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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	ST 6235/18 + COR 1
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 952/2013 to prolong the transitional use of means other than the electronic data-processing techniques provided for in the Union Customs Code - Confirmation of the final compromise text with a view to agreement

1. On 2 March 2018, the Commission submitted to the Council and the European Parliament a Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 952/2013 to prolong the transitional use of means other than the electronic data-processing techniques provided fro in the Union Customs Code.
2. The Working Party on Customs Union examined this proposal at various meetings in 2018.
3. At its meeting on 5 December 2018, the Permanent Representatives Committee confirmed the mandate to start negotiations with the European Parliament on the compromise text of the proposal for a Regulation as laid down in docs. ST 13488/18 REV 1 + ADD 1 and ST 13501/18.

4. In the European Parliament, this proposal was referred to the Committee for Internal Market and Consumers Protection (IMCO), and Mr Jasenko SELIMOVIC was appointed rapporteur. The IMCO Committee voted their draft report on 19 October 2018.
5. After three political trilogues and a series of technical trilogues, a provisional agreement on a compromise text¹ was reached between the co-legislators on 23 January 2019.
6. **Against this background, the Permanent Representatives Committee is invited to:**
 - **approve the text of the proposal for a Regulation as set out in Annex to this Note with a view to reaching an agreement at first reading with the European Parliament; and**
 - **give to the Chairman of the Permanent Representatives Committee the mandate to inform the Chair of the European Parliament's IMCO Committee that, should the European Parliament adopt the text of the proposal in the exact form as set out in Annex to this Note , the Council would adopt the proposed Regulation thus amended, subject to legal-linguistic revision by both Institutions.**

¹ NL expressed a scrutiny reservation and LT may abstain.

PE-CONS No/YY - 2018/0040(COD)

REGULATION (EU) 2019/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of ...

**amending Regulation (EU) No 952/2013 to prolong the transitional use of means other than
the electronic data-processing techniques provided for in the Union Customs Code**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 33 and Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure²,

Whereas:

- (1) Under Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code³ (the Code), all exchanges of information between customs authorities and between economic operators and customs authorities, and the storage of such information, are to be made using electronic data-processing techniques.

² Position of the European Parliament of ..., **(not yet published in the Official Journal) and decision of the Council of ...**

³ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

- (2) However, the Code allows for the use of means of exchange and storage of information other than electronic data-processing techniques *referred to in Article 6 of the Code* during a transitional period, to the extent that the electronic systems necessary for the application of the provisions of the Code are not yet operational, but only until 31 December 2020 at the latest.
- (3) In accordance with the Code, Member States are to cooperate with the Commission to develop, maintain and employ electronic systems for the exchange and the storage of customs information and the Commission is to draw up a work programme relating to the development and deployment of those electronic systems.
- (4) The Work Programme has been established by Commission Implementing Decision (EU) 2016/578⁴. It contains a list of seventeen electronic systems that must be developed for the application of the Code, either by the Member States alone (in the case of systems to be managed at national level – "national systems") or by the Member States and the Commission in close collaboration (in the case of Union-wide systems, some of which consist both of Union-wide components and national components – "trans-European systems").
- (5) The Work Programme sets out the planning schedule for the implementation of those national and trans-European systems.
- (5a6) The shift to a complete use of electronic systems for interactions between economic operators and customs authorities, and between customs authorities, will enable the simplifications provided for in the Code to take full effect, resulting in an improved exchange of information between actors, a more effective registration of the arrival, transit and exit of goods, a centralised customs clearance and harmonised customs controls throughout the customs territory of the Union, thereby reducing administrative costs, red tape, error fraud in customs declarations and import-point shopping.***

⁴ Commission Implementing Decision (EU) 2016/578 of 11 April 2016 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code (OJ L 99, 15.4.2016, p. 6).

(76) ■ **Setting up** ■ electronic systems *requires* the Commission and ■ the Member States *to harmonise* the data elements on the basis of internationally accepted data models, as required by the Code, *in some cases to fully reprogramme* existing electronic systems and *to make* investments both in financial terms and in terms of time. *Member States program the development differently, which has led to differences in the timing of implementation of systems in Member States.* As the electronic systems are closely interlinked, introducing them in the right order is important. Delays in the development of one system will therefore unavoidably lead to delays in the development of others. ■ **The** Code (including the end date for transitional measures on 31 December 2020) was adopted in 2013 while the rules supplementing and implementing it, namely Commission Delegated Regulation (EU) 2015/2446⁵, Commission Implementing Regulation (EU) 2015/2447⁶ and Commission Delegated Regulation (EU) 2016/341⁷, were only adopted in 2015 and 2016, ■ and this has caused a delay in setting out the functional and technical specifications necessary for the development of the electronic systems.

⁵ 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).

⁶ 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 (L 343, 29.12.2015, p. 558).

⁷ Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446 (OJ L 69, 15.3.2016, p. 1).

(87) *Although Article 278 of the Code set a single deadline of 31 December 2020 for the deployment of all the systems referred to in that Article, and despite the efforts made by the Union and some of the Member States, at budgetary and operational levels, to complete the work within the time limit given, it has become evident that some systems can only be partially deployed by that date, which implies that pre-existing systems will continue in use beyond that date, and in the absence of legislative amendments extending that deadline, companies and customs authorities will be unable to perform their duties and legal obligations as regards customs operations.*

(98) Work should continue after 31 December 2020 on *three* groups of systems. A first group consists of *national electronic systems concerned with the notification of arrival, the presentation notification, the temporary storage and the customs declaration for goods brought into the customs territory of the Union (including the Special Procedures with the exception of outward processing) that must be upgraded or constructed to take account of certain requirements of the Code, such as the harmonisation of the requirements on data to be input into the systems.* A second group consists of existing electronic systems that must be upgraded to take account of certain requirements of the Code, such as the harmonisation of the requirements on data to be input into the systems. This group consists of three trans-European systems (the system dealing with Entry Summary Declarations, the system dealing with external and internal transit and the system dealing with goods taken out of the customs territory of the Union) as well as the National Export System (including the export component of the national Special Procedures System). The *third* group consists of three new trans-European electronic systems (the systems concerning guarantees for a potential or existing customs debt, the customs status of goods and centralised clearance). The Commission, in partnership with the Member States, has drawn up a detailed timetable with a view to deploying those systems over a period up to the end of 2025.

(109) In line with the new planning for the development of the electronic systems, the period laid down in the Code during which means for the exchange and storage of information, other than the electronic data-processing techniques referred to in Article 6(1) of the Code, may be used on a transitional basis, should also be extended to **2022 as regards the first group and to 2025 as regards the second and third** groups of electronic systems.

(101) With regard to the other systems to be set up for the purposes of implementing the Code, the general end date of 31 December 2020 for the use of means for the exchange and storage of information other than the electronic data-processing techniques referred to in Article 6(1) of the Code should continue to apply.

(10a2) *In order to enable the European Parliament and the Council to monitor the deployment of all the electronic systems necessary for the application of the provisions of the Code referred to in Article 278 of the Code, the Commission should regularly report on the progress made and on the attainment of interim objectives within the planned schedule. The relevant administrations of the Member States should, twice per year, provide the appropriate information to the Commission. Once all electronic systems are operational, the Commission should assess whether they are fit for purpose through a fitness check to be launched within one year of the first date on which they are all operational.*

(131) The Code should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 952/2013 is amended as follows:

(1) Article 278 is replaced by the following:

"Article 278

Transitional measures

1. ***Until 31 December 2020 at the latest, means*** for the exchange and storage of information, other than the electronic data-processing techniques referred to in Article 6(1), may be used on a transitional basis, ■ where the electronic systems which are necessary for the application of the provisions of the Code other than those referred to ***paragraphs ~~1a-2~~ and ~~23~~ of this Article*** are not yet operational.

- ~~1a-2~~***. ***Until 31 December 2022 at the latest, means other than the electronic data-processing techniques referred to in Article 6(1) may be used on a transitional basis, where the electronic systems which are necessary for the application of the following provisions of the Code are not yet operational:***
 - (a) ***the provisions on notification of arrival, on presentation notification and on temporary storage laid down in Articles 133, 139, 145 and 146; and***

 - (b) ***the provisions related to the customs declaration for goods brought into the customs territory of the Union laid down in Articles 158, 162, 163, 166, 167, 170 to 174, 201, 240, 250, 254 and 256.***

- ~~23~~***. ***Until 31 December 2025 at the latest, means*** other than the electronic data-processing techniques referred to in Article 6(1) may be used on a transitional basis, ■, where the electronic systems which are necessary for the application of the following provisions of the Code are not yet operational:
 - (a) ***the provisions on guarantees for a potential or existing customs debt laid down in Article 89(2)(b) and (6);***

- (b) the provisions on entry summary declarations *and risk analysis* laid down in *Articles 46, 47 and 127 to 129*;
- (c) the provisions on the customs status of goods laid down in *Article 153(2)*;
- (d) the provisions on centralised clearance laid down in *Article 179*;
- (e) the provisions on transit laid down in *Articles 210(a), 215(2), 226, 227, 233 and 234*; and
- (f) the provisions *related to outward processing, pre-departure declarations, formalities on exit of goods, export of Union goods, re-export of non-Union goods and exit summary declarations for taking goods* out of the customs territory of the Union laid down in *Articles 258, 259, 263, 267, 269, 270 to 272, 274 and 275.*”

(4a2) The following Article is inserted:

“Article 278a

1. *Not later than 31 December 2019 and every year thereafter until the date when the electronic systems referred to in Article 278 become fully operational, the Commission shall submit an annual report to the European Parliament and to the Council on progress in developing these electronic systems.*
2. *The report shall assess the Commission and the Member States’ progress in developing each of the electronic systems, taking particular account of the following milestones:*
 - (i) *the date of publication of the technical specifications for the external communication of the electronic system;*
 - (ii) *the period of conformance testing with economic operators; and*
 - (iii) *the expected and actual dates of deployment of the electronic systems.*
3. *If the assessment shows that the progress is not satisfactory, the report shall also describe the mitigating actions to be taken to ensure the deployment of the electronic systems before the end of the transitional periods.*

4. *The Member States shall provide the Commission twice per year with an updated table on their own progress in developing and deploying the systems. The Commission shall publish this updated information on its website.”*

(23) In Article 279, the words "in the situation referred to in" are replaced by the words "in the situations referred to in".

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~~ ...,

For the European Parliament

The President

For the Council

The President

Joint statement by the European Parliament and the Council*

The European Parliament and the Council welcome the European Court of Auditors' Special Report 26/2018: 'A series of delays in Customs IT systems: what went wrong?' and other recent relevant reports in the area of customs, which have given the co-legislators a better overview of the causes for the delays in the implementation of the IT systems necessary for improving customs operations in the EU.

The European Parliament and the Council consider that any future audit by the European Court of Auditors assessing the reports prepared by the Commission on the basis of Article 278a of the Union Customs Code could positively contribute to the avoidance of further delays.

The European Parliament and the Council call on the Commission and the Member States to take full account of such audits.

* To be published in the L series of the *Official Journal of the European Union*.