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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 COUNCIL REGULATION temporarily suspending the autonomous Common Customs Tariff duties on certain goods of a kind to be incorporated in or used for aircraft, and repealing Regulation (EC) No 1147/2002

Delegations will find attached document COM(2017) 731 final.

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Brussels, 4.12.2017
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2017/0324 (NLE)

Proposal for a

COUNCIL REGULATION

temporarily suspending the autonomous Common Customs Tariff duties on certain goods of a kind to be incorporated in or used for aircraft, and repealing Regulation (EC) No 1147/2002

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Council Regulation (EC) No 1147/2002 provides for the temporary suspension of the autonomous common customs tariff duties on certain goods imported with ‘airworthiness certificates’. Airworthiness certificates (nowadays "authorised release certificates") were issued by the national aviation in the state where the aircraft was registered and certified that the items incorporated in the aircraft were manufactured in conformity to an approved design according to the applicable aviation legislation of that time. The Council Regulation (EC) No 1147/2002 has simplified customs procedures for duty-free imports of parts, components and other goods that are used for the manufacture, repair, maintenance, rebuilding, modification or conversion of aircraft and were previously imported under different customs suspensive procedures (e.g. ‘inward processing’, ‘end-use’ and ‘warehousing’ procedures).

Some provisions in the Regulation require updating to take account of legal and technological developments. In particular, in order to ensure compliance with legal developments in the aviation sector, provisions should refer to ‘authorised release certificates’ (i.e. European Aviation Safety Agency (EASA) Form 1 or its equivalent) rather than ‘airworthiness certificates’. Also, the term ‘original certificates’ is obsolete, since certificates are now issued in electronic form.

National authorities have adopted different views as to whether goods imported with an ‘airworthiness certificate’ and benefitting from the suspension of customs duties as provided by Regulation (EC) No 1147/2002, can be used exclusively in civil aircraft, or whether they can be used both in civil and military aircraft. To ensure consistent interpretation, and uniform implementation, there is a need to clarify these provisions. Consequently, it is envisaged to allow parts intended for military aircraft also to benefit from the duty suspension as long they are accompanied by the authorised release certificate or its equivalent. This proposal is in line with customs legislation extending the simplified discharge of the inward processing procedure to military aircraft as Article 324(1)(c) of Commission Implementing Regulation (EU) 2015/2447, does not distinguish between civil and non-civil aircraft in respect of the simplified discharge of the inward processing procedure.

For the sake of legal certainty and to ensure uniform application of the regulation, the proposal will empower the Commission to establish a list of codes of the Combined Nomenclature set out in Council Regulation (EEC) No 2658/87 under which the goods in question can be classified and a list of certificates deemed equivalent to EASA Form 1 certificates. It will also allow swift action where these codes or certificates lists have to be amended.

For legal certainty and clarity, the current Regulation should be repealed rather than amended. The proposed new Regulation clarifies, simplifies, reduces administrative burden for economic operators and customs administrations, and supports the competitiveness of the EU aeronautics industry.

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

The measure reduces administrative burden for Member State customs authorities and for economic operators in the aircraft sector, as it reduces the need to use suspensive customs

regimes such as favourable tariff treatment for goods by reason of their end-use, inward processing relief or customs warehousing.

- **Consistency with other Union policies**

The proposal is in line with Union policy in the field of aviation and builds on the process of mutual recognition of authorised release certificates between EU and non-EU countries. In particular, the proposal is consistent with the Union policy on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (Regulation (EC) No 216/2008). In addition, the proposal is in conformity to the Union policy on the continuing airworthiness of aircraft and aeronautical products, parts, and appliances (Regulation (EC) No 1321/2014) and on the implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (Regulation (EC) No 748/2012).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of this proposal is Article 31 of the Treaty on the Functioning of the European Union (TFEU).

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

The subject of the proposal falls under the EU's exclusive competence. The subsidiarity principle therefore does not apply.

- **Proportionality**

The proposal complies with the principle of proportionality. The Regulation does not go beyond what is necessary to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on European Union (TEU).

- **Choice of the instrument**

Under Article 31 TFEU, 'Common Customs Tariff duties shall be fixed by the Council on a proposal from the Commission'. A Council Regulation is therefore the appropriate instrument.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

In parallel with the proposal and in accordance with Article 4 of Council Regulation (EC) No 1147/2002, the Commission is submitting to the Council a report on the application of the Regulation. The report, which is based on information received by the Member States for the period 2014-2016, concludes that the core rationale for simplification and suspension remains valid. The administrative burden on economic operators and customs administrations is reduced considerably.

According to the outcome of the report, the current Regulation remains relevant and effective as it reduces the administrative burden for the customs officials by allowing an alternative procedure to special customs procedures, such as end-use authorisation and its customs supervision. However, certain provisions of the current Regulation need further clarification

concerning the authorised certificates and procedures for repaired goods. In terms of efficiency, the report has clearly shown that the impact of the use of the current Regulation is significant for both economic operators and customs administrations. In particular, comparing the use of airworthiness certificate with the prescribed time limit for end-use procedure, it is apparent that the time saved is equivalent to the time necessary for granting the end-use procedure.

- **Stakeholder consultations**

The Commission organised several consultations informing the business community about the envisaged course of action. In particular, the Commission organised several meetings with the Association of European Airlines and the Association of Aerospace and Defence Industries. Economic operators expressed overall agreement with the proposal. Furthermore, the Commission consulted the European Aviation Safety Agency (EASA). Member States were informed through the expert group of the Economic Tariff Questions Group (ETQG) and the Tariff and Statistical Nomenclature Section of the Customs Code Committee (CN sector). Member States expressed their support to the Commission's proposal.

- **Impact assessment**

No impact assessment has been carried out for this proposal since there are no significant new economic, environmental or social impacts and there are no policy choices to be made.

- **Regulatory fitness and simplification**

The current Regulation has proven highly beneficial to the EU aeronautics industry (duty-free treatment of goods granted on presentation of a certificate) and Member State administrations (acceptance of a specific type of certificate, which is less burdensome than suspensive customs regimes used previously). The positive impact on the industry is reflected in the gradual increase in 2014-2016 in the value of imports with airworthiness certificates (around EUR 11,3 billion in 2014, EUR 14,9 billion in 2015 and EUR 18,5 billion in 2016). The Commission is submitting a report to the Council on the application of the Regulation (see above).

- **Fundamental rights**

The proposal has no impact on fundamental rights.

4. BUDGETARY IMPLICATIONS

This proposal has no financial implications. Economic operators in the sector were able to use suspensive customs regimes even before Council Regulation (EC) No 1147/2002 came into force and the proposal does not introduce major changes.

5. OTHER ELEMENTS

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

The proposed measures are to be managed under the integrated tariff of the European Union (TARIC) and applied by Member State customs administrations.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 31 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Council Regulation (EC) No 1147/2002¹, the autonomous Common Customs Tariff duties were temporarily suspended for certain parts, components and other goods of a kind to be incorporated in, or used for civil aircraft, when imported with airworthiness certificates. That Regulation simplified customs procedures for duty-free imports of parts, components and other goods used for the manufacture, repair, maintenance, rebuilding, modification or conversion of aircraft. However, due to extensive technical and legislative developments which have occurred since 2002, Regulation (EC) No 1147/2002 needs to be adapted and, in the interest of clarity, it should be replaced.
- (2) According to information received from the Member States, the temporary suspension introduced by Regulation (EC) No 1147/2002 remains necessary in order to achieve the objective of alleviating the administrative burden for both the economic operators in the aircraft sector and for the customs authorities of the Member States, as importations under special procedures with customs supervision such as end-use, inward processing or customs warehousing would be burdensome. The temporary suspension should therefore be continued.
- (3) In view of the fact that the prices for parts and components used in the aircraft sector are usually much higher than the prices for similar goods used for other purposes, the risk that the goods imported duty free might be used in other industrial areas and, hence, the risk of abuse of the temporary suspension, is very small.
- (4) Commission Regulation (EU) No 748/2012² provides that in order for a part to be eligible for installation in a type-certificated product, it must be accompanied by an authorised release certificate (EASA Form 1) issued by a party authorised by aviation authorities within the Union. Therefore, the suspension of customs duties should be conditional on the submission of an authorised release certificate.

¹ Council Regulation (EC) No 1147/2002 of 25 June 2002 temporarily suspending the autonomous Common Customs Tariff duties on certain goods imported with airworthiness certificates (OJ L 170, 29.6.2002, p. 8).

² Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ L 224, 21.8.2012, p. 1).

- (5) In addition, equivalent certificates issued by third countries and certificates which have been issued in the framework of bilateral aviation safety agreements with the Union before the establishment of the European Aviation Safety Agency (EASA) should also be accepted as an alternative to the authorised release certificates (EASA Form 1).
- (6) Considering that certain certificates are issued in an electronic form only, it should be possible to submit certificates using either electronic data-processing techniques or other means for the purposes of benefitting from the suspension.
- (7) Where a certificate cannot be submitted at the time of declaring the good for release for free circulation, a declaration should be provided by the seller of the goods containing the certificate reference number in order to allow customs authorities of the Member States to check the products which are released for free circulation.
- (8) Customs authorities should be able, at the expense of the importer, to call upon the expertise of a representative of the national aviation authorities where they have good reason to believe that certificates have been falsified. However, before taking such action, the customs authorities should take into account the volume of the goods to be imported, the amount of the duties that would be payable if the suspension laid down in this Regulation did not apply and the risk that the cost of the expert opinion would outweigh the benefit to the importer of the suspension of duties, in the event that according to the expert opinion the rules for the issuing of those certificates have not been infringed, in order to avoid creating unnecessary burdens for the economic operators.
- (9) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to establish a list of the headings, subheadings and codes of the Combined Nomenclature set out in Council Regulation (EEC) No 2658/87³ under which the goods eligible for suspension under this Regulation are classified, to establish a list of certificates which are equivalent to the authorised release certificate EASA Form 1 and to draw up a template for declarations that may be submitted to the customs authorities where a certificate cannot be submitted at the time of declaring the goods for release for free circulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴.
- (10) In view of the extensive changes brought about by this Regulation with regard to the goods eligible for the suspension of autonomous customs duties, the authorised release certificates acceptable and the procedures, as well as in the interest of clarity, Regulation (EC) No 1147/2002 should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

The autonomous Common Customs Tariff duties laid down in Regulation (EEC) No 2658/87 for parts, components and other goods of a kind to be incorporated in or used for aircraft and

³ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

⁴ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

parts thereof in the course of their manufacture, repair, maintenance, rebuilding, modification or conversion shall be suspended.

The Commission shall, by means of implementing acts, establish a list of the headings, subheadings and codes of the Combined Nomenclature set out in Regulation (EEC) No 2658/87 under which goods eligible for the suspension are classified. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 4.

Article 2

1. In order for goods to benefit from the suspension laid down in Article 1, the declarant shall submit an authorised release certificate EASA Form 1, as set out in Appendix I to Annex I to Regulation (EU) No 748/2012, or an equivalent certificate to the customs authorities when submitting the customs declaration for release for free circulation. The customs declaration for release for free circulation shall contain a reference to the certificate reference number.

The certificate shall be submitted using electronic data-processing techniques or other means.

The Commission shall, by means of implementing acts, establish a list of certificates which are deemed to be equivalent to the authorised release certificate EASA Form 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 4.

2. By way of derogation from paragraph 1, where a certificate cannot be submitted at the time of declaring the goods for release for free circulation, the declarant may instead provide a declaration on the commercial invoice or a document annexed thereto. The declaration shall contain a certificate reference number. In case of goods imported for repair or maintenance that have lost their airworthiness status, the declaration shall refer to the original certificate number.

The declaration shall be signed by the seller of the goods.

The declaration shall be drawn up in accordance with a template established by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 4.

Article 3

Where the customs authorities have good reason to suspect that a certificate submitted pursuant to Article 2(1) has been falsified, they may request an expert opinion from a representative of the national aviation authorities. The importer shall bear the costs of the expert opinion.

When deciding whether to request an expert opinion, the customs authorities shall take into account the volume of the goods to be imported, the amount of duties that would be payable if the suspension laid down in this Regulation did not apply and the risk that the cost of the expert opinion would outweigh the benefit to the importer of the suspension of duties, in the event that according to the expert opinion the rules for the issuing of those certificates have not been infringed.

Article 4

The Commission shall be assisted by the Customs Code Committee established by Article 285 of Regulation (EU) No 952/2013 of the European Parliament and of the Council⁵. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 5

Regulation (EC) No 1147/2002 is repealed. References to the repealed Regulation shall be construed as references to this Regulation.

Article 6

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

It shall apply from [1 March 2018].

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

Done at Brussels,

For the Council
The President

⁵ 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).

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

Council Regulation temporarily suspending the autonomous Common Customs Tariff duties on certain goods of a kind to be incorporated in or used for aircraft, and repealing Regulation (EC) No 1147/2002

2. BUDGET LINES

Proposal has no financial implications

Proposal has no financial impact on expenditure but has a financial impact on revenue -the effect is as follows:

(EUR million to one decimal place)

Budget line	Revenue	12 month period, starting dd/mm/yyyy	[Year: 2017]

Situation following action	
Budget line	

This proposal has no financial implications. Economic operators in this sector were still able to make use of the suspensive customs regimes (such as "inward processing", "end-use", "warehousing" procedures) even before Council Regulation (EC) No 1147/2002 was in force and the current proposal does not bring major changes to the existing legislation.

For information purposes, the estimated customs duties that correspond to the volume of imports in the EU with "airworthiness certificates" for the year 2016 would amount to 560 million EUR.

3. ANTI-FRAUD MEASURES

Article 3 of the Regulation provides that the customs authorities may request an expert opinion from a representative of the national aviation authorities at the expense of the importer where they have reason to believe that certificates have been falsified.