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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 14.12.2022 amending Delegated Regulation (EU) 2015/2446 as regards extending the possibilities for making customs declarations orally or by any other act deemed to be a customs declaration, the invalidation of declarations in specific cases, and specifying the exchange of information for entry summary declarations

Delegations will find attached document C(2022) 9254 final.

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COMMISSION DELEGATED REGULATION (EU) .../...

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(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC) delegates to the Commission the power to supplement certain non-essential elements of the UCC, in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU). The Commission exercised these powers by adopting, on 28 July 2015, Commission 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 UCC.

Delegated Regulation (EU) 2015/2446 establishes provisions of general application to supplement the UCC to ensure its clear and proper application. It must therefore be regularly updated to take account of developments in legislation and of the deployment of the UCC's IT systems and to clarify the application of certain customs formalities.

The present amending Delegated Regulation aims to update certain rules in the existing Delegated Regulation to reflect the latest developments in relation to the filing of entry summary declarations in the context of releases 2 and 3 of the EU's Import Control System-2 (ICS2). This update concerns in particular the mandatory provision of entry summary declaration data by postal operators established in third countries in specific situations where such data is not available either to the postal operators in the Union or to the carrier, because the goods are only transhipped in the customs territory of the EU. Moreover, it introduces the possibility to allow persons, notably economic operators in the supply chain other than the carrier, to provide parts of the information of the entry summary declaration data in the context of rail transport, in accordance with Article 127(6) of the UCC.

Economic operators established in the customs territory of the Union do not have the possibility of making an oral declaration or a declaration by any other act to temporarily bring packaging that is filled into that territory and re-export it, filled or empty. Only persons established outside the customs territory of the Union can declare packaging for temporary admission and re-export orally or by any other act, putting EU operators at a disadvantage. This amendment will make it possible for EU operators to use simplified customs formalities for packaging as well so that they are no longer at a disadvantage. This amendment will also include the possibility to apply such facilitation to packings that are imported empty.

Under previous customs legislation (Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code) it was possible for customs authorities to repay customs duties to the declarant/debtor in specific situations when goods were delivered free of charge to charitable or philanthropic organisations. This amendment will reintroduce that possibility.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission carried out a consultation in line with the Common Understanding on Delegated Acts between the European Parliament, the Council and the European Commission.

Member States and all other relevant stakeholders have been duly involved and regularly consulted on the draft provisions.

The Commission consulted Member States on the draft text in regular meetings of its group of experts (Customs Expert Group (CEG)). It consulted the business community through its stakeholder body (the Trade Contact Group (TCG)) on the following occasions:

- for the articles on declarations of packaging, Member State experts were consulted at the CEG – Special Procedures Section (SPE) meeting on 23 June 2022;
- for the amendment concerning the invalidation of declarations, Member State experts and the TCG were consulted in a joint meeting of the CEG – Import and Export Formalities Section (FOR) and the TCG on 30 June 2022;
- for amendments concerning ICS2, the business community was consulted in meetings with the trade stakeholders concerned (mainly railway and postal operators) and meetings with Member State experts in the 47th CEG – General Customs Legislation Section (GEN) meeting on 30 May 2022;
- Member State experts and the TCG were consulted in the 48th meeting of the CEG – GEN held jointly with the TCG on 11 July 2022.

The Commission has carefully considered all the comments it received during the consultation and taken them into account as much as possible in the proposed Delegated Act.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis for this Regulation is contained in the delegation of power provided for in Articles 131, 160 and 175 of the UCC.

Proportionality principle

In terms of proportionality, this Regulation respects the limits of the empowerments granted by the co-legislators and concerns only aspects aimed at better adapting existing legal provisions to the requirements of the day-to-day practices of customs authorities, economic operators and persons other than economic operators.

COMMISSION DELEGATED REGULATION (EU) .../...

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amending Delegated Regulation (EU) 2015/2446 as regards extending the possibilities for making customs declarations orally or by any other act deemed to be a customs declaration, the invalidation of declarations in specific cases, and specifying the exchange of information for entry summary declarations

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code¹, and in particular Article 131, point (c), and Articles 160 and 175 thereof,

Whereas:

- (1) The practical implementation of Regulation (EU) No 952/2013 ('the Code') in combination with Commission Delegated Regulation (EU) 2015/2446² has shown that some amendments to that Delegated Regulation are needed in order to better tailor it to the needs of economic operators and customs authorities and to take into account the developments regarding the forthcoming deployment of releases 2 and 3 of the Import Control System (ICS2).
- (2) In order to clarify that in the case of postal consignments transhipped in the Union, in certain situations the obligation to provide the entry summary declaration data lies with the postal operator in a third country from which the goods were dispatched, in accordance with Article 127(6) of Regulation (EU) 952/2013, it is necessary to introduce a new definition of 'third country postal operator'.
- (3) From the date set out in the Annex to Commission Implementing Decision (EU) 2019/2151³ for the deployment of release 3 of ICS2, it is to be possible for different persons involved in the process of transporting goods into the customs territory of the Union by rail to submit parts of the information of an entry summary declaration, that is, multiple filing. A new Article 112a should therefore be added to Delegated Regulation (EU) 2015/2446 to provide for this possibility.
- (4) In order to make it obligatory for third country postal operators to submit particulars of the entry summary declaration for goods transhipped in the customs territory of the Union, where that postal operator has not provided those particulars to the carrier, Article 113a of Delegated Regulation 2015/2446 should be amended.

¹ OJ L 269, 10.10.2013, p. 1.

² 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 (OJ L 343, 29.12.2015, p. 1).

³ Commission Implementing Decision (EU) 2019/2151 of 13 December 2019 establishing the work programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code (OJ L 325, 16.12.2019, p. 168).

- (5) Packings bearing a permanent marking identifying a person that are temporarily imported filled and re-exported either filled or empty can be declared by means of an oral declaration or by any other act referred to in Article 141 of Delegated Regulation (EU) 2015/2446. As that can only be done for filled packings imported by persons established outside the customs territory of the Union, it is necessary to extend the application of that simplified customs formality to packings imported empty by persons regardless of where those persons are established.
- (6) The possibility of repayment of import duty in specific situations in which goods are delivered free of charge to charitable or philanthropic organisations should be introduced. This should be done by adding a new reason for invalidating customs declarations after the release of goods, making it possible to repay import duty paid in accordance with Article 116(1) of the Code.
- (7) Delegated Regulation (EU) 2015/2446 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2015/2446 is amended as follows:

- (1) in Article 1, the following definition is added:
‘(54) ‘third country postal operator’ means an operator established in and designated by a third country to provide the international services governed by the Universal Postal Convention.’;
- (2) in Title IV, Chapter 1, the following Article 112a is inserted:

‘Article 112a

Provision of particulars of the entry summary declaration by other persons in specific cases as regards transport by rail

(Article 127(6) of the Code)

1. Where, in the case of transport by rail, for the same goods one or more additional transport contracts covered by one or more consignment notes have been concluded by one or more persons other than the carrier, and the person issuing the consignment note does not make the particulars required for the entry summary declaration available to his or her contractual partner who issues a consignment note to him or her or to his or her contractual partner with whom he or she concluded a goods co-loading arrangement, the person who does not make the required particulars available shall provide those particulars to the customs office of first entry in accordance with Article 127(6) of the Code.

Where the consignee indicated in the consignment note that has no underlying consignment note does not make the particulars required for the entry summary declaration available to the person issuing that consignment note, he or she shall provide those particulars to the customs office of first entry.

2. Until the date set out in accordance with the Annex to Implementing Decision (EU) 2019/2151 for the deployment of release 3 of the system referred to in Article

182(1) of Implementing Regulation (EU) 2015/2447, paragraph 1 of this Article shall not apply.’;

(3) in Article 113a, the following paragraph 4 is added:

‘4. From the date set out in accordance with the Annex to Implementing Decision (EU) 2019/2151 for the deployment of release 2 of the system referred to in Article 182(1) of Implementing Regulation (EU) 2015/2447, where the third country postal operator does not make the particulars required for the entry summary declaration of postal consignments available to a carrier who is obliged to lodge the rest of the particulars of the declaration through that system, the third country postal operator at the country of dispatch, if the goods are transhipped through the Union, shall provide those particulars to the customs office of first entry in accordance with Article 127(6) of the Code.’;

(4) in Article 136(1), point (j) is replaced by the following:

‘(j) packings which are imported filled or empty and are intended for re-export, whether filled or empty, bearing the permanent, indelible markings identifying a person established within or outside the customs territory of the Union;’;

(5) in Article 138, point (c) is replaced by the following:

‘(c) goods as referred to in Article 136(1), points (a) and (j), of this Regulation that benefit from relief from import duty as returned goods in accordance with Article 203 of the Code;’.

(6) in Article 139, paragraphs 1 and 2 are replaced with the following:

‘1. Where not declared by other means, the goods referred to in Article 136(1), points (a) to (d), (h), (i) and (j), shall be deemed to be declared for temporary admission in accordance with Article 141.

2. Where not declared by other means, the goods referred to in Article 136(1), points (a) to (d), (h), (i) and (j), shall be deemed to be declared for re-export in accordance with Article 141 on discharging the temporary admission procedure.’;

(7) Article 141, paragraph 1 is amended as follows:

(a) the introductory phrase is replaced by the following:

‘In respect of goods as referred to in Article 138, points (a) to (d) and point (h), Article 139 and Article 140(1), any of the following acts shall be deemed to be a customs or a re-export declaration.’;

(b) in point (d), points (iv) and (v) are replaced by the following:

‘(iv) where goods as referred to in Article 136(1), points (a) and (j), of this Regulation are deemed to be declared for temporary admission in accordance with Article 139(1) of this Regulation;

(v) where goods as referred to in Article 136(1), points (a) and (j), of this Regulation complying with the conditions established in Article 203 of the Code are brought to the customs territory of the Union in accordance with Article 138, point (c), of this Regulation.’;

(8) in Article 148(4) the following point (f) is added:

‘(f) where goods have been released for free circulation and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed in the customs territory of the Union provided that:

(i) the application is made within 1 year of the date of acceptance of the customs declaration;

(ii) the goods were given free of charge to charitable or philanthropic organisations carrying out their activities in the customs territory of the Union, and, at the moment the customs declaration referred to in point (iii) is accepted, the goods would be eligible for relief from import duty if they were released for free circulation; and

(iii) a customs declaration for release for free circulation with total relief from import duty for the goods in question has been lodged by or on behalf of those charitable or philanthropic organisations by the time-limit set in point (i).’

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14.12.2022

For the Commission
The President
Ursula VON DER LEYEN