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#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 5 April 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 5.4.2016  
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

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Delegations will find attached document C(2016) 1934 final .

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Encl.: C(2016) 1934 final



Brussels, 5.4.2016  
C(2016) 1934 final

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

**of 5.4.2016**

**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**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE DELEGATED ACT**

Regulation (EU) No 952/2013 (Code), in its consistency with the Treaty on the Functioning of the European Union (TFEU), delegates on the Commission the power to supplement certain non-essential elements of the Code, in accordance with Article 290 TFEU. The Commission has therefore exercised these new powers and adopted 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 Union Customs Code. This Commission Delegated Regulation established provisions of general application to supplement the Code in accordance with its delegations of power and with a view to allow for a clear and proper application of it.

Following the entry into force of Delegated Regulation (EU) 2015/2446, wrong cross-references were discovered that were due to the final review of the text and the rearrangement of the structure of certain provisions. In addition, certain missing elements in its provisions were detected that were unintentionally not included in the text of the act. The adjustment of these inaccuracies is of major importance for the Commission, Member States and Trade and an absolute precondition for the proper implementation of Union customs legislation.

Regulation (EU) No 952/2013 and Commission Delegated Regulation (EU) 2015/2446 will be applicable as of 1 May 2016. It is therefore necessary to correct Delegated Regulation (EU) 2015/2446 in order to replace the problematic references and rectify the omissions as quickly as possible with a view to ensure that the necessary provisions are in place for the application of the Code and its implementing provisions.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

A consultation was carried out in line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission.

The draft act was presented at the Customs Code Expert Group on 17 March 2016 to the delegates of the Member States. Member States agreed with the proposed corrections.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

Articles 139 and 141 of Commission Delegated Regulation (EU) 2015/2446 need to be corrected in order to rectify the spotted omissions.

As these modifications affect the substance of the delegated act, the appropriate instrument is a Commission Delegated Regulation correcting Delegated Regulation (EU) 2015/2446. It will apply as long as no objection is expressed by the European Parliament or the Council within a period of two months with the possibility of an extension of this period for another two months.

**Commission Delegated Regulation (EU) .../... of 5.4.2016 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**

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 Code<sup>1</sup>, and in particular Article 160 thereof,

Whereas:

- (1) Following the publication of Commission Delegated Regulation (EU) 2015/2446<sup>2</sup>, two errors were detected.
- (2) The first error concerns the presumption of a customs declaration laid down in Article 139 of Delegated Regulation (EU) 2015/2446 for some of the types of goods referred to in Article 136(1) of that Delegated Regulation. That presumption was intended to cover the same types of goods as under the currently applicable Commission Regulation (EEC) No 2454/93<sup>3</sup>, namely pallets, containers and means of transport, and spare parts, accessories and equipment for those pallets, containers and means of transport, personal effects and goods for sports purposes, welfare materials for seafarers used on a vessel engaged in international maritime traffic, medical, surgical and laboratory equipment, disaster relief material used in connection with measures taken to counter the effects of disasters or similar situations affecting the customs territory of the Union and portable musical instruments temporarily imported by travellers and intended to be used as professional equipment. When Delegated Regulation (EU) 2015/2446 was finalised, the order of the goods listed in its Article 136 was changed, but, by mistake, the references to those goods in Article 139 of that Delegated Regulation were not updated. The references should therefore be corrected.
- (3) The second error concerns Article 141(1) of Delegated Regulation (EU) 2015/2446. The currently applicable Article 233(1)(b) of Regulation (EEC) No 2454/93 provides for the possibility, in a number of limited and very specific cases, to deem the crossing of the border to be a declaration for temporary importation, export or re-export. By mistake, that provision was not included in Delegated Regulation (EU) 2015/2446, and as a result there is no possibility to declare certain goods by the sole act of crossing the frontier of the Union customs territory. At the adoption of Delegated

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<sup>1</sup> OJ L 269, 10.10.2013, p. 1.

<sup>2</sup> 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).

<sup>3</sup> 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 (OJ L 253, 11.10.1993, p. 1).

Regulation (EU) 2015/2446, no change to the provision regarding the types of acts that are deemed to be a customs declaration was intended. Article 141(1) should therefore be corrected.

- (4) Delegated Regulation (EU) 2015/2446 should therefore be corrected accordingly.
- (5) The provisions of this Regulation should apply from 1 May 2016 in order to enable the full application of the Code,

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### ***Corrections to Delegated Regulation (EU) 2015/2446***

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

- (1) Article 139 is replaced by the following:

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

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

- (2) in Article 141(1), the following point (d) is added:

"(d) the sole act of the goods crossing the frontier of the customs territory of the Union in any of the following situations:

- (i) where an exemption from the obligation to convey goods to the appropriate place applies in accordance with the special rules referred to in Article 135(5) of the Code;
- (ii) where goods are deemed to be declared for re-export in accordance with Article 139(2) of this Regulation;
- (iii) where goods are deemed to be declared for export in accordance with Article 140(1) of this Regulation."

### *Article 2*

#### **Entry into force**

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

It shall apply from 1 May 2016.

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

Done at Brussels, 5.4.2016

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*