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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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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

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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The provisions of the Union Customs Code¹ (the Code) are being applied since 1 May 2016. A major goal of the Code is the shift to a complete use of electronic systems for interactions between economic operators and customs authorities, and between customs authorities, and the end of paper-based customs processes.

The Code provides that different customs processes should be covered by electronic systems while also providing that the details of and planning for such systems should be set out in a separate Work Programme. The UCC Work Programme² draws up planning for seventeen UCC electronic systems in total, on the basis of the Multi-Annual Strategic Plan (MASP) for all electronic customs projects that is prepared and updated regularly in accordance with a 2008 Decision³ of the European Parliament and the Council. The systems can be divided into two categories:

- (a) fourteen trans-European systems including some systems that have national components for development by the Member States and
- (b) three national systems that have to be developed or upgraded by the Member States alone.

Article 278 of the Code provides that, until all the new electronic systems envisaged under the Code are operational, existing electronic and paper-based systems can continue to be used for customs processes. The Article establishes the end of 2020, at the latest, as the date by which the use of these transitional arrangements must cease. In line with this deadline, the Work Programme sets out step-by-step plans for completion of the work on the electronic systems by 2020.

The Commission and the Member States are on track to finish the major part of the work on the electronic systems on time. In 2017 three of the seventeen systems were implemented and a first phase of another system was completed, all by their scheduled dates. In effect, close to eighty per cent of the Commission's work on the trans-European systems provided for under the Work Programme will be completed by that date. However, the last phases of development of IT systems are often the longest and therefore, while most systems will be completed by 2020, some will only be partially completed. There are many challenges for both the Commission and Member States in this work of implementing seventeen electronic systems. These challenges, that were impossible to predict at the time the deadline was set, include the following:

¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ L 56, 10.10.2013, p.1).

² 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).

³ Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade (OJ L 23, 26.1.2008, p.21).

- The unavoidable delay in completing the design of the electronic systems. When setting the 2020 deadline, it was anticipated that the rules supplementing and implementing the UCC (the UCC Delegated Regulation,⁴ the UCC Implementing Regulation⁵ and the UCC Transitional Delegated Regulation⁶) would be adopted very soon after the adoption of the UCC in 2013, so that their provisions could be taken into account in developing the IT systems. However, as it happened, discussions took much longer than expected and the acts were only adopted in their final form in late 2015/early 2016. This delay meant a delay in producing the functional and technical specifications for many of the electronic systems.
- The enormity of the work of interlinking seventeen electronic systems across the whole of the EU and the particular complexity of some of the electronic systems. These elements only became apparent as work started on the functional and technical specifications for the systems. Having the full picture following the work on the specifications has led the Commission and Member States to the conclusion that a revision of the target date for completion of the systems is necessary in some cases. This is particularly true for those electronic systems for which the specifications will only be completed in 2018.
- Data harmonisation difficulties. Since the adoption of the Delegated Regulation and the Implementing Regulation, work is also proceeding at an intensive pace on harmonisation of the data provided by economic operators. This element is crucial for the interoperability of the different UCC electronic systems, for a harmonised application of the legal rules and for cooperation with other public services active at the border. Harmonising the data in line with international data models such as that of the World Customs Organisation also ensures better linkages with the IT systems of third countries and thus greatly facilitates trade. However, this work involves a much heavier than expected investment in terms of time and in financial terms in fully reprogramming some of the existing electronic systems.
- Sequencing. When planning realistic timelines and costs, close attention must be paid to the impact of the proposed electronic changes on the customs and trade ecosystem. As the electronic systems are closely interlinked, it is important to introduce them in the right order (sequencing) so as to ensure that interdependencies are respected and that the changes for administrations and trade are introduced in a structured and coherent manner.

For all of these reasons, it has become necessary to provide for a later date (2025 at the latest) for full completion of work on some of the systems. This target date will ensure the smooth implementation by 2020 of the majority of the systems and the later implementation of the remaining systems, in proper sequence, on dates between 2021 and 2025. Half of the systems

⁴ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing 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 58, 29.12.2015, p.1).

⁵ 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 of 9 October 2013 laying down the Union Customs Code (OJ L 58, 29.12.2015, p.558).

⁶ Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council are regards transitional rule for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational (OJ 69, 15.3.2016, p.1).

for which implementation is to be delayed already exist and are merely being upgraded under the UCC while the other half are new systems.

The systems to be postponed are as follows:

- Upgrades for which the main technical challenge is the harmonisation of data i.e. the upgrades of the Import Control System (ICS), the New Computerised Transit System (NCTS), the Automated Export System (AES) and the National Export System (including the export component of the national Special Procedures System); and
- Three new systems which are designed to apply innovative features of the Code i.e. Centralised Clearance for Import (CCI), Proof of Union Status (PoUS) and Guarantee Management (GUM).

The postponement to 2025 of the latest delivery date for these electronic systems conflicts with Article 278 of the Code which only allows the use of means for the exchange and storage of information other than the planned electronic systems until 2020. Therefore, the deadline in Article 278 must be extended in respect of the delayed systems. Furthermore, action must be taken quickly in order to ensure legal certainty; business and customs administrations would have serious problems if, by 2020, some of the electronic systems were not implemented and at the same time the law prohibited the continued transitional use of alternative arrangements.

As Member States and businesses need on average two years to make arrangements for each electronic system, the Commission has to provide certainty by 2018 about the re-planning for some of the systems and the related extension of the applicability of transitional arrangements after 2020 up to 2025.

- **Consistency with existing policy provisions in the policy area**

The amendment to Article 278 of the Code is consistent with the calendar for IT planning in the Multi-Annual Strategic Plan (MASP) and the Work Programme for the Code will shortly be updated on this basis via a new Commission Implementing Decision.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 33 and Article 207 of the Treaty on the Functioning of the European Union (TFEU) (customs cooperation and common commercial policy).

- **Subsidiarity (for non-exclusive competence)**

The proposal falls under the exclusive competence of the EU according to Article 3(1)(e), TFEU.

- **Proportionality**

The proposal does not entail any new policy developments compared to the legislative act it intends to amend; it modifies a single provision of that legislative act to extend the deadline for the use of transitional measures in respect of a small number of customs processes so that an existing policy choice (gradual shift to an electronic environment) can be better assured. As the Code is a legal act of the EU, it can only be amended by way of an equivalent legal act. Member States cannot act individually in this area.

- **Choice of the instrument**

In order to tackle the aforementioned problem, the Commission proposes to amend Article 278 of the Code so that the transitional arrangements for the exchange and storage of customs information (i.e. existing electronic and paper-based systems) can continue to be used after

2020 for the customs processes covered by the electronic systems that will not be implemented by 2020.

The proposed amendment keeps the deadline of 2020 in Article 278 but at the same time it provides for an extended deadline of 2025 in relation to customs processes covered by the aforementioned electronic systems that will not be operational by 2020.

3. STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Stakeholder consultations

The Commission has extensively consulted the Member States and listened to their concerns about the need for a more realistic timetable for the development of the electronic systems of the Union Customs Code and about the corresponding need for the continued applicability of transitional arrangements for the exchange and storage of customs information beyond the current deadline of 2020. In addition to some written and bilateral consultations, these issues were discussed in detail at Commission meetings with Member States on 31 March 2017 and on 29-30 June 2017. The Commission also sent Member States a detailed questionnaire to obtain information on their preferences regarding systems that should be delayed if any had to be delayed. The proposed new deadline and new planning schedule for the electronic systems takes into account the responses of Member States to that questionnaire.

The Commission also consulted the trade representatives in the forum of the expert group that gathers representatives from diverse trade associations, the Trade Contact Group, at Plenary meetings on 27 April 2017 and 12 July 2017. Businesses need realistic timetables and agree that the deadline to use the transitional arrangements for the exchange and storage of customs information must be extended in the case of electronic systems that will be ready later than 2020.

Impact assessment

This initiative does not require an impact assessment because it does not concern a policy choice. It simply suggests extending the use of the transitional arrangements that are already provided for in the Union Customs Code, for an additional period of time. This extension will, in fact, ensure a smoother and less disruptive implementation of the policy choice contained in the Code for a gradual shift to a complete use of electronic systems for interactions between economic operators and customs authorities, and among customs authorities, and for the end of paper based procedures.

The Commission has adopted a report⁷ on the implementation and impact to date of the Union Customs Code including its electronic systems, which provides more detail on the background to the delay in implementation of some electronic systems.

Regulatory fitness and simplification

The Code aims to ensure a shift to a fully electronic environment for all customs processes in order to ensure a framework for EU customs that is adapted to modern trade realities and thus to improve the competitiveness of European businesses while also better protecting the

⁷ Report from the Commission to the European Parliament and the Council on the implementation of the Union Customs Code and on the exercise of the power to adopt delegated acts pursuant to Article 284 thereunder [COM (2018)39]

financial and economic interests of the Union and the Member States and the safety and security of EU consumers. However, the deadline to implement all seventeen relevant electronic systems by 2020 imposes considerable pressure on all involved – on the Member States, the Commission and the business community. The proposed delay in implementation of a small number of systems will help to focus attention on ensuring the effective delivery of the other systems by 2020. Moreover, the delay can be managed by the present amendment to the legal framework, to allow the continued transitional use after 2020 of existing arrangements in the case of the customs matters dealt with by the electronic systems to be delayed. In fact these existing arrangements already, in some cases, involve electronic systems and the provisions of the Code simply provide for their upgrade. Therefore, the postponement of the deadline for the delivery of some IT systems will not jeopardise the achievement of the objectives of the UCC.

4. BUDGETARY IMPLICATIONS

The possibility to use alternative means of exchange and storage of the customs information in the case of some of the UCC electronic systems does not have budgetary implications in the short term. The present initiative, by providing a legal safety net for the small number of electronic systems to be deployed later than 2020, allows full attention to be focused in the next two years on the work of ensuring that the majority of the systems are finalised by 2020. It thus assists in the achievement of the objectives of the UCC including that of better ensuring the protection of EU financial resources.

Financing will be required under the next generation of EU customs funding programmes for post 2020 to ensure that the work on the development of the UCC electronic systems can continue until 2025.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will, by 2021, carry out an interim evaluation of the UCC legal framework and the electronic systems implemented by that date. It will launch a more comprehensive fitness check after 2025, once all the electronic systems are in place, so as to determine whether there are gaps or errors in the Code that need to be addressed by a more comprehensive proposal for amendment.

- **Detailed explanation of the specific provisions of the proposal**

In line with the legislative approach used for the current wording of Article 278, and for the the Code as a whole, the Commission proposes that the amended Article 278 will not name the electronic systems that are delayed. Instead the amendment will refer to the groups of legislative provisions that the electronic systems in question are designed to apply, as follows:

- Guarantee Management (GUM) is referred to as the electronic system designed to apply Articles 89 to 98 of the Code (guarantee for a potential or existing customs debt);
- the Import Control System (ICS) is referred to as the electronic system designed to apply Articles 127 to 130 of the Code (entry summary declaration);
- Proof of Union Status (PoUS) is referred to as the electronic system designed to apply Articles 153 to 155 of the Code (customs status of goods);

- Centralised Clearance for Import (CCI) is referred to as the electronic system designed to apply Article 179 of the Code
- the New Computerised Transit System (NCTS) is referred to as the electronic system designed to apply Articles 210(a), 215(2), 226 to 230 and 233 to 234 of the Code (transit); and
- the Automated Export System (AES) plus the upgrade of the National Export System (covering also the export component of the national Special Procedures System) are referred to as the electronic systems designed to apply paragraph (d) of Article 210, Article 215(1) and Articles 263, 264, 267, 269 to 272, 274 and 275 of the Code (as applicable to goods taken out of the customs territory of the Union) .

The Automated Export System (AES) is also designed to apply centralised clearance for export (Articles 179 of the Code) but to the extent that both Centralised Clearance (CCI) and AES are to be delivered after 2020, there is no need to expressly mention the connection between Article 179 and AES in the proposed new paragraph of Article 278 of the Code.

If adopted, the amended text will allow a smooth transition from the existing, mainly paper-based, systems to the new electronic environment foreseen in the Code. The transitional arrangements for each of the electronic systems under development, and that would consequently continue to apply in the case of the delayed systems, are spelled out in detail in the UCC Transitional Delegated Regulation. The legal consequence of amending Article 278 of the Code in the sense described above would be that some of these transitional measures apply for a longer period of time. The most important such measures are as follows:

- the electronic system to deal with the entry summary declaration, the transit procedure and the export control would continue to be the existing versions of ICS, NCTS and the Export Control system;
- the paper form T2L would continue to be endorsed by the customs authorities as proof of Union status;
- Annex 9 of the Transitional Delegated Regulation, instead of Annex B of the Delegated Regulation, would set the applicable data requirements for declarations and notifications in the aforementioned IT systems that will be deployed after 2020;
- existing paper-based Union transit procedures for rail, air or sea would continue to apply;
- paper documents could continue to be used to notify the exit of the goods from the customs territory;
- while the Member States involved in an authorisation for Centralised Clearance should cooperate, they would also be entitled to refuse an authorisation where granting it would create a disproportionate administrative burden; and
- the information on guarantees used in several Member States for purposes other than transit would have to be exchanged between Member States by email and would have to be stored in the Member States' national systems.

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

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 procedure,

Whereas:

- (1) Under Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code⁸ (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) However, the Code allows for the use of means of exchange and storage of information other than electronic data-processing techniques 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) 2016/578⁹. 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
- (6) There are many challenges in setting up all the necessary electronic systems by 2020 both for the Commission and for the Member States. First, in some cases, harmonising

⁸ 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).

⁹ 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).

the data elements on the basis of internationally accepted data models as required by the Code demands a full reprogramming of existing electronic systems and investments both in financial terms and in terms of time that are greater than foreseen at the time of adoption of the Code. Second, 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. Third, 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) 2015/2446¹⁰, Commission Implementing Regulation (EU) 2015/2447¹¹ and Commission Delegated Regulation (EU) 2016/341¹², were only adopted in 2015 and 2016. The discussions on those rules took much longer than expected and this has caused a delay in setting out the functional and technical specifications necessary for the development of the electronic systems.

- (7) It has become evident that, while most systems will be deployed by 2020, others can only be partially completed by that date.
- (8) The Commission, after having consulted Member States and economic operators, therefore proposes that work should continue after 31 December 2020 on two groups of systems. A first 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 second 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.
- (9) 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 2025 as regards those two groups of electronic systems.
- (10) 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

¹⁰ 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).

¹¹ 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 (OJ L 343, 29.12.2015, p. 558).

¹² 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).

and storage of information other than the electronic data-processing techniques referred to in Article 6(1) of the Code should continue to apply.

(11) 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. 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, until 31 December 2020 at the latest, where the electronic systems which are necessary for the application of the provisions of the Code other than those referred to in paragraph 2 are not yet operational.
 2. Means other than the electronic data-processing techniques referred to in Article 6(1) may be used on a transitional basis, until 31 December 2025 at the latest, 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 Articles 89 to 98;
 - (b) the provisions on entry summary declarations laid down in Articles 127 to 130;
 - (c) the provisions on the customs status of goods laid down in Articles 153 to 155;
 - (d) the provisions on centralised clearance laid down in Article 179;
 - (e) the provisions on transit laid down in Article 210(a), Article 215(2), Articles 226 to 230 and Articles 233 to 234; and
 - (f) the provisions on goods taken out of the customs territory of the Union laid down in Article 210 (d), Article 215(1), Articles 263 to 264, Article 267, Articles 269 to 272 and Articles 274 to 275.
- (2) 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