article 154

Guarantee reference number and access code(Article 89(2) of the Code)

1 Where an individual guarantee may be used in more than one Member State, the customs office of guarantee shall communicate to the person who has provided the guarantee or, in case of a guarantee in the form of vouchers, to the guarantor the following information:

- a a guarantee reference number;
- b an access code associated with the guarantee reference number.

2 Where a comprehensive guarantee may be used in more than one Member State, the customs office of guarantee shall communicate to the person who has provided the guarantee the following information:

- a a guarantee reference number for each part of the reference amount to be monitored in accordance with Article 157 of this Regulation;
- b an access code associated with the guarantee reference number.

Upon request of the person who has provided the guarantee, the customs office of guarantee shall assign one or more additional access codes to this guarantee to be used by that person or his representatives.

3 A customs authority shall verify the existence and the validity of the guarantee each time a person communicates to it a guarantee reference number.

Section 2

Comprehensive guarantee

Article 155

Reference amount(Article 90 of the Code)

1 Unless otherwise provided for in Article 158 of this Regulation, the amount of the comprehensive guarantee shall be equal to a reference amount established by the customs office of guarantee in accordance with Article 90 of the Code.

2 Where a comprehensive guarantee is to be provided for import or export duty and other charges the amount of which can be established with certainty at the time when the guarantee is required, the part of the reference amount covering those duties and charges shall correspond to the amount of the import or export duty and of the other charges payable.

3 Where a comprehensive guarantee is to be provided for import or export duty and other charges, the amount of which cannot be established with certainty at the time when the guarantee is required or which vary in amount over time, the part of the reference amount covering those duties and charges shall be fixed as follows:

- a for the part that is to cover import or export duty and other charges which have been incurred, the reference amount shall correspond to the amount of the import or export duty and of the other charges payable;
- b for the part that is to cover import or export duty and other charges which may be incurred, the reference amount shall correspond to the amount of the import or export duty and of the other charges which may become payable in connection with each customs declaration or temporary storage declaration in respect of which the guarantee is provided, in the period between the placing of the goods under the relevant customs procedure or in temporary storage and the moment when that procedure is discharged or the supervision of end-use goods or temporary storage is ended.

For the purposes of point (b), account shall be taken of the highest rates of import or export duty applicable to goods of the same type and of the highest rates of other charges due in connection with the import or export of goods of the same type in the Member State of the customs office of guarantee.

Where the information necessary to determine the part of the reference amount pursuant to the first subparagraph is not available to the customs office of guarantee, that amount shall be fixed at EUR 10 000 for each declaration.

4 The customs office of guarantee shall establish the reference amount in cooperation with the person required to provide the guarantee. When fixing the part of the reference amount in accordance with paragraph 3, the custom office of guarantee shall establish that amount on the basis of the information on goods placed under the relevant customs procedures or in temporary storage in the preceding 12 months and on an estimate of the volume of intended operations as shown, inter alia, by the commercial documentation and accounts of the person required to provide the guarantee.

5 The customs office of guarantee shall review the reference amount on its own initiative or following a request from the person required to provide the guarantee, and shall adjust it to comply with the provisions of this Article and Article 90 of the Code.

Article 156

Monitoring of the reference amount by the person required to provide a guarantee(Article 89 of the Code)

The person required to provide a guarantee shall ensure that the amount of import or export duty, and of other charges due in connection with the import or export of goods where they are to be covered by the guarantee, which is payable or may become payable does not exceed the reference amount.

That person shall inform the customs office of guarantee when the reference amount is no longer at a level sufficient to cover his operations.

Article 157

Monitoring of the reference amount by the customs authorities(Article 89(6) of the Code)

1 The monitoring of the part of the reference amount that covers the amount of import or export duty, and of other charges due in connection with the import or export of goods, which will become payable with respect to goods placed under release for free circulation shall be ensured for each customs declaration at the time of placing of goods under the procedure. Where customs declarations for release for free circulation are lodged in accordance with an authorisation referred to in Articles 166(2) or 182 of the Code, the monitoring of the relevant part of the reference amount shall be ensured on the basis of the supplementary declarations or, where applicable, on the basis of the particulars entered in the records.

2 The monitoring of the part of the reference amount that covers the amount of import or export duty, and other charges due in connection with the import or export of goods, which may become payable with respect to goods placed under the Union transit procedure shall be ensured, by means of the electronic system referred to in Article 273(1) of this Regulation, for each customs declaration at the time of placing of goods under the procedure. That monitoring shall not apply to goods placed under the Union transit procedure using the simplification referred to in Article 233(4)(e) of the Code where the customs declaration is not processed by the electronic system referred to in Article 273(1) of this Regulation.

3 The monitoring of the part of the reference amount that covers the amount of import or export duty, and other charges due in connection with the import or export of goods where they are to be covered by the guarantee, which will be incurred or may be incurred in cases other than those referred to in paragraphs 1 and 2 shall be ensured by regular and appropriate audit.

Article 158

Level of the comprehensive guarantee(Article 95(2) and (3) of the Code)

1 For the purposes of Article 95(2) of the Code, the amount of the comprehensive guarantee shall be reduced to:

- a 50% of the part of the reference amount determined in accordance with Article 155(3) of this Regulation where the conditions of Article 84(1) of Delegated Regulation (EU) 2015/2446 are fulfilled;

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- b 30% of the part of the reference amount determined in accordance with Article 155(3) of this Regulation where the conditions of Article 84(2) of Delegated Regulation (EU) 2015/2446 are fulfilled; or
- c 0% of the part of the reference amount determined in accordance with Article 155(3) of this Regulation where the conditions of Article 84(3) of Delegated Regulation (EU) 2015/2446 are fulfilled.

2 For the purposes of Article 95(3) of the Code, the amount of the comprehensive guarantee shall be reduced to 30% of the part of the reference amount determined in accordance with Article 155(2) of this Regulation.

Section 3

Provisions for the Union transit procedure and the procedure under the TIR and the ATA Conventions

Subsection 1

Union transit

Article 159

Calculation for the purpose of common transit(Article 89(2) of the Code)

For the purpose of the calculation referred to in Article 148 and in the second subparagraph of Article 155(3)(b) of this Regulation, Union goods carried in accordance with the Convention on a common transit procedure⁽¹⁾ shall be treated as non-Union goods.

Article 160

Individual guarantee in the form of vouchers(Article 92(1)(b) of the Code)

1 In the context of Union transit procedure, an individual guarantee in the form of an undertaking by a guarantor may also be provided by the guarantor by issuing vouchers to persons who intend to be the holders of the procedure.

The proof of that undertaking shall be made out using the form set out in Annex 32-02 and the vouchers shall be made out using with the form set out in Annex 32-06.

Each voucher shall cover an amount of EUR 10 000 for which the guarantor shall be liable.

The period of validity of a voucher shall be 1 year from the date of issue.

2 The guarantor shall provide the customs office of guarantee with any required details about the individual guarantee vouchers that he has issued.

3 For each voucher, the guarantor shall communicate to the person who intends to be the holder of the procedure the following information:

- a a guarantee reference number;

b an access code associated with the guarantee reference number.

The person who intends to be the holder of the procedure shall not modify the access code.

4 The person who intends to be the holder of the procedure shall submit at the customs office of departure a number of vouchers corresponding to the multiple of EUR 10 000 required to cover the sum of the amounts referred to in Article 148 of this Regulation.

Article 161

Revocation and cancellation of an undertaking provided in case of an individual guarantee in the form of vouchers(Articles 92(1)(b) and 94 of the Code)

The customs authority responsible for the relevant customs office of guarantee shall introduce into the electronic system referred to in Article 273(1) of this Regulation information of any revocation or cancellation of an undertaking provided in case of an individual guarantee in the form of vouchers and the date when it becomes effective.

Article 162

Comprehensive guarantee(Articles 89(5) and 95 of the Code)

1 In the context of Union transit procedure, the comprehensive guarantee may only be provided in the form of an undertaking by a guarantor.

2 The proof of that undertaking shall be kept by the customs office of guarantee for the period of validity of the guarantee.

3 The holder of the procedure shall not modify the access code associated with the guarantee reference number.

Subsection 2

Procedures under the TIR and the ATA Conventions

Article 163

Liability of guaranteeing associations for TIR operations(Article 226(3)(b) of the Code)

For the purposes of Article 8(4) of the TIR Convention, including any subsequent amendments thereof, (TIR Convention) where a TIR operation is carried out on the customs territory of the Union, any guaranteeing association established in the customs territory of the Union may become liable for the payment of the secured amount relating to the goods concerned in the TIR operation up to a limit, per TIR carnet, of EUR 60 000 or the national currency equivalent thereof.

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*Article 164***Notification of non-discharge of a procedure to guaranteeing associations(Article 226(3)(b) and (c) of the Code)**

A valid notification of non-discharge of a procedure in accordance with the TIR Convention or with the ATA Convention or with the Istanbul Convention, made by the customs authorities of one Member State to a guaranteeing association, shall constitute a notification to any other guaranteeing association of another Member State identified as liable for payment of an amount of import or export duty or other charges.

(1) OJ L 226, 13.8.1987, p. 2.